Customs Act 1901

No. 6, 1901

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This compilation is in 5 volumes

Volume 1:	**Parts I to VI** **sections 1 to 126C**
Volume 2:	Parts IVA to XI sections 126D to 183UAA
Volume 3:	Parts XII to XVA sections 183UA to 269SK
Volume 4:	Parts XVB to XVII sections 269SM to 279 Schedule
Volume 5:	Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Customs Act 1901* that shows the text of the law as amended and in force on 27 August 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the Customs

Part I—Introductory

1 Short title

This Act may be cited as the *Customs Act 1901*.

2 Commencement

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

4 Definitions

(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.

aircraft identification powers has the same meaning as in the *Maritime Powers Act 2013*.

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.

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Answer questions means that the person on whom the obligation of answering questions is cast shall to the best of his or her 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.

approved statement means a statement approved under section 4A.

arrival means:

(a) in relation to a ship—the securing of the ship in a port, or

(b) in relation to an aircraft—the aircraft coming to a stop after landing.

assessed GST has the meaning given by the GST Act.

assessed luxury car tax has the meaning given by the Luxury Car Tax Act.

assessed wine tax has the meaning given by the Wine Tax Act.

Australia does not include the external Territories.

Australian aircraft means an aircraft that:

(a) is an Australian aircraft as defined in the *Civil Aviation Act 1988*; or

(b) is not registered under the law of a foreign country and is either wholly owned by, or solely operated by:

(i) one or more residents of Australia; or

(ii) one or more Australian nationals; or

(iii) one or more residents of Australia and one or more Australian nationals.

For the purposes of this definition, ***Australian national*** and ***resident of Australia*** have the same meanings as in the *Shipping Registration Act 1981*.

Australian Border Force Commissioner has the same meaning as in the *Australian Border Force Act 2015*.

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Australian offshore electricity installation means an ***offshore electricity installation*** that is deemed to be part of Australia because of the operation of section 5C.

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 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and
  (ii) the Coral Sea area; and
(b) part of:
  (i) the seabed beneath the coastal area; or
  (ii) the continental shelf of Australia.

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

Australian ship means a ship that:

(a) is an Australian ship as defined in the *Shipping Registration Act 1981*; or
(b) is not registered under the law of a foreign country and is either wholly owned by, or solely operated by:
  (i) one or more residents of Australia; or
  (ii) one or more Australian nationals; or
  (iii) one or more residents of Australia and one or more Australian nationals.

For the purposes of this definition, ***Australian national*** and ***resident of Australia*** have the same meanings as in the *Shipping Registration Act 1981*.

Australian waters means:

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

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

authorised officer, in relation to a provision of this Act, means an officer of Customs authorised under subsection (1AA) to exercise the powers or perform the functions of an authorised officer under that provision.

Note: See also subsection (1A).

authorising officer has the same meaning as in the *Maritime Powers Act 2013*.

Authority to deal means:

(a) in relation to goods the subject of an export declaration—an authority of the kind mentioned in paragraph 114C(1)(a); or

(b) in relation to goods the subject of an import declaration—an authority of the kind referred to in subsection 71C(4); or

(d) in relation to goods the subject of a warehouse declaration—an authority of the kind referred to in subsection 71DJ(4); or

(e) in relation to goods that are Subdivision AA goods within the meaning of section 71AAAA or that are specified low value goods within the meaning of section 71AAAD—an authority under section 71.

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.

border controlled drug has the same meaning as in Part 9.1 of the *Criminal Code*.

border controlled plant has the same meaning as in Part 9.1 of the *Criminal Code*.

border controlled precursor has the same meaning as in Part 9.1 of the *Criminal Code*.

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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.

cargo report means a report under section 64AB that is made in respect of the cargo to be unloaded from, or kept on board, a ship at a port or an aircraft at an airport.

cargo reporter, in relation to a ship or aircraft and in relation to a particular voyage or flight, means:

(a) the operator or charterer of the ship or aircraft; or

(b) a slot charterer in respect of the ship; or

(c) a freight forwarder in respect of the ship or aircraft;

for the voyage or flight.

Carriage includes vehicles and conveyances of all kinds.

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

Charter of the United Nations means the Charter of the United Nations, done at San Francisco on 26 June 1945 [1945] ATS 1.

Note: The text of the Charter of the United Nations is set out in Australian Treaty Series 1945 No. 1. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

child: without limiting who is a child of a person for the purposes of this Act, each of the following is the child of a person:

(a) an adopted child or exnuptial child of the person;

(b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

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.

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Collector has the meaning given by subsection 8(1).

commercial document, in relation to goods, means a document or other record prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of the goods, but does not include a record of any electronic transmission to or from the Department or a Collector:

(a) in respect of an import declaration, or warehouse declaration, relating to the goods or the withdrawal of such an import declaration or warehouse declaration; or

(b) in respect of an export entry, submanifest, or outward manifest, relating to the goods or in respect of the withdrawal of such an entry, submanifest or manifest.

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 aircraft means an aircraft that is in the service of the Commonwealth and displaying the prescribed ensign or prescribed insignia.

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).

Commonwealth offshore area has the same meaning as in the *Offshore Electricity Infrastructure Act 2021*.

Commonwealth ship means a ship that is in the service of the Commonwealth and flying the prescribed ensign.

Comptroller-General of Customs means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

Container means a container within the meaning of the Customs Convention on Containers, 1972 signed in Geneva on 2 December

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1972, as affected by any amendment of the Convention that has come into force.

controlled trial means a controlled trial established by rules made under subsection 179L(1).

controlled trial provision means the following:

(a) Part IV (importation of goods), other than Division 1 of that Part;
(b) Part IVA (depots);
(c) Part V (warehouses);
(d) Part VI (exportation of goods), other than Division 1 of that Part;
(e) Part VIA (electronic communications);
(f) Part XI (agents and customs brokers);
(g) Part XVA (tariff concession orders);
(h) regulations made for the purposes of a provision covered by paragraph (a), (b), (c), (d), (e), (f) or (g).

Coral Sea area has the same meaning as in section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Country includes territory or other place, but does not include:

(a) an Australian resources installation; or
(b) an Australian sea installation; or
(c) an Australian offshore electricity 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 broker means a customs broker within the meaning of Part XI.

Customs-related law has the meaning given by section 4B.

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

data includes:

(a) information in any form; or

(b) any program (or part of a program).

Days does not include Sundays or holidays.

Defence Minister means the Minister administering section 1 of the *Defence Act 1903*.

depot operator means a person who holds a depot licence as defined by subsection 77F(1).

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.

designated place means:

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

(aa) a place to which a ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1), while that ship or aircraft remains at that place; or

(b) a place that is the subject of a permission under subsection 58(2) while the ship or aircraft to which the permission relates remains at that place; or

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

(d) a place from which a ship or aircraft that is the subject of a permission under section 175 is required to depart, between the grant of that permission and the departure of the ship or aircraft; or

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(e) a place to which a ship or aircraft that is the subject of a permission under section 175 is required to return, while that ship or aircraft remains at that place; or

(f) a section 234AA place that is not a place, or a part of a place, referred to in paragraph (a), (aa), (b), (c), (d) or (e).

Detention officer means:

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

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

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

Detention place means:

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

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

Division 1B Judge means:

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

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

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

Division 1B Magistrate means:

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

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(b) a Magistrate of a State (other than New South Wales) to whom an appropriate arrangement under subsection 11(1) applies; or

(ba) a Judge of the Local Court of New South Wales to whom an appropriate arrangement under subsection 11(1A) applies; or

(c) a Judge of the Local Court of the Northern Territory to whom an appropriate arrangement under subsection 11(2) applies.

documents include:

(a) any paper or other material on which there is writing; and

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(c) any paper or other material on which a photographic image or any other image is recorded; and

(d) any article or material from which sounds, images or writing is capable of being produced with or without the aid of a computer or of some other device.

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.

electronic, in relation to a communication, means the transmission of the communication by computer.

eligible business entity has the meaning given by subparagraph 69(1)(d)(ia).

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

excisable goods has the same meaning as in the *Excise Act 1901*.

excise-equivalent goods means goods prescribed by the regulations for the purposes of this definition.

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excise-equivalent warehouse licence has the meaning given by subsection 78(1).

export declaration means an export declaration communicated to the Department by document or electronically as mentioned in section 114.

export entry means an entry of goods for export made as mentioned in section 113AA.

export entry advice means an export entry advice given under subsection 114C(1).

External place means:

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

(b) a foreign country.

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

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

(b) to recover any such goods;

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

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

foreign aircraft means an aircraft that is not an Australian aircraft.

foreign ship means a ship that is not an Australian ship.

frisk search means:

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

fuel means goods of a kind that fall within a classification in subheading 2707, 2709 or 2710 of Schedule 3 to the Customs Tariff.

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gaseous fuel means compressed natural gas, liquefied natural gas or liquefied petroleum gas.

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

goods means movable personal property of any kind and, without limiting the generality of the expression, includes documents, vessels and aircraft.

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

Greater Sunrise special regime area has the same meaning as in the *Seas and Submerged Lands Act 1973*.

GST has the meaning given by section 195-1 of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

identity card means an identity card issued under section 4C for the purposes of the provision in which the expression is used.

import declaration means an import declaration communicated to the Department by document or electronically as mentioned in section 71A.

import declaration advice means an import declaration advice given under subsection 71C(1).

import declaration processing charge means import declaration processing charge payable as set out in section 71B.

import duty means duty imposed on goods imported into Australia.

import entry means an entry of goods for home consumption made as mentioned in subsection 68(3A) or an entry of goods for warehousing made as mentioned in subsection 68(3B).

import entry advice means an import declaration advice or a warehouse declaration advice.

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infringement notice has the meaning given by subsection 243X(1).

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

Installation means:

(a) a resources installation; or

(b) a sea installation; or

(c) an offshore electricity installation.

internal medical search means an internal search carried out under section 219Z (internal medical search by medical practitioner).

internal non-medical scan means an internal search carried out under section 219SA (internal non-medical scan using prescribed equipment).

internal search of a person:

(a) means an examination (including an internal examination) of the person's body to determine whether the person is internally concealing a substance or thing; and

(b) in the case of an internal medical search—includes the recovery of any substance or thing suspected on reasonable grounds to be so concealed.

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

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

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

like customable goods means goods that are prescribed by the regulations for the purposes of this definition.

low value cargo has the same meaning as in section 63A.

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luxury car tax has the meaning given by section 27-1 of the Luxury Car Tax Act.

Luxury Car Tax Act means the *A New Tax System (Luxury Car Tax) Act 1999*.

maritime officer has the same meaning as in the *Maritime Powers Act 2013*.

Master means:

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

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

but does not include a pilot or Government officer.

Medical practitioner means any person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

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

monitoring powers has the meaning given by section 214AB.

month means one of the 12 months of the calendar year.

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

Narcotic goods means goods that consist of a narcotic substance.

Narcotic-related goods means:

(a) narcotic goods;

(b) moneys within the meaning of section 229A to which that section applies or is believed by the person in possession of the moneys to apply;

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(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 border controlled drug or a border controlled plant.

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) the Secretary of the Department; or

(b) the Australian Border Force Commissioner (including in his or her capacity as the Comptroller-General of Customs); or

(c) an APS employee in the Department; or

(d) a person authorised under subsection (1B) to exercise all the powers and perform all the functions of an officer of Customs; or

(e) a person who from time to time holds, occupies, or performs the duties of an office or position (whether or not in or for the Commonwealth) specified under subsection (1C), even if the office or position does not come into existence until after it is so specified; or

(f) in relation to a provision of a Customs Act:

(i) a person authorised under subsection (1D) to exercise the powers or perform the functions of an officer of Customs for the purposes of that provision; or

(ii) a person who from time to time holds, occupies, or performs the duties of an office or position (whether or not in or for the Commonwealth) specified under subsection (1E) in relation to that provision, even if the

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office or position does not come into existence until after it is so specified.

offshore electricity installation means infrastructure, a structure or an installation that:

(a) is ***offshore renewable energy infrastructure*** within the meaning of the *Offshore Electricity Infrastructure Act 2021*; or

(b) is ***offshore electricity transmission infrastructure*** within the meaning of that Act.

operator of a ship or aircraft for a particular voyage or flight means:

(a) the shipping line or airline responsible for the operation of the ship or aircraft for the voyage or flight; or

(b) if there is no such shipping line or airline, or no such shipping line or airline that is represented by a person in Australia—the master of the ship or the pilot of the aircraft.

outturn report means a report under section 64ABAA.

overseas offshore electricity installation means an ***offshore electricity installation*** that:

(a) is in the Commonwealth offshore area; and

(b) has been brought into the Commonwealth offshore area from a place outside the outer limits of the area;

but does not include an Australian offshore electricity installation.

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

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(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 or herself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

owner, in respect of a ship or aircraft, includes a charterer of the ship or aircraft or a slot charterer or freight forwarder responsible for the transportation of goods on the ship or aircraft.

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

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

parent: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this subsection.

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

Place includes ship or aircraft.

place outside Australia includes:

(a) the waters in the Greater Sunrise special regime area; or

(b) a resources installation in the Greater Sunrise special regime area;

but does not include:

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

(d) any other installation outside Australia; or

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(e) a ship outside Australia; or

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

pleasure craft means a ship that from the time of its arrival at its first port of arrival in Australia from a place outside Australia until the time of its departure from its last port of departure in Australia is:

(a) used or intended to be used wholly for recreational activities, sporting activities or both; and

(b) not used or intended to be used for any commercial activity; and

(c) not offered or intended to be offered for sale or disposal.

Port means a port appointed under section 15.

port authority means a body administering the business carried on at a port or ports in a State or Territory.

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

Prohibited goods means:

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

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

(ba) restricted goods that have been brought into Australia other than in accordance with a permission under subsection 233BABAE(2); or

(c) goods subject to customs control.

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

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

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Records offence means:

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

(b) an offence against:

(i) section 6 of the *Crimes Act 1914*; 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

(ba) an ancillary offence (within the meaning of the *Criminal Code*) that relates to an offence of the kind referred to in paragraph (a) of this definition; or

(c) an offence against section 134.1, 134.2 or 135.1 of the *Criminal Code*, 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).

resources installation in the Greater Sunrise special regime area means a resources installation that is attached to the seabed in the Greater Sunrise special regime area.

restricted goods has the meaning given by section 233BABAE.

rules:

(a) in relation to Part XA, means rules made under section 179; and

(b) in relation to Part XB, means rules made under section 179L.

Sea installation has the same meaning as in the Sea Installations Act.

Sea Installations Act means the *Sea Installations Act 1987*.

section 234AA place means a place that is identified under section 234AA as a place of a kind referred to in that section.

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self-assessed clearance declaration means a declaration given to the Department under section 71 in the circumstances mentioned in section 71AAAF.

self-assessed clearance declaration advice means a self-assessed clearance declaration advice given under section 71AAAG.

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.

small business entity has the meaning given by section 328-110 (other than subsection 328-110(4)) of the *Income Tax Assessment Act 1997*.

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

special reporter has the same meaning as in section 63A.

suspicious substance means a narcotic substance that would, or would be likely to, assist in the proof of the commission by any person of an offence against Division 307 of the *Criminal Code* that is punishable by imprisonment for a period of 7 years or more.

taxable dealing has the meaning given by the Wine Tax Act.

taxable importation has the meaning given by the GST Act.

taxable importation of a luxury car has the meaning given by the Luxury Car Tax Act.

taxation officer means a person employed or engaged under the *Public Service Act 1999* who is:

(a) exercising powers; or

(b) performing functions;

under, pursuant to or in relation to a taxation law (as defined in section 2 of the *Taxation Administration Act 1953*).

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territorial sea, in relation to Australia, means the territorial sea area whose outer limits are from time to time specified in a Proclamation made by the Governor-General for the purposes of section 7 of the *Seas and Submerged Lands Act 1973*.

terrorist act has the same meaning as in the *Crimes Act 1914*.

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

This Act includes all regulations made thereunder.

Timor Sea Maritime Boundaries Treaty means the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force from time to time.

Note: The Treaty could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Timor Sea petroleum activities purpose, in relation to goods, means the purpose of the goods being:

(a) taken to a resources installation that is attached to the seabed:
  (i) in the Greater Sunrise special regime area; or
  (ii) in the Greater Sunrise pipeline international offshore area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; or
  (iii) above the Bayu-Undan Gas Field within the meaning of the Timor Sea Maritime Boundaries Treaty; or
  (iv) in the Bayu-Undan pipeline international offshore area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; or
  (v) above the Kitan Oil Field within the meaning of the Timor Sea Maritime Boundaries Treaty; and
(b) used at the resources installation for a purpose related to Petroleum Activities within the meaning of the Timor Sea Maritime Boundaries Treaty.

tobacco products means goods classified to heading 2401, 2402 or 2403 or subheading 2404.11.00 of Schedule 3 to the *Customs*

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Tariff Act 1995 (except goods classified to subheading 2402.90.00 or 2403.99.10 of that Schedule).

transport security identification card means:

(a) an aviation security identification card issued under the *Aviation Transport Security Regulations 2005*; and

(b) a maritime security identification card issued under the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

trusted trader agreement means an agreement entered into under section 176A between the Comptroller-General of Customs and an entity, and includes such an agreement as varied and in force from time to time.

UNCLOS means the United Nations Convention on the Law of the Sea.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31.

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.

unmarked plastic explosive has the same meaning as in Subdivision B of Division 72 of the *Criminal Code*.

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UN-sanctioned goods means goods that are prescribed as UN-sanctioned goods under subsection 233BABAA(1).

Visual examination application means an application made under section 71D or 71DK for permission to examine goods.

warehouse means a place at which a person or partnership is authorised by a warehouse licence under section 79 to warehouse goods.

warehouse declaration means a warehouse declaration communicated to the Department by document or electronically under section 71DH.

warehouse declaration advice means a warehouse declaration advice given under section 71DJ.

warehouse declaration processing charge means a warehouse declaration processing charge payable as set out in section 71DI.

Warehoused goods means:

(a) goods received into a warehouse in pursuance of an entry for warehousing or permission granted under section 71E; or

(b) goods blended or packaged in a warehouse in compliance with this Act.

warehoused goods declaration fee means a fee payable under section 71BA for the processing of an import declaration in respect of warehoused goods.

Wharf means a wharf appointed under section 15.

Wharf owner includes any owner or occupier of any wharf.

wine tax has the meaning given by section 33-1 of the Wine Tax Act.

Wine Tax Act means the *A New Tax System (Wine Equalisation Tax) Act 1999*.

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(1AA) The Comptroller-General of Customs may, by writing, authorise an officer of Customs to exercise the powers or perform the functions of an authorised officer under a specified provision of this Act.

(1A) If:

(a) the Comptroller-General of Customs gives an authorisation under subsection (1AA); and

(b) the authorisation is for officers of Customs from time to time holding, occupying or performing the duties of specified offices or positions to exercise the powers or perform the functions of an authorised officer under specified provisions of this Act;

then the authorisation extends to such an office or position that comes into existence after the authorisation is given.

(1B) For the purposes of paragraph (d) of the definition of ***officer of Customs*** in subsection (1), the Comptroller-General of Customs may, by writing, authorise a person to exercise all the powers and perform all the functions of an officer of Customs.

(1C) For the purposes of paragraph (e) of the definition of ***officer of Customs*** in subsection (1), the Comptroller-General of Customs may, by writing, specify an office or position (whether or not in or for the Commonwealth).

(1D) For the purposes of subparagraph (f)(i) of the definition of ***officer of Customs*** in subsection (1), the Comptroller-General of Customs may, by writing, authorise a person to exercise the powers or perform the functions of an officer of Customs for the purposes of a specified provision of a Customs Act.

(1E) For the purposes of subparagraph (f)(ii) of the definition of ***officer of Customs*** in subsection (1), the Comptroller-General of Customs may, by writing, specify an office or position (whether or not in or for the Commonwealth) in relation to a specified provision of a Customs Act.

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

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

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

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

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

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

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

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

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

(3C) Unless the contrary intention appears, if the word "Free" is set out in section 16 or 18 of the *Customs Tariff Act 1995*, in the third column of Schedule 3 or 4 to that Act or in the third column of the table in a later Schedule to that Act, that word is taken to be a rate

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of duty for the purposes of this Act or any other law of the Commonwealth.

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

(4A) To avoid doubt, if narcotic goods are:

(a) imported into Australia in breach of a prohibition under section 50; or

(b) exported from Australia in breach of a prohibition under section 112;

the goods are imported or exported, as the case may be, in contravention of this Act.

Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the *Criminal Code*.

(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

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(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:

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

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

(b) the installation:

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

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

(9A) If it is necessary to determine whether a resources installation is attached to the seabed (the ***relevant seabed***):

(a) in the Greater Sunrise special regime area; or

(b) in the Greater Sunrise pipeline international offshore area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; or

(c) above the Bayu-Undan Gas Field within the meaning of the Timor Sea Maritime Boundaries Treaty; or

(d) in the Bayu-Undan pipeline international offshore area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; or

(e) above the Kitan Oil Field within the meaning of the Timor Sea Maritime Boundaries Treaty;

subsection (9) has effect as if a reference in that subsection to the Australian seabed were a reference to the relevant seabed.

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

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(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).

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(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

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(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.

(18A) An offshore electricity installation is taken to be installed in the Commonwealth offshore area if the installation:

(a) rests on the seabed in the Commonwealth offshore area; or

(b) is fixed or connected to the seabed in the Commonwealth offshore area (whether or not the installation is floating); or

(c) is attached or tethered to any other offshore electricity installation (including any other offshore electricity installation covered by this paragraph);

but does not include a vessel that is temporarily moored or anchored to the seabed in the Commonwealth offshore area.

(18B) An offshore electricity installation is not taken to be installed in the Commonwealth offshore area for the purposes of this Act unless it is taken to be so installed under subsection (18A).

(19) For the purposes of Part XII, a person will be taken to carry a thing, including a thing constituting or containing special forfeited goods or prohibited goods, on his or her body only if the thing constitutes, or is in or under, clothing worn by the person.

(19A) In subsection (19), the reference to clothing worn by a person includes a reference to any personal accessory or device that is worn by, or attached to, the person.

(19B) Without limiting Part XII, a person is taken to be unlawfully carrying prohibited goods on his or her body if the person is carrying, on his or her body, restricted goods that have been brought into Australia other than in accordance with a permission under subsection 233BABAE(2).

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

(a) under 18 years of age; or

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

4AAA Members of family

For the purposes of this Act, the members of a person's family are taken to include the following (without limitation):

(a) a de facto partner of the person (within the meaning of the *Acts Interpretation Act 1901*);

(b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in section 4;

(c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a member of the person's family.

4AA Act not to apply so as to exceed Commonwealth power

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

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

(b) also has at least one valid application;

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

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

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

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

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

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

(5) In this section:

application means an application in relation to:

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

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

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

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

4AB Compensation for acquisition of property

(1) If:

(a) this Act would result in an acquisition of property; and

(b) any provision of this Act would not be valid, apart from this section, because a particular person has not been compensated;

the Commonwealth must pay that person:

(c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or

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(d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.

(2) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

(4) The Consolidated Revenue Fund is appropriated for the purposes of making payments under this section.

4A Approved forms and approved statements

(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-General of Customs.

(1A) In this Act, a reference to an approved statement is a reference to a statement that is approved, by instrument in writing, by the Comptroller-General of Customs.

(2) Neither of the following is a legislative instrument:

(a) a form or statement approved as mentioned in this section;

(b) an instrument approving a form or statement as mentioned in this section.

4B What is a Customs-related law

In this Act:

Customs-related law means:

(a) this Act; or

(b) the *Excise Act 1901* and regulations made under that Act; or

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(baa) section 72.13 of the *Criminal Code*; or

(ba) Division 307 of the *Criminal Code*; or

(c) any other Act, or any regulations made under any other Act, in so far as the Act or regulations relate to the importation or exportation of goods, where the importation or exportation is subject to compliance with any condition or restriction or is subject to any tax, duty, levy or charge (however described).

4C Identity cards

(1) The Comptroller-General of Customs must cause an identity card to be issued to an officer who is an authorised officer for the purposes of Division 3A of Part VI or is a monitoring officer for the purposes of Subdivision J of Division 1 of Part XII or is a verification officer for the purposes of Subdivision JA of Division 1 of Part XII.

(2) An identity card:

(a) must be in a form approved by the Comptroller-General of Customs; and

(b) must contain a recent photograph of the authorised officer, monitoring officer or verification officer.

(3) If a person to whom an identity card has been issued ceases to be an authorised officer, monitoring officer or verification officer for the purposes of the provisions of this Act in respect of which the card was issued, the person must return the card to the Comptroller-General of Customs as soon as practicable.

Penalty: One penalty unit.

(4) An offence for a contravention of subsection (3) is an offence of strict liability.

(5) An authorised officer, monitoring officer or verification officer must carry his or her identity card at all times when exercising powers in respect of which the card was issued.

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5 Penalties at foot of sections or subsections

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.

5AA Application of the *Criminal Code*

(1) Subject to subsection (2), Chapter 2 of the *Criminal Code* applies to an offence against this Act.

(2) For the purposes of a Customs prosecution:

(a) Parts 2.1, 2.2 and 2.3 of the *Criminal Code* apply; and

(b) Parts 2.4, 2.5 and 2.6 of the *Criminal Code* do not apply; and

(c) a reference to criminal responsibility in Chapter 2 of the *Criminal Code* is taken to be a reference to responsibility.

(3) This section is not to be interpreted as affecting in any way the nature of any offence under this Act, the nature of any prosecution or proceeding in relation to any such offence, or the way in which any such offence is prosecuted, heard or otherwise dealt with.

(4) Without limiting the scope of subsection (3), this section is not to be interpreted as affecting in any way the standard or burden of proof for any offence under this Act that is the subject of a Customs prosecution.

(5) In this section:

Customs prosecution has the meaning given in section 244.

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Part II—Administration

5A Attachment of overseas resources installations

(1) A person shall not cause an overseas resources installation to be attached to the Australian seabed.

Penalty: 500 penalty units.

(1A) Subsection (1) does not apply if the person has the permission of the Comptroller-General of Customs given under subsection (2).

(2) The Comptroller-General of Customs 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: 100 penalty units.

(4) Where the Comptroller-General of Customs has, under subsection (2), given a person permission to cause an overseas resources installation to be attached to the Australian seabed, the Comptroller-General of Customs 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.

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(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 biosecurity risks (within the meaning of the *Biosecurity Act 2015*); and

(b) conditions requiring the master of an installation to bring the installation to a place specified by the Comptroller-General of Customs for examination for purposes relating to biosecurity risks (within the meaning of the *Biosecurity Act 2015*) before the installation is attached to the Australian seabed.

5B Installation of overseas sea installations

(1) A person shall not cause an overseas sea installation to be installed in an adjacent area or a coastal area.

Penalty: 500 penalty units.

(1A) Subsection (1) does not apply if the person has the permission of the Comptroller-General of Customs given under subsection (2).

(2) The Comptroller-General of Customs may, by notice in writing given to a person who has applied for permission to cause an overseas sea installation to be installed in an adjacent area or 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: 100 penalty units.

(4) Where the Comptroller-General of Customs has, under subsection (2), given a person permission to cause an overseas sea installation to be installed in an adjacent area or a coastal area, the Comptroller-General of Customs may, at any time before that

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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 biosecurity risks (within the meaning of the *Biosecurity Act 2015*); and

(b) conditions requiring the owner of the installation, to bring the installation to a place specified by the Comptroller-General of Customs for examination for purposes relating to biosecurity risks (within the meaning of the *Biosecurity Act 2015*) before the installation is installed in an adjacent area or a coastal area.

5BA Installation of overseas offshore electricity installations

(1) A person commits an offence if:

(a) the person causes an overseas offshore electricity installation to be installed; and

(b) the installation is installed in the Commonwealth offshore area.

Penalty: 500 penalty units.

(2) Subsection (1) does not apply if the person has permission in force under subsection (4).

(3) A person may apply to the Comptroller-General of Customs for permission to cause an overseas offshore electricity installation to be installed in the Commonwealth offshore area.

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(4) The Comptroller-General of Customs may, by notice in writing given to the applicant, grant the permission, subject to such conditions (if any) as are specified in the notice.

(5) A person commits an offence if:
  (a) the person has permission in force under subsection (4); and
  (b) the permission is subject to one or more conditions (including a condition imposed or varied under subsection (6)); and
  (c) the person fails to comply with any of those conditions.

  Penalty: 100 penalty units.

(6) If the Comptroller-General of Customs has granted a person permission under subsection (4), the Comptroller-General of Customs may, at any time before the installation is installed, by notice in writing given to the person:
  (a) revoke the permission; or
  (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.

(7) Without limiting the generality of subsection (4), conditions to which a permission given under that subsection in relation to an offshore electricity installation may be subject include:
  (a) conditions relating to biosecurity risks (within the meaning of the *Biosecurity Act 2015*); and
  (b) conditions requiring the owner of the installation, to bring the installation to a place specified by the Comptroller-General of Customs for examination for purposes relating to biosecurity risks (within the meaning of the *Biosecurity Act 2015*) before the installation is installed in the Commonwealth offshore area.

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5C Certain installations to be part of Australia

(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; or

(c) an offshore electricity installation that becomes installed in, or that is, at the commencement of this paragraph, installed in, the Commonwealth offshore area;

shall, subject to subsections (2), (3) and (4), 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

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(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.

(4) An offshore electricity installation that is deemed to be part of Australia because of the operation of this section ceases to be part of Australia for the purposes of the Customs Acts if:

(a) the installation is uninstalled from its location for the purpose of being taken to a place outside the outer limits of the Commonwealth offshore area; or

(b) after having been uninstalled 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 outside the outer limits of the Commonwealth offshore area.

6 Act does not extend to external Territories

(1) Subject to subsection (2), this Act does not extend to the external Territories.

(2) Regulations may be made to extend the whole or a part of this Act (with or without modifications) to the Territory of Ashmore and Cartier Islands.

7 General administration of Act

The Comptroller-General of Customs has the general administration of this Act.

8 Collectors, States and Northern Territory

(1) In this Act, a reference to the Collector, or to a Collector, is a reference to:

(a) the Comptroller-General of Customs; or

(b) any officer doing duty in the matter in relation to which the expression is used.

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(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 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* 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 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* 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.

8A Attachment of part of a State or Territory to adjoining State or Territory for administrative purposes

The Governor-General may, by Proclamation, declare that, for the purposes of the administration of this Act, 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.

9 Delegation

(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.

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

(4) Subsection (1) does not apply to the Minister's power under subsection 77EA(1), 77ED(1), 77EE(1) or 77EF(2).

11 Arrangements with States and the Northern Territory

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

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

(ab) 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 judicial officer under Subdivision DA of Division 1 of Part XII, and under other provisions in so far as they relate to that Subdivision; 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 Subdivision C of Division 1B of Part XII; and

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

(1A) The Governor-General may make arrangements with the Governor of New South Wales for the performance by all or any of the persons who from time to time hold office as Judges of the Local Court of that State of the functions of a Magistrate under Subdivision C of Division 1B of Part XII.

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

(aa) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that Territory (and are not also Judges of the Federal Court of

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Australia or of the Supreme Court of the Australian Capital Territory) of the functions of a Judge under Subdivision C of Division 1B of Part XII; and

(ab) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that Territory (and are not also Judges of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory) of the functions of a judicial officer under Subdivision DA of Division 1 of Part XII, and under other provisions in so far as they relate to that Subdivision; and

(b) for the performance by all or any of the persons who from time to time hold office as Judges of the Local Court of that Territory of the functions of a Magistrate under Subdivision C of Division 1B of Part XII; and

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

13 Customs seal

(1) There is to be a seal, called the customs seal, the design of which must be determined by the Comptroller-General of Customs.

(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—Comptroller-General of Customs”.

(3) The customs seal must be kept at such place, and in the custody of such person, as the Comptroller-General of Customs directs.

(4) The customs seal must be used as directed by the Comptroller-General of Customs.

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(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 on a document or a copy of a document and, in the absence of proof to the contrary, shall presume that impression was made by proper authority.

14 Flag

The ships and aircraft employed in the service of the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*) shall be distinguished from other ships and aircraft by such flag or in such other manner as shall be prescribed.

15 Appointment of ports etc.

(1) The Comptroller-General of Customs 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.

(1A) In deciding whether to appoint a port under subsection (1), the Comptroller-General of Customs may take into account:

(a) whether the port or any part of the port is a security regulated port (within the meaning of the *Maritime Transport and Offshore Facilities Security Act 2003*); and

(b) if so—whether the person designated under section 14 of the *Maritime Transport and Offshore Facilities Security Act 2003* as the port operator has a maritime security plan (within the meaning of that Act).

(2) The Comptroller-General of Customs 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

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port, airport, wharf or boarding station for limited purposes specified in the notice.

19 Accommodation on wharfs and at airports

Every wharf-owner and airport owner shall provide to the satisfaction of the Collector suitable office accommodation on his or her wharf or at his or her 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-General of Customs may in writing declare to be requisite.

Penalty: 1 penalty unit.

20 Waterfront area control

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

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

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

Penalty: 10 penalty units.

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

(a) have appropriate identification; and

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

(5) If:

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

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

the officer may:

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

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

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

(7) A person must not refuse or fail to comply with a request under subsection (2) or paragraph (5)(d).

Penalty: 5 penalty units.

(7A) Subsection (7) does not apply if the person has a reasonable excuse.

(8) In this section:

appropriate identification means:

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

(i) current passport; or

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

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

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

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

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

international ship means a ship that is currently engaged in making international voyages.

waterfront area means an area:

(a) that is:

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

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

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

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

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

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

25 Persons before whom declarations may be made

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

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26 Declaration by youths

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

28 Working days and hours etc.

(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) If, at the request of a person, a Collector arranges for an officer to be available to perform a function at a place outside the hours prescribed for that function, the person must pay to the Commonwealth an overtime fee.

(3) The overtime fee in relation to the officer is:

(a) $40 per hour or part hour during which the officer performs that function and engages in any related travel, or such other rate as is prescribed; and

(b) any prescribed travel expense (at the rate prescribed) associated with the officer performing that function at that place.

(4) If, at the request of a person, a Collector arranges for an officer to be available to perform a function:

(a) at a place that is not a place at which such a function is normally performed; and

(b) during the hours prescribed for that function;

the person must pay to the Commonwealth a location fee.

(5) The location fee in relation to the officer is:

(a) $37 per hour or part hour during which the officer performs that function and engages in any related travel, or such other rate as is prescribed; and

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(b) any prescribed travel expense (at the rate prescribed) associated with the officer performing that function at that place.

(6) In this section:

related travel means travel to or from the place at which the function referred to in paragraph (3)(a) or (5)(a) is performed if that travel directly relates to the officer performing that function.

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Part III—Customs control examination and securities generally

30 Customs control of goods

(1) Goods shall be subject to customs control as follows:

(a) as to goods to which section 68 applies that are unshipped or that are a ship or aircraft not carried on board a ship or aircraft—from the time of their importation:

(ii) if the goods are not examinable food that has been entered for home consumption or warehousing and are not excise-equivalent goods—until either they are delivered into home consumption in accordance with an authority to deal or in accordance with a permission under section 69, 70 or 162A or they are exported to a place outside Australia, whichever happens first; and

(iii) if the goods are examinable food that has been entered for home consumption—until a food control certificate is delivered to the person who has possession of the food; and

(iv) if the goods are examinable food that has been entered for warehousing and are not excise-equivalent goods—until there is delivered to the person who has possession of the food an imported food inspection advice requiring its treatment, destruction or exportation or, if no such advice is delivered, until the goods are entered for home consumption or the food is exported to a place outside Australia, whichever happens first; and

(v) if the goods (the ***dual goods***) are examinable food that has been entered for warehousing and are excise-equivalent goods—until whichever of the events mentioned in subsection (1A) happens first; and

(vi) if the goods are excise-equivalent goods and are not examinable food—until whichever of the events mentioned in subsection (1B) happens first;

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

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

(i) if they are unshipped—until they are delivered into home consumption in accordance with an authority under section 71; or

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

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

(i) if they are unshipped—until they are delivered into home consumption; or

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

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

(ae) as to goods referred to in paragraph 68(1)(j)—from the time of their importation until they are exported to a place outside Australia;

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

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

(d) as to all goods for export (including goods delivered for export under section 61AA of the *Excise Act 1901*)—from the time the goods are made or prepared in, or are brought

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into, any prescribed place for export, until their exportation to a place outside Australia, or, in the case of goods delivered for export under section 61AA of the *Excise Act 1901*, their exportation to such a place or their return, in accordance with subsection 114D(2) of this Act, to the Commissioner of Taxation's control under section 61 of the *Excise Act 1901*;

(e) as to goods made or prepared in, or brought into, a prescribed place for export that are no longer for export—from the time the goods are made or prepared in, or brought into, the prescribed place until the goods are moved from the place in accordance with a permission given under section 119AC.

(1A) The events for the purposes of subparagraph (1)(a)(v) are as follows:

(a) the dual goods are destroyed in accordance with an imported food inspection advice delivered to the person who has possession of the goods;

(b) excisable goods are manufactured and the dual goods are used in that manufacture;

(c) the dual goods are delivered into home consumption in accordance with an authority to deal or in accordance with a permission under section 69, 70 or 162A;

(d) the dual goods are exported to a place outside Australia.

(1B) The events for the purposes of subparagraph (1)(a)(vi) are as follows:

(a) excisable goods are manufactured and the excise-equivalent goods are used in that manufacture;

(b) the excise-equivalent goods are delivered into home consumption in accordance with an authority to deal or in accordance with a permission under section 69, 70 or 162A;

(c) the excise-equivalent goods are exported to a place outside Australia.

(2) In this section:

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

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

30A Exemptions under Torres Strait Treaty

(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-General of Customs 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-General of Customs may, by notice published in the *Gazette*, exempt, subject to such conditions (if any) as are

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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 or her 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 or her in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone; or

(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.

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(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 or her 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-General of Customs setting out such information as is prescribed, request the Comptroller-General of Customs to grant an exemption under subsection (5) in relation to the voyage or flight, as the case may be.

(5) The Comptroller-General of Customs may, in his or her 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

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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; and

(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 or her in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone; or

(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

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

31 Goods on ships and aircraft subject to customs control

All goods on board any ship or aircraft from a place outside Australia are subject to customs control while the ship or aircraft:

(a) is within the limits of any port or airport in Australia; or

(b) is at a place to which the ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1); or

(c) is at a place that is the subject of a permission under subsection 58(2).

33 Persons not to move goods subject to customs control

(1) If:

(a) a person intentionally moves, alters or interferes with goods that are subject to customs control; and

(b) the movement, alteration or interference is not authorised by or under this Act;

the person commits an offence punishable, on conviction, by a penalty not exceeding 500 penalty units.

(2) If:

(a) a person moves, alters or interferes with goods that are subject to customs control; and

(b) the movement, alteration or interference is not authorised by or under this Act;

the person commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(3) If:

(a) an employee of a person moves, alters or interferes with goods that are subject to customs control; and

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(b) in moving, altering or interfering with the goods the employee is acting on behalf of the person; and

(c) the movement, alteration or interference is not authorised by or under this Act;

the person commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(4) It is a defence to a prosecution of a person for a contravention of subsection (3) if the person took reasonable precautions, and exercised due diligence, to prevent the employee who is alleged to have moved, altered or interfered with the goods from moving, altering or interfering with them.

(5) If:

(a) a person intentionally directs or permits another person to move, alter or interfere with goods that are subject to customs control; and

(b) the movement, alteration or interference is not authorised by or under this Act;

the person commits an offence punishable, on conviction, by a penalty not exceeding 500 penalty units.

(6) If:

(a) a person directs or permits another person to move, alter or interfere with goods that are subject to customs control; and

(b) the movement, alteration or interference is not authorised by or under this Act;

the person commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(7) An offence against subsection (2), (3) or (6) is an offence of strict liability.

(8) In this section:

employee, of a body corporate, includes a person who is a director, a member, or a member of the board of management, of the body corporate.

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goods does not include installations.

Note 1: For permission to move goods specified in a cargo report from one place under customs control to another place under customs control, see section 71E.

Note 2: For permission to move, alter or interfere with goods for export, see section 119AA.

Note 3: For permission to move, alter or interfere with goods that are no longer for export, see sections 119AB and 119AC.

33A Resources installations subject to customs control

(1) A person shall not use an Australian resources installation that is subject to customs control in, or in any operations or activities associated with, or incidental to, exploring or exploiting the Australian seabed.

Penalty: 500 penalty units.

(1A) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(1B) Subsection (1) does not apply if the person has permission in force under subsection (2).

(2) The Comptroller-General of Customs 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 customs control.

(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: 100 penalty units.

(4) Where the Comptroller-General of Customs has, under subsection (2), given a person permission to engage in any activities in relation to an Australian resources installation, the

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Comptroller-General of Customs may, while that installation remains subject to customs control, 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.

33B Sea installations subject to customs control

(1) A person shall not use an Australian sea installation that is subject to customs control.

Penalty: 500 penalty units.

(1A) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(1B) Subsection (1) does not apply if the person has permission in force under subsection (2).

(2) The Comptroller-General of Customs 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 customs control.

(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: 100 penalty units.

(4) Where the Comptroller-General of Customs has, under subsection (2), given a person permission to engage in any activities in relation to an Australian sea installation, the Comptroller-General of Customs may, while that installation

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remains subject to customs control, 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.

33BA Offshore electricity installations subject to customs control

(1) A person commits an offence of strict liability if:

(a) the persons uses an Australian offshore electricity installation; and

(b) the Australian offshore electricity installation is subject to customs control.

Penalty: 500 penalty units.

(2) Subsection (1) does not apply if the person has permission in force under subsection (4).

(3) A person may apply to the Comptroller-General of Customs for permission to engage in specified activities in relation to the use of an Australian offshore electricity installation that is subject to customs control.

(4) The Comptroller-General of Customs may, by notice in writing given to the applicant, grant the permission, subject to such conditions (if any) as are specified in the notice.

(5) A person commits an offence if:

(a) the person has permission in force under subsection (4); and

(b) the permission is subject to one or more conditions (including a condition imposed or varied under subsection (6)); and

(c) the person fails to comply with any of those conditions.

Penalty: 100 penalty units.

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(6) If the Comptroller-General of Customs has, under subsection (4), granted a person permission to engage in any activities in relation to an Australian offshore electricity installation, the Comptroller-General of Customs may, while that installation remains subject to customs control, by notice in writing served on the person:

(a) suspend or revoke the permission; or

(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.

33C Obstructing or interfering with Commonwealth property in a Customs place

(1) A person commits an offence if:

(a) the person intentionally obstructs or interferes with the operation of a thing; and

(b) the thing belongs to the Commonwealth; and

(c) the thing is located in a Customs place.

Penalty: 60 penalty units.

(2) Absolute liability applies to paragraph (1)(b).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

(3) In this section:

Customs place has the same meaning as in section 183UA.

34 No claim for compensation for loss

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

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35 Goods imported by post

Goods imported by post shall be subject to customs control equally with goods otherwise imported.

35A Amount payable for failure to keep dutiable goods safely etc.

(1) Where a person who has, or has been entrusted with, the possession, custody or control of dutiable goods which are subject to customs control:

(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 in accordance with section 37;

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 customs control are, in accordance with authority to deal or by authority of a permission given under section 71E, taken from a place for removal to another place;

(b) the goods are not, or part of the goods is not, delivered to that other place; and

(c) when so requested by a Collector, the person who made the entry or to whom the permission was given, as the case may be, does not account for the goods, or for that part of the goods, as the case may be, to the satisfaction of a Collector in accordance with section 37;

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.

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(1B) Where:

(a) dutiable goods subject to customs control are, by authority of a permission given under section 71E, removed to a place other than a warehouse; and

(b) the person to whom the permission was given fails to keep those goods safely or, when so requested by a Collector, does not account for the goods to the satisfaction of a Collector in accordance with section 37;

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.

36 Offences for failure to keep goods safely or failure to account for goods

Offences for failure to keep goods safely

(1) A person commits an offence if:

(a) goods are subject to customs control; and

(b) the person has, or has been entrusted with, the possession, custody or control of the goods; and

(c) the person fails to keep the goods safely.

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Penalty: 500 penalty units.

(2) A person commits an offence if:

(a) goods are subject to customs control; and

(b) the person has, or has been entrusted with, the possession, custody or control of the goods; and

(c) the person fails to keep the goods safely.

Penalty: 60 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Offences for failure to account for goods

(4) A person commits an offence if:

(a) goods are subject to customs control; and

(b) the person has, or has been entrusted with, the possession, custody or control of the goods; and

(c) the person, when so requested by a Collector, does not account for the goods to the satisfaction of a Collector in accordance with section 37.

Penalty: 500 penalty units.

(5) A person commits an offence if:

(a) goods are subject to customs control; and

(b) the person has an authority to deal with the goods, or is given a permission under section 71E in relation to the goods; and

(c) the goods are taken, in accordance with the authority to deal or by authority of the permission under section 71E, from a place for removal to another place; and

(d) the goods are not, or part of the goods is not, delivered to that other place; and

(e) the person, when so requested by a Collector, does not account for the goods or for that part of the goods (as the case may be) to the satisfaction of a Collector in accordance with section 37.

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Penalty: 500 penalty units.

(6) A person commits an offence if:

(a) goods are subject to customs control; and

(b) the person has, or has been entrusted with, the possession, custody or control of the goods; and

(c) the person, when so requested by a Collector, does not account for the goods to the satisfaction of a Collector in accordance with section 37.

Penalty: 60 penalty units.

(7) A person commits an offence if:

(a) goods are subject to customs control; and

(b) the person has an authority to deal with the goods, or is given a permission under section 71E in relation to the goods; and

(c) the goods are taken, in accordance with the authority to deal or by authority of the permission under section 71E, from a place for removal to another place; and

(d) the goods are not, or part of the goods is not, delivered to that other place; and

(e) the person, when so requested by a Collector, does not account for the goods or for that part of the goods (as the case may be) to the satisfaction of a Collector in accordance with section 37.

Penalty: 60 penalty units.

(8) An offence against subsection (6) or (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Removal of goods by authority of section 71E permission

(9) Without limiting subsection (1), (2), (4) or (6), if goods are removed to a place other than a warehouse by authority of a permission given to a person under section 71E, the person is taken to have, or to have been entrusted with, the possession, custody or

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control of the goods for the purposes of paragraph (1)(b), (2)(b), (4)(b) or (6)(b).

Other liabilities not affected

(10) 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.

37 Accounting for goods

A person accounts for goods or a part of goods to the satisfaction of a Collector in accordance with this section if, and only if:
  (a) the Collector sights the goods; or
  (b) if the Collector is unable to sight the goods—the person satisfies the Collector that the goods have been dealt with in accordance with this Act.

42 Right to require security

(1) The Commonwealth 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, and pending the giving of the required security in relation to any goods subject to customs control, an officer of Customs may refuse to deliver the goods or to give any authority to deal with the goods.

(1A) The right of the Commonwealth 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 Commonwealth under subsection (1) to require and take a security includes the right to require and take securities in respect of any interim duty that may be payable on goods under

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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 Commissioner (within the meaning of Part XVB) has made a preliminary affirmative determination, within the meaning of Part XVB, in respect of those goods; or

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

(1C) If:

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

(b) the undertaking is subsequently breached;

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

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

(2) The right of the Commonwealth 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 Commonwealth under this section may be exercised by a Collector on behalf of the Commonwealth.

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43 Form of security

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.

44 General securities may be given

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

45 Cancellation of securities

(1) All 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-General of Customs.

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

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

(a) in relation to a security in respect of any interim duty that may be payable on goods under section 8 or 9 of the *Customs Tariff (Anti-Dumping) Act 1975*—a period described in subsection (3A) of this section; or

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

(3A) For the purposes of paragraph (3)(a), the period is:

(a) unless paragraph (b) of this subsection applies:

(i) a period of 4 months; or

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(ii) if an exporter of goods of the kind referred to in paragraph (3)(a) requests a longer period—a period (not exceeding 6 months) that the Commissioner (within the meaning of Part XVB) determines to be appropriate; or

(b) if the security was taken in connection with an investigation under Part XVB and the non-injurious price of goods the subject of the investigation as ascertained, or last ascertained, for the purposes of the investigation is less than the normal value of such goods as so ascertained, or last so ascertained:

(i) a period of 6 months; or

(ii) if an exporter of goods of the kind referred to in paragraph (3)(a) requests a longer period—a period (not exceeding 9 months) that the Commissioner (within the meaning of Part XVB) determines to be appropriate.

(4) Where:

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

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

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

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

46 New securities

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.

47 Form of security

The form of security in Schedule I hereto shall suffice for all the purposes of a bond or guarantee under this Act and without sealing

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shall bind its subscribers as if sealed and unless otherwise provided therein jointly and severally and for the full amount.

48 Effect of security

(1) Whenever any such 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 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; or

(b) the Commonwealth 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.

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Part IV—The importation of goods

Division 1A—Preliminary

49 Importation

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.

49A Ships and aircraft deemed to be imported

(1) Where:

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

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

he or she 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 or she 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

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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 or she 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);

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(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 is not to be read as including a reference to:

(a) an overseas resources installation; or

(b) an overseas sea installation; or

(c) an overseas offshore electricity installation.

49B Installations and goods deemed to be imported

(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; or

(c) an overseas offshore electricity installation (not being an installation referred to in subsection (2)) becomes installed in the Commonwealth offshore 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.

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(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; or

(c) an overseas offshore electricity installation is brought to a place in Australia and is to be taken from that place into the Commonwealth offshore 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.

49C Obligations under this Part may be satisfied in accordance with a trusted trader agreement

(1) An entity is released from an obligation that the entity would otherwise be required to satisfy under a provision of this Part (other than Division 1) if the obligation:

(a) is of a kind prescribed by rules for the purposes of Part XA; and

(b) is specified in those rules as an obligation from which an entity may be released; and

(c) is specified in a trusted trader agreement between the Comptroller-General of Customs and the entity.

(2) If:

(a) an obligation must be satisfied under a provision of this Part (other than Division 1); and

(b) the obligation:

(i) is of a kind prescribed by rules for the purposes of Part XA; and

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(ii) is specified in those rules as an obligation that may be satisfied in a way other than required by this Part; and

(iii) is specified in a trusted trader agreement between the Comptroller-General of Customs and an entity;

then, despite the relevant provision, the entity may satisfy the obligation in the way specified in the trusted trader agreement.

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Division 1—Prohibited imports

50 Prohibition of the importation of goods

(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 made under this Act or the *Therapeutic Goods Act 1989*; and

(b) in relation to licences or permissions granted as prescribed by regulations made under this Act—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

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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.

(3B) Regulations made for the purposes of this section may confer on the Minister the power to make provision in relation to a matter by legislative instrument.

(4) A person commits an offence if:

(a) a licence or permission has been granted, on or after 16 October 1963, under the regulations; and

(b) the licence or permission relates to goods that are not narcotic goods; and

(c) the licence or permission is subject to a condition or requirement to be complied with by the person; and

(d) the person engages in conduct; and

(e) the person's conduct contravenes the condition or requirement.

Penalty: 100 penalty units.

(5) Subsection (4) is an offence of strict liability.

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Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(6) Absolute liability applies to paragraph (4)(a), despite subsection (5).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(7) A person commits an offence if:

(a) a licence or permission has been granted, on or after 16 October 1963, under the regulations; and

(b) the licence or permission relates to goods that are narcotic goods; and

(c) the licence or permission is subject to a condition or requirement to be complied with by the person; and

(d) the person engages in conduct; and

(e) the person's conduct contravenes the condition or requirement.

Penalty: Imprisonment for 2 years or 20 penalty units, or both.

(9) Absolute liability applies to paragraph (7)(a).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(10) In this section:

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

51 Prohibited imports

(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.

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51A Certain controlled substances taken to be prohibited imports

(1) This section applies if a substance or plant is a border controlled drug, a border controlled plant or a border controlled precursor because of a determination made under Subdivision C of Division 301 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drugs and precursors).

Note: ***Border controlled drug***, ***border controlled plant*** and ***border controlled precursor*** have the same meaning as in Part 9.1 of the *Criminal Code* (see subsection 4(1) of this Act). In that Part, those terms include substances or plants that are, under Subdivision C of Division 301 of the *Criminal Code*, taken, for the purposes of the Part, to be border controlled drugs, border controlled plants or border controlled precursors only in relation to particular offences against the Part, or particular elements of those offences.

(2) For the period during which the determination has effect, Schedule 4 to the *Customs (Prohibited Imports) Regulations 1956* has effect as if the substance or plant were described as a drug in that Schedule.

52 Invalidation of licence, permission etc. for false or misleading information

A licence, permission, consent or approval granted in respect of the importation of UN-sanctioned goods is taken never to have been granted if:

(a) an application for the licence, permission, consent or approval was made in an approved form; and

(b) information contained in, or information or a document accompanying, the form:

(i) was false or misleading in a material particular; or

(ii) omitted any matter or thing without which the information or document is misleading in a material particular.

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Division 2—The boarding of ships and aircraft

58 Ships and aircraft to enter ports or airports

(1) The master of a ship or the pilot of any aircraft shall not bring his or her ship or aircraft to a place other than a port or airport unless from stress of weather or other reasonable cause.

Penalty: 500 penalty units.

(1A) Subsection (1) does not apply if the master or pilot has the permission of a Collector given under subsection (2).

(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 or her 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: 100 penalty units.

(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.

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(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 is to be read as including a reference to the ship or aircraft being brought to a ship that is at:

(a) an overseas resources installation; or

(b) an overseas sea installation; or

(c) an overseas offshore electricity installation.

58A Direct journeys between installations and external places prohibited

(1) For the purposes of this section, 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:

(i) a sea installation installed in an adjacent area or in a coastal area; or

(ii) a resources installation attached to the Australian seabed; or

(iii) an offshore electricity installation installed in the Commonwealth offshore 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 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;

each commit an offence against this section.

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

(a) are brought from an external place to:

(i) a sea installation installed in an adjacent area or in a coastal area; or

(ii) a resources installation attached to the Australian seabed; or

(iii) an offshore electricity installation installed in the Commonwealth offshore 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 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;

each commit an offence against this section.

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

(a) travels from:

(i) a sea installation installed in an adjacent area or in a coastal area; or

(ii) a resources installation attached to the Australian seabed; or

(iii) an offshore electricity installation installed in the Commonwealth offshore 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:

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(c) that person;
(d) 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;

each commit an offence against this section.

(5) Subject to subsection (6), where goods:
(a) are sent from:
(i) a sea installation installed in an adjacent area or in a coastal area; or
(ii) a resources installation attached to the Australian seabed; or
(iii) an offshore electricity installation installed in the Commonwealth offshore 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 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;

each commit an offence against this section.

(5A) Subsections (2), (3), (4) and (5) are offences of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(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;

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(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 an installation; or

(c) was authorised in writing, by the Comptroller-General of Customs, 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 an 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 an installation because only of being in an aircraft flying over, or on a landing place in, the place or installation.

Penalty: 100 penalty units.

58B Direct journeys between certain resources installations and external places prohibited

(1) In this section:

external place does not include Timor-Leste.

(2) Subject to subsection (6), where a person travels from an external place to a resources installation in the Greater Sunrise special regime area (whether or not in the course of a longer journey) without entering either Australia or Timor-Leste:

(a) that person; and

(b) the owner of the installation; and

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

each commit an offence against this section.

(3) Subject to subsection (6), where goods are taken from an external place to a resources installation in the Greater Sunrise special regime area (whether or not previously brought to that place from another place) without being taken into either Australia or Timor-Leste:

(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;

each commit an offence against this section.

(4) Subject to subsection (6), where a person travels from a resources installation in the Greater Sunrise special regime area to an external place (whether or not in the course of a longer journey) without entering either Australia or Timor-Leste:

(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;

each commit an offence against this section.

(5) Subject to subsection (6), where goods are sent from a resources installation in the Greater Sunrise special regime area to an external place (whether or not the goods are sent on from that place) without being taken into Australia or Timor-Leste:

(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;

each commit an offence against this section.

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(5A) Subsections (2), (3), (4) and (5) are offences of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(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-General of Customs 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 100 penalty units.

60 Boarding stations

(1) The master of every ship from a place outside Australia bound to or calling at any port shall bring his or her ship to for boarding at a

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boarding station appointed for that port and shall permit his or her ship to be boarded.

Penalty: 100 penalty units.

(2) The pilot of an aircraft from a place outside Australia arriving in Australia shall not suffer the aircraft to land at any other airport until the aircraft has first landed:

(a) at such airport for which a boarding station is appointed as is nearest to the place at which the aircraft entered Australia; or

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

Penalty: 100 penalty units.

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

(a) shall not suffer the aircraft to land at an airport for which a boarding station is not appointed; and

(b) shall, as soon as practicable after the aircraft lands at an airport, bring the aircraft for boarding to a boarding station appointed for that airport and shall permit the aircraft to be boarded.

Penalty: 100 penalty units.

(3A) Subsections (1), (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) It is a defence to a prosecution for an offence against a provision of subsection (2) or (3) if the person charged proves that he or she was prevented from complying with the provision by stress of weather or other reasonable cause.

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61 Facility for boarding

(1) A person commits an offence if:

(a) the person is:

(i) the master of a ship who permits the ship to be boarded; or

(ii) the pilot of an aircraft who permits the aircraft to be boarded; or

(iii) the master of a resources installation; or

(iv) the owner of a sea installation; or

(v) the owner of an offshore electricity installation; and

(b) the person does not, by all reasonable means, facilitate the boarding of the ship, aircraft or installation by a person who is authorised under this Act to board the ship, aircraft or installation.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

61A Owner or operator of port etc. to facilitate boarding

(1) An officer of Customs may request an owner or operator of a port or of a port facility to facilitate, by any reasonable means, the boarding of a ship that is in the port or port facility by any person who is authorised under this Act to board the ship.

(2) The owner or operator commits an offence if the owner or operator fails to comply with the request.

Penalty: 30 penalty units.

(3) In this section:

port facility means an area of land or water, or land and water, (including any buildings, installations or equipment in or on the area) used either wholly or partly in connection with the loading, unloading, docking or mooring of ships.

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62 Ships to come quickly to place of unlading

(1) 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 to the proper wharf appointed under subsection 15(2), without touching at any other place, as quickly as it is practicable for him or her lawfully to do so.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

63 Ship or aircraft not to be moved without authority

(1) No ship or aircraft after arrival at the proper place of mooring, at the proper wharf appointed under subsection 15(2) or at an airport appointed under subsection 15(1) shall be removed therefrom before the discharge of the cargo intended to be discharged at the port or airport.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply if the removal is by authority or by direction of the harbour or aerial authority.

(3) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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Division 3—The report of the cargo

Subdivision A—General reporting requirements

63A Definitions

In this Division:

abbreviated cargo report means an electronic cargo report, in relation to low value cargo of a particular kind, made by a special reporter in relation to cargo of that kind in accordance with the requirements of section 64AB.

applicant means an applicant under Subdivision C for registration, or for renewal of registration, as a special reporter in relation to low value cargo of a particular kind.

application means an application under Subdivision C for registration, or for renewal of registration, as a special reporter in relation to low value cargo of a particular kind.

cargo, in relation to a ship or aircraft, includes any mail carried on the ship or aircraft.

dedicated computer facilities, in relation to a person who is seeking to be registered, or is or has been registered, as a special reporter in relation to low value cargo of a particular kind, means computer facilities of that person that meet the requirements of Subdivision C relating to the making of abbreviated cargo reports in relation to cargo of that kind, and the storage of electronic information concerning individual consignments covered by those reports.

house agreement, in relation to a particular mail-order house and to a particular registered user proposing to handle consignments from that house, means a written agreement between that house and that user that includes provisions:

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(a) setting out the arrangements made by the user with the house for the shipment of low value goods consigned by that house and handled by that user; and

(b) providing that all such consignments from that house that are to be handled by that user will be consolidated at a single place of export outside Australia designated or determined in accordance with the agreement; and

(c) providing that the house will transmit electronically to the user full particulars of each such consignment for which an order has been placed including details of the consignment's transportation to Australia.

low value cargo means:

(a) cargo consigned from a particular mail-order house; or

(c) cargo comprising other goods of a kind prescribed by the regulations;

being cargo in relation to each single consignment of which section 68 does not apply because of paragraph 68(1)(f).

mail, in relation to a ship or aircraft, means:

(a) any goods consigned through the Post Office that are carried on the ship or aircraft; and

(b) any other correspondence carried on the ship or aircraft that is not consigned as cargo and that is not accompanied personal or household effects of a passenger or member of the crew.

Note: Correspondence covered by paragraph (b) would include, for example, an airline's inter-office correspondence that is carried on one of the airline's aircraft and that is not consigned as cargo.

mail-order house means a commercial establishment carrying on business outside Australia that sells goods solely in response to orders placed with it either by mail or electronic means.

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notified premises, in relation to a person who is, or has been, a special reporter in relation to low value cargo of a particular kind, means:

(a) the premises or all premises indicated in the application, in accordance with subsection 67EC(3), as places in Australia at which are located:
  (i) dedicated computer facilities for the storage of information relating to cargo of that kind; or
  (ii) documents relating to such information; and

(b) if a special reporter notifies the Comptroller-General of Customs under subsection 67EF(2) that, with effect from a particular day, the premises at which all or any of those facilities or documents will be located is to be changed to another place in Australia—with effect from that day, the premises at which all of those facilities and documents will be located.

re-mail item, in relation to a ship or aircraft, means an item of cargo carried on the ship or aircraft, in respect of which all of the following apply:

(a) the item is packaged in an addressed envelope, of paper or other material, whose length plus width does not exceed 80 cm;

(b) the item consists only of paper;

(c) the item and packaging weigh no more than one kilogram;

(d) the item either has no commercial value or is a publication in respect of which the following apply:
  (i) the publication is sent from overseas to the addressee as a subscriber to the publication;
  (ii) the subscription is made by a direct dealing with the consignor by either the addressee or another person arranging a gift subscription for the addressee;
  (iii) the value of the publication does not exceed $250 (or such other amount as is prescribed for the purposes of subparagraph 68(1)(f)(iii));

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(e) the item is not mail;

(f) the item is not, or does not contain, goods covered by paragraph (a) or (b) of the definition of ***prohibited goods*** in subsection 4(1);

(g) there is no individual document of carriage for the item;

(h) the item was consigned on the ship or aircraft by the consignor, with other items that are covered by paragraphs (a) to (g) of this definition, to different consignees.

re-mail reporter means a person or partnership that is registered under Subdivision E as a re-mail reporter.

special reporter means a person who is registered under Subdivision C as a special reporter in respect of low value cargo of a particular kind.

64 Impending arrival report

(1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.

(2) If the ship or aircraft is due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), the operator must report to the Department, in accordance with this section, the impending arrival of the ship or aircraft.

(3) Subject to subsection (4), the report of the impending arrival of the ship or aircraft may be made by document or electronically.

(4) If the operator is required to report to the Department under section 64AAB, or to make a cargo report, in respect of the voyage or flight, the report of the impending arrival of the ship or aircraft must be made electronically.

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(5) A report of the impending arrival of a ship (other than a pleasure craft) must be made:

(a) not earlier than 10 days before the time stated in the report to be the estimated time of arrival of the ship; and

(b) not later than:

(i) the start of the prescribed period before its estimated time of arrival; or

(ii) if the journey is of a kind described in regulations made for the purposes of this subparagraph—the start of the shorter period specified in those regulations before its estimated time of arrival.

(5A) A report of the impending arrival of a pleasure craft must be made:

(a) not earlier than the prescribed number of days before the time stated in the report to be the estimated time of arrival of the pleasure craft; and

(b) not later than:

(i) the start of the prescribed period before its estimated time of arrival; or

(ii) if the journey is of a kind described in regulations made for the purposes of this subparagraph—the start of the shorter period specified in those regulations before its estimated time of arrival.

(6) Regulations made for the purposes of paragraph (5)(b) or (5A)(b) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.

(7) A report of the impending arrival of an aircraft must be made:

(a) not earlier than 10 days before the time stated in the report to be the estimated time of arrival of the aircraft; and

(b) not later than the prescribed period before that time.

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(8) For the purposes of paragraph (7)(b), the ***prescribed period*** before the estimated time of arrival of an aircraft is:

(a) if the flight from the last airport is likely to take not less than 3 hours—3 hours or such other period as is prescribed by the regulations; or

(b) if the flight from the last airport is likely to take less than 3 hours:

(i) one hour or such other period as is prescribed by the regulations; or

(ii) if the flight is of a kind described in regulations made for the purposes of this subparagraph—such shorter period as is specified in those regulations.

(9) A documentary report must:

(a) be in writing; and

(b) be in an approved form; and

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

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

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

(10) An electronic report must communicate such information as is set out in an approved statement.

(11) The Comptroller-General of Customs may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (9) and (10) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.

(12) An operator of a ship or aircraft who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

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(13) An operator of a ship or aircraft who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(14) An offence against subsection (13) is an offence of strict liability.

64AA Arrival report

(1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.

(2) When the ship or aircraft has arrived at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), the operator must report to the Department, in accordance with this section, particulars of the arrival of the ship or aircraft and the time of arrival.

(3) Subject to subsection (3A), the report must be made:

(a) in the case of a ship—before:

(i) the end of 24 hours (disregarding any period that occurs on a Saturday, Sunday or holiday) after the ship's arrival; or

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

whichever first happens; or

(b) in the case of an aircraft—before:

(i) the end of 3 hours after the aircraft's arrival; or

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

whichever first happens.

(3A) The Comptroller-General of Customs may, by legislative instrument, determine that reports for specified ships, or specified aircraft, in specified circumstances must be made before a specified time or before the occurrence of a specified event. Such reports must be made in accordance with the instrument.

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(4) Subject to subsection (5), a report mentioned in subsection (3) or (3A) may be made by document or electronically.

(5) If the operator is required to report to the Department under section 64AAB, or to make a cargo report, in respect of the voyage or flight, a report mentioned in subsection (3) or (3A) must be made electronically.

(6) A documentary report must:
  (a) be in writing; and
  (b) be in an approved form; and
  (c) be communicated to the Department by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and
  (d) contain such information as is required by the form; and
  (e) be signed in a manner specified in the form.

(7) An electronic report must communicate such information as is set out in an approved statement.

(8) The Comptroller-General of Customs may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (6) and (7) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.

(9) An operator of a ship or aircraft who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

(10) An operator of a ship or aircraft who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(11) An offence against subsection (10) is an offence of strict liability.

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64AAA Report of stores and prohibited goods

(1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.

(2) When the ship or aircraft has arrived at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), the operator must report to the Department, in accordance with this section, particulars of the ship's stores or aircraft's stores and of any prohibited goods contained in those stores at the time of arrival.

(3) Subject to subsection (3A), the report must be made:

(a) in the case of a ship—before:

(i) the end of 24 hours (disregarding any period that occurs on a Saturday, Sunday or holiday) after the ship's arrival; or

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

whichever first happens; or

(b) in the case of an aircraft—before:

(i) the end of 3 hours after the aircraft's arrival; or

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

whichever first happens.

(3A) The Comptroller-General of Customs may, by legislative instrument, determine that reports for specified ships, or specified aircraft, in specified circumstances must be made before a specified time or before the occurrence of a specified event. Such reports must be made in accordance with the instrument.

(4) A report mentioned in subsection (3) or (3A) may be made by document or electronically.

(5) A documentary report must:

(a) be in writing; and

(b) be in an approved form; and

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

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

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

(6) An electronic report must communicate such information as is set out in an approved statement.

(7) The Comptroller-General of Customs may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (5) and (6) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.

(8) An operator of a ship or aircraft who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

(11) In this section:

aircraft's stores and ***ship's stores*** have the meanings given by section 130C.

64AAB Notifying Department of particulars of cargo reporters

(1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.

(2) A cargo reporter who has entered into an agreement or arrangement with another cargo reporter under which cargo for whose carriage the other cargo reporter is responsible is to be carried on the ship or aircraft during the voyage or flight must report to the Department, in accordance with this section, particulars of the other cargo reporter.

(3) A report must be made electronically and must communicate such information as is set out in an approved statement.

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(4) A report must be made before the latest time by which a cargo report may be made.

(5) The Comptroller-General of Customs may approve different statements for reports to be made under this section in different circumstances or by different kinds of cargo reporters.

(6) A cargo reporter who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

(7) A cargo reporter who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(8) An offence against subsection (7) is an offence of strict liability.

(9) A cargo reporter who is required to make a report under this section is not liable to be prosecuted for, and cannot be served with an infringement notice under Division 5 of Part XIII for, an offence against this section if:

(a) the cargo reporter made a report, but contravened subsection (4) of this section; and

(b) the time (the ***actual time of arrival***) at which the ship or aircraft in question arrived at the first port or airport in Australia since it last departed from a port or airport outside Australia was later than the estimated time of arrival referred to in subsection 64AB(8); and

(c) the cargo reporter would not have contravened subsection (4) of this section if the estimated time of arrival of the ship or aircraft had been its actual time of arrival.

64AAC Report to Department of persons engaged to unload cargo

(1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.

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(2) The operator must report to the Department, in accordance with this section, particulars of:

(a) in the case of a ship—the stevedore with whom the operator has entered into a contract for the unloading of the cargo from the ship at a place in Australia; or

(b) in the case of an aircraft—the depot operator who will first receive the cargo after it has been unloaded from the aircraft at a place in Australia.

(3) A report must be made electronically and must communicate such information as is set out in an approved statement.

(4) A report must be made during the period within which a report under section 64 of the impending arrival of the ship or aircraft is required to be made.

(5) The Comptroller-General of Customs may approve different statements for electronic reports to be made under this section in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.

(6) An operator of a ship or aircraft who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

64AB Cargo reports

(1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.

(2) If the ship or aircraft is due to arrive at its first port or airport in Australia since it last departed from a port or airport outside Australia, each cargo reporter must report to the Department, in accordance with this section, particulars of all goods:

(a) that the cargo reporter has arranged to be carried on the ship or aircraft on the voyage or flight; and

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(b) that are intended to be unloaded from the ship or aircraft at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight); and

(c) that are not:

(i) accompanied personal or household effects of a passenger or member of the crew; or

(ii) ship's stores or aircraft's stores.

(2A) If the ship or aircraft is due to arrive at its first port, or airport, in Australia since it last called at a port, or departed from an airport, outside Australia, each cargo reporter must report to the Department, in accordance with this section, particulars of all goods that the cargo reporter has arranged to be carried on the ship or aircraft and that are intended to be kept on board the ship or aircraft for shipment on to a place outside Australia, other than:

(a) goods that are accompanied personal or household effects of a passenger or member of the crew; or

(b) ship's stores or aircraft's stores.

(4) A cargo report must be an electronic report.

(4B) An electronic cargo report must communicate such information as is set out in an approved statement.

(5) If the information required by an approved statement to be communicated electronically refers to particulars of the consignor or consignee of goods:

(a) in the case of a report under subsection (2)—the reference in the statement to the consignor of goods is a reference to a supplier of goods who is located outside Australia and:

(i) initiates the sending of goods to a person in Australia; or

(ii) complies with a request from a person in Australia to send goods to the person; and

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(aa) in the case of a report under subsection (2A)—the reference in the statement to the consignor of goods is a reference to a supplier of goods who is located outside Australia and:

(i) initiates the sending of goods to a person in a place outside Australia; or

(ii) complies with a request from a person in a place outside Australia to send goods to the person; and

(b) in any case—the reference in the statement to the consignee of goods is a reference to the person who is the ultimate recipient of goods that have been sent from outside Australia, whether or not the person ordered or paid for the goods.

(6) The Comptroller-General of Customs may approve different statements for the cargo reports to be made in different circumstances or by different kinds of cargo reporters.

(7) The statement approved for a report by a special reporter in relation to low value cargo of a particular kind must not require the special reporter to include information relating to cargo of that kind at a level of specificity below the level of a submaster air waybill or an ocean bill of lading, as the case requires.

(7A) The statement approved for a report by a re-mail reporter in relation to re-mail items must not require the reporter to include information relating to re-mail items at a level of specificity below the level of a submaster air waybill or an ocean bill of lading, as the case requires.

Note: This means that a re-mail reporter using the approved statement does not have to give information about individual re-mail items.

(7B) However, a re-mail reporter must not use that approved statement for a re-mail item for which the reporter has information below that level of specificity.

Note: A re-mail reporter who does not use the approved statement for re-mail items must provide information about individual re-mail items in a cargo report.

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(8) A cargo report is to be made not later than:

(a) if the cargo is carried on a ship:

(i) the start of the prescribed period; or

(ii) if the journey from the last port is of a kind described in regulations made for the purposes of this subparagraph—the start of the shorter period that is specified in those regulations;

before the estimated time of arrival of the ship at the first port in Australia since it last departed from a port outside Australia; or

(b) if the cargo is carried on an aircraft:

(i) 2 hours or such other period as is prescribed by the regulations; or

(ii) if the flight from the last airport is of a kind described in regulations made for the purposes of this subparagraph—such shorter period as is specified in those regulations;

before the estimated time of arrival specified in the report under section 64 of the impending arrival of the aircraft at the first airport in Australia since it last departed from an airport outside Australia.

(8A) Regulations made for the purposes of paragraph (8)(a) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.

(9) A cargo reporter who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

(10) A cargo reporter who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(11) An offence against subsection (10) is an offence of strict liability.

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(14A) A cargo reporter who is required to make a cargo report in respect of particular goods is not liable to be prosecuted for, and cannot be given an infringement notice for, an offence against this section if:

(a) the cargo reporter made a cargo report, but contravened subsection (8) because the report was not made before the start of a certain period; and

(b) the time (the ***actual time of arrival***) at which the ship or aircraft in question arrived at the first port or airport in Australia since it last departed from a port or airport outside Australia was later than the estimated time of arrival referred to in subsection (8); and

(c) the cargo reporter would not have contravened subsection (8) if the estimated time of arrival of the ship or aircraft had been its actual time of arrival.

(15) Nothing in this section affects the operation of Subdivision C.

(16) In this section:

aircraft's stores and ***ship's stores*** have the meanings given by section 130C.

64ABAA Outturn reports

(1) When cargo is unloaded from an aircraft at an airport, the depot operator whose particulars have been communicated to the Department by the operator of the aircraft under section 64AAC must communicate electronically to the Department an outturn report in respect of the cargo.

(2) When a container is unloaded from a ship at a port, the stevedore whose particulars have been communicated to the Department by the operator of the ship under section 64AAC must communicate electronically to the Department an outturn report in respect of the container.

(3) When cargo that is not in a container is unloaded from a ship, the stevedore whose particulars have been communicated to the Department by the operator of the ship under section 64AAC must

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communicate electronically to the Department an outturn report in respect of the cargo.

(4) When cargo unloaded from an aircraft or ship has been moved, under a permission given under section 71E, to a Customs place other than a warehouse, the person in charge of the Customs place must communicate electronically to the Department an outturn report in respect of the cargo.

(5) An outturn report must:

(a) if it is made under subsection (1), (3) or (4):

(i) specify any goods included in the cargo report that have not been unloaded or, if there are no such goods, contain a statement to that effect; and

(ii) specify any goods not included in the cargo report that have been unloaded or, if there are no such goods, contain a statement to that effect; and

(b) if it is made under subsection (2)—set out a list of the containers that have been unloaded; and

(c) in any case:

(i) be in accordance with an approved statement; and

(ii) state any times required by section 64ABAB; and

(iii) be made within the period or at the time required by that section.

(6) The Comptroller-General of Customs may approve different statements for the outturn reports to be made by stevedores, depot operators, or persons in charge of Customs places.

(7) An officer may disclose a cargo report to a stevedore, a depot operator or a person in charge of a Customs place (other than a warehouse) for the purpose of enabling the stevedore, operator or person to communicate to the Department an outturn report in respect of the cargo.

(8) A person who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

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(9) A person who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(10) An offence against subsection (9) is an offence of strict liability.

(11) In this section:

Customs place has the meaning given by subsection 183UA(1).

64ABAB When outturn report is to be communicated to Department

(1) In the case of cargo unloaded from an aircraft at an airport and received into a depot, the depot operator must communicate the outturn report to the Department within 24 hours, or such other period as is prescribed by the regulations, after the time of arrival of the aircraft as stated in the report under section 64AA.

(2) Subsections (2A), (2B), (2C), (2D) and (2E) of this section apply to outturn reports a stevedore must communicate under subsection 64ABAA(2) because of the unloading of one or more containers from a ship at a port.

(2A) The stevedore must communicate a report at the end of each period:

(a) that starts at a time described in subsection (2B); and

(b) that is 3 hours long; and

(c) during which a container is unloaded.

(2B) A period starts:

(a) at the time the first container is unloaded; or

(b) immediately after the end of the most recent period covered by subsection (2A); or

(c) at the first time a container is unloaded after the end of the most recent period covered by subsection (2A), if a container has not been unloaded in the 3 hours starting at the end of the most recent period covered by that subsection.

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(2C) The first report must state the time the first container is unloaded.

(2D) The last report must state the time when the unloading of the containers was completed.

(2E) If the stevedore communicates a report that:

(a) covers the unloading of a container that, because of a decision not to unload any more containers that was made after the communication, completes the unloading of the containers; and

(b) does not state the time when the unloading of the containers was completed;

the stevedore must communicate another report that states that the unloading of the containers has been completed. The stevedore must do so within 3 hours of the decision being made.

(2F) If the regulations prescribe a period other than 3 hours, subsections (2A), (2B) and (2E) have effect as if they referred to the period prescribed instead of 3 hours.

(3) In the case of cargo (not in containers) unloaded from a ship at a wharf, the stevedore must communicate the outturn report to the Department within 5 days, or such other period as is prescribed by the regulations, after the day on which the unloading of the cargo from the ship was completed. The outturn report must state the time when the unloading of the cargo was completed.

(4) In the case of cargo unloaded from a ship or aircraft and moved, under a permission given under section 71E, to a Customs place (as defined in subsection 183UA(1)) other than a warehouse, the person in charge of the Customs place must communicate the outturn report to the Department:

(a) if the cargo is in a container:

(i) if the container is not unpacked at that place—within 24 hours (or such longer period as is prescribed by the regulations) after the person in charge of that place recorded the receipt of the container at that place; or

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(ii) if the container is unpacked at that place—within 24 hours, or such other period as is prescribed by the regulations, after it was unpacked; or

(b) if the cargo is not in a container—not later than:

(i) the day after the day on which the person in charge of that place recorded a receipt of the cargo at that place; or

(ii) if a later time is prescribed by the regulations—that later time.

If the cargo is in a container that is unpacked at the Customs place, the outturn report must state the time when the unpacking of the cargo was completed.

64ABAC Explanation of shortlanded or surplus cargo

(1) If an outturn report specifies:

(a) any goods included in the cargo report that have not been unloaded; or

(b) any goods not included in the cargo report that have been unloaded;

the officer may require the cargo reporter who made the cargo report in relation to the goods to explain why the goods were not unloaded or were not included in the cargo report, as the case may be.

(2) If a cargo reporter in respect of whom a requirement is made under subsection (1) fails to comply with the requirement, the cargo reporter commits a offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

64ACA Passenger reports

Obligation to report on passengers

(1) The operator of a ship or aircraft that is due to arrive, from a place outside Australia, at a port or airport in Australia (whether it is the first or any subsequent port or airport of the voyage or flight) must

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report to the Department on each passenger who will be on board the ship or aircraft at the time of its arrival at the port or airport.

Note 1: This obligation must be complied with even if the information concerned is personal information (as defined in the *Privacy Act 1988*).

Note 2: See also section 64ACC, which deals with what happens if information has already been reported under the *Migration Act 1958*.

Note 3: Section 64ACD contains an offence for failure to comply with this subsection.

How report is to be given—certain operators to use an approved electronic system

(2) If one of the following paragraphs applies, the operator must give the report by the electronic system approved for the operator for the purposes of this subsection:

(a) the ship is on a voyage for transporting persons:

(i) that is provided for a fee payable by those using it; and

(ii) the operator of which is prescribed by the regulations;

and the Comptroller-General of Customs has, in writing, approved an electronic system for the operator for the purposes of this subsection;

(b) the aircraft is on a flight that is provided as part of an airline service:

(i) that is provided for a fee payable by those using it; and

(ii) that is provided in accordance with fixed schedules to or from fixed terminals over specific routes; and

(iii) that is available to the general public on a regular basis;

and the Comptroller-General of Customs has, in writing, approved an electronic system for the operator for the purposes of this subsection.

Note 1: An approval, and a variation or revocation of an approval, is a legislative instrument: see subsection (10).

Note 2: An approval can be varied or revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

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(3) However, if the approved electronic system is not working, then the operator must give the report as if subsection (4) applied.

How report to is be given—other operators

(4) The operator of any other ship or aircraft may give the report by document or electronically.

(5) If the report relates to a ship, it must be given not later than:
  (a) the start of the prescribed period before its estimated time of arrival; or
  (b) if the journey is of a kind described in regulations made for the purposes of this paragraph—the start of the shorter period before its estimated time of arrival that is specified in those regulations.

(5A) Regulations made for the purposes of subsection (5) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.

Deadline for giving report—aircraft

(6) If the report relates to an aircraft, it must be given not later than:
  (a) if the flight from the last airport outside Australia is likely to take not less than 3 hours—3 hours; or
  (b) if the flight from the last airport outside Australia is likely to take less than 3 hours—one hour;

before the time stated in the report made under section 64 to be the estimated time of arrival of the aircraft.

Other requirements for documentary reports

(7) If the report is given by document, it must:
  (a) be in writing; and
  (b) be in an approved form; and
  (c) contain such information as is required by the form; and
  (d) be signed in a manner specified in the form; and

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

Other requirements for electronic reports

(8) If the report is given electronically (whether or not by an electronic system approved for the purposes of subsection (2)), it must communicate such information as is set out in an approved statement.

Different forms and statements for different circumstances etc.

(9) The Comptroller-General of Customs may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (7) and (8) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.

Legislative instruments

(10) An approval of an electronic system for the purposes of subsection (2), or a variation or revocation of such an approval, is a legislative instrument.

Purpose for which information obtained

(12) Information obtained by the Department under this section is taken to be obtained by the Department for the purposes of the administration of this Act, the *Migration Act 1958*, and any other law of the Commonwealth prescribed by regulations for the purposes of this subsection.

64ACB Crew reports

Obligation to report on crew

(1) The operator of a ship or aircraft that is due to arrive, from a place outside Australia, at a port or airport in Australia (whether it is the

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first or any subsequent port or airport of the voyage or flight) must, in accordance with this section, report to the Department on each member of the crew who will be on board the ship or aircraft at the time of its arrival at the port or airport.

Note 1: This obligation must be complied with even if the information concerned is personal information (as defined in the *Privacy Act 1988*).

Note 2: See also section 64ACC, which deals with what happens if information has already been reported under the *Migration Act 1958*.

Note 3: Section 64ACD contains an offence for failure to comply with this subsection.

How report is to be given

(2) The operator may give the report by document or electronically.

Deadline for giving report

(3) The report must be made during the period within which a report under section 64 of the impending arrival of the ship or aircraft is required to be made.

(4) However, a report in respect of an aircraft must not be made before the date of departure of the aircraft from the last airport outside Australia.

Other requirements for documentary reports

(5) If the report is given by document, it must:
  (a) be in writing; and
  (b) be in an approved form; and
  (c) contain such information as is required by the form; and
  (d) be signed in a manner specified in the form; and
  (e) be communicated to the Department by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport at which the ship or aircraft is expected to arrive.

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Other requirements for electronic reports

(6) If the report is given electronically, it must communicate such information as is set out in an approved statement.

Different forms and statements for different circumstances etc.

(7) The Comptroller-General of Customs may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (5) and (6) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.

Purpose for which information obtained

(9) Information obtained by the Department under this section is taken to be obtained by the Department for the purposes of the administration of this Act, the *Migration Act 1958*, and any other law of the Commonwealth prescribed by regulations for the purposes of this subsection.

64ACC Information does not have to be reported if it has already been reported under the *Migration Act 1958*

(1) If:

(a) both:

(i) section 64ACA or 64ACB of this Act; and

(ii) section 245L of the *Migration Act 1958*;

require the same piece of information in relation to a particular passenger or member of the crew on a particular voyage or flight to be reported; and

(b) the operator has reported that piece of information in relation to that passenger or member of the crew in accordance with that section of the *Migration Act 1958*;

the operator is then taken not to be required by section 64ACA or 64ACB of this Act (as the case requires) to report the same piece of information in relation to those passengers or crew.

Note: This may mean that no report at all is required under this Act.

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(2) However, subsection (1) only applies if the report under the *Migration Act 1958* relates to the arrival of the ship or aircraft at the same port or airport for which this Act requires a report.

Note: So, for example, if a report under the *Migration Act 1958* is given for a ship's or aircraft's arrival in an external Territory that is not part of Australia for the purposes of this Act, subsection (1) does not apply and a report under this Act is required.

64ACD Offence for failure to comply

(1) An operator of a ship or aircraft who intentionally contravenes section 64ACA or 64ACB commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

(2) An operator of a ship or aircraft who contravenes section 64ACA or 64ACB commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) An operator of an aircraft or ship commits a separate offence under subsection (1) or (2) in relation to each passenger or member of the crew in relation to whom the operator contravenes section 64ACA or 64ACB.

64ACE Communication of reports

(1) For the purposes of this Act, a documentary report that is sent or given to the Department in accordance with section 64, 64AA, 64AAA, 64ACA or 64ACB may be sent or given in any prescribed manner and, when so sent or given, is taken to have been communicated to the Department when it is received by an officer.

(2) For the purposes of this Act, a report that is sent electronically to the Department under section 64, 64AA, 64AAA, 64AAB, 64AAC, 64AB, 64ABAA, 64ACA or 64ACB is taken to have been communicated to the Department when an acknowledgment of the

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report is sent to the person identified in the report as the person sending it.

64ADAA Requirements for communicating to Department electronically

A communication that is required or permitted by this Subdivision to be made to the Department electronically must:

(a) be signed by the person who makes it (see paragraph 126DA(1)(c)); and

(b) otherwise meet the information technology requirements determined under section 126DA.

64ADA Disclosure of cargo reports to port authorities

(1) An officer may disclose a cargo report to a port authority for the purpose of enabling the authority to collect statistics or compute liability for wharfage charges.

(2) A person to whom information is disclosed under subsection (1) must not:

(a) use the information for any purpose other than the purpose for which the information was disclosed; or

(b) disclose the information to any person except to the extent necessary for that purpose.

Penalty: Imprisonment for 2 years.

(3) A reference in this section to disclosure of information includes a reference to disclosure by way of the provision of electronic access to the information.

64AE Obligation to answer questions and produce documents

(1) The operator of a ship or aircraft to whom section 64, 64AA, 64AAA, 64ACA or 64ACB applies must:

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

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(b) produce documents requested by the Collector relating to a matter referred to in paragraph (a), if the documents are in his or her possession or control at the time of the request.

Penalty: 30 penalty units.

(1A) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) Each cargo reporter to whom section 64AB applies must:

(a) answer questions asked by a Collector relating to the goods he or she has arranged to be carried on the relevant ship or aircraft; and

(b) produce documents requested by the Collector relating to such goods, if the documents are in his or her possession or control at the time of the request.

Penalty: 30 penalty units.

(2A) Subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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

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

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

64AF Obligation to provide access to passenger information

(1) An operator of an international passenger air service commits an offence if:

(a) the operator receives a request from the Comptroller-General of Customs to allow authorised officers ongoing access to the operator's passenger information in a particular manner and form; and

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(b) the operator fails to provide that access in that manner and form.

Note 1: For ***operator***, ***international passenger air service*** and ***passenger information***, see subsection (6).

Note 2: The obligation to provide access must be complied with even if the information concerned is personal information (as defined in the *Privacy Act 1988*).

Penalty: 50 penalty units.

(2) An operator of an international passenger air service does not commit an offence against subsection (1) at a particular time if, at that time, the operator cannot itself access the operator's passenger information.

Note 1: For example, the operator cannot access the operator's passenger information if the operator's computer system is not working.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) An operator of an international passenger air service commits an offence if the operator fails to provide an authorised officer to whom the operator is required to allow access in accordance with subsection (1) with all reasonable facilities, and assistance, necessary to obtain information by means of that access and to understand information obtained.

Penalty: 50 penalty units.

(4) An operator of an international passenger air service does not commit an offence against subsection (3) if the operator had a reasonable excuse for failing to provide the facilities and assistance in accordance with that subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

(5) An authorised officer must only access an operator's passenger information for the purposes of performing his or her functions in accordance with:

(a) this Act; or

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(b) a law of the Commonwealth prescribed by regulations for the purposes of this paragraph.

(6) In this section:

Australian international flight means a flight:

(a) from a place within Australia to a place outside Australia; or

(b) from a place outside Australia to a place within Australia.

international passenger air service means a service of providing air transportation of people:

(a) by means of Australian international flights (whether or not the operator also operates domestic flights or other international flights); and

(b) for a fee payable by people using the service; and

(c) in accordance with fixed schedules to or from fixed terminals over specific routes; and

(d) that is available to the general public on a regular basis.

operator, in relation to an international passenger air service, means a person who conducts, or offers to conduct, the service.

passenger information, in relation to an operator of an international passenger air service, means any information the operator of the service keeps electronically relating to:

(a) flights scheduled by the operator (including information about schedules, departure and arrival terminals, and routes); and

(b) payments by people of fees relating to flights scheduled by the operator; and

(c) people taking, or proposing to take, flights scheduled by the operator; and

(d) passenger check-in, and seating, relating to flights scheduled by the operator; and

(e) numbers of passengers taking, or proposing to take, flights scheduled by the operator; and

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(f) baggage, cargo or anything else carried, or proposed to be carried, on flights scheduled by the operator and the tracking and handling of those things; and

(g) itineraries (including any information about things other than flights scheduled by the operator) for people taking, or proposing to take, flights scheduled by the operator.

Note: The flights referred to are any flights scheduled by the operator (not just Australian international flights).

64A Ships or aircraft arriving at certain places

(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: 60 penalty units.

(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: 30 penalty units.

(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: 30 penalty units.

(3A) Subsections (1), (2) and (3) are offences of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(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.

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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.

65 Master or pilot of wrecked ship or aircraft to report

(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 or her to do so.

Penalty: 60 penalty units.

(1A) Subsection (1) does not apply to the extent that it requires the master or owner of the ship to make a report of the cargo if the master or owner has:

(a) made a cargo report in respect of the cargo; or

(b) communicated an outward manifest under section 119 in respect of the cargo.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(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 so far as it may be possible for him or her to do so.

Penalty: 60 penalty units.

(2A) Subsection (2) does not apply to the extent that it requires the pilot or owner of the aircraft to make a report of the cargo if the pilot or owner has:

(a) made a cargo report in respect of the cargo; or

(b) communicated an outward manifest under section 119 in respect of the cargo.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

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(3) Subsections (1) and (2) are offences of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

66 Goods derelict to be delivered to officer

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

Penalty: 20 penalty units.

67 Interference with derelict goods

(1) No person shall unnecessarily move alter or interfere with any goods derelict flotsam jetsam lagan or wreck.

Penalty: 20 penalty units.

(2) Subsection (1) does not apply to a person who moves, alters or interferes with the goods by authority.

Note: For ***by authority***, see subsection 4(1).

Subdivision C—The registration, rights and obligations of special reporters

67EA Special reporters

For the purposes of section 64AB of this Act, a person or a partnership may, in accordance with this Subdivision, become a special reporter in relation to low value cargo of a particular kind.

67EB Requirements for registration as a special reporter

(1) The Comptroller-General of Customs must not register a person as a special reporter if:

(b) the applicant does not satisfy the Comptroller-General of Customs as mentioned in subsection (2) in relation to low value cargo of that kind; or

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(c) if the applicant is applying to be registered in respect of low value cargo consigned from a particular mail-order house—the applicant is not a party to a house agreement with that mail-order house in force at all times during the 3 consecutive months before the making of the application; or

(d) the applicant does not have dedicated computer facilities having such specifications as are determined, in writing, by the Comptroller-General of Customs for the purpose of this paragraph, in relation to low value cargo generally, including, in particular, specifications to ensure that the information maintained by the applicant in those facilities will not be able to be accessed or altered by unauthorised persons; or

(e) in the opinion of the Comptroller-General of Customs:

(i) if the applicant is a natural person—the applicant is not a fit and proper person to be registered as a special reporter; or

(ii) if the applicant is a partnership—any of the partners is not a fit and proper person to be a member of a partnership registered as a special reporter; or

(iii) if the applicant is a company—any director, officer or shareholder of a company who would participate in the management of the affairs of the company is not a fit and proper person so to participate; or

(iv) an employee of the applicant who would participate in the management of the applicant's dedicated computer facilities is not a fit and proper person so to participate; or

(v) if the applicant is a company—the company is not a fit and proper company to be registered as a special reporter.

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(2) An applicant for registration as a special reporter in relation to low value cargo of a particular kind is taken to comply with this subsection if, and only if, the applicant satisfies the Comptroller-General of Customs that:

(a) in a case of low value cargo consigned from a particular mail-order house to consignees in Australia—the applicant is likely to make cargo reports covering at least 1,000 such consignments per month from the mail-order house during the period of registration; or

(b) in a case of low value cargo of another prescribed kind consigned from a place outside Australia to a consignee in Australia—the applicant is likely to make cargo reports covering a number of consignments per month of that kind that is not less than the number specified in the regulations.

(3) The Comptroller-General of Customs must, in deciding whether a person is a fit and proper person for the purposes of subparagraph (1)(e)(i), (ii), (iii) or (iv) have regard to:

(a) any conviction of the person of an offence against this Act committed within the 10 years immediately before the decision; and

(b) any conviction of the person of an offence punishable by imprisonment for one year or longer:

(i) against another law of the Commonwealth; or

(ii) against a law of a State or of a Territory;

if that offence was committed within the 10 years immediately before that decision; and

(c) whether the person is an insolvent under administration; and

(d) whether the person was, in the 2 years immediately before that decision, a director of, or concerned in the management of, a company that:

(i) had been, or is being, wound up; or

(ii) had had its registration as a special reporter in relation to any low value cargo of any kind cancelled by the Comptroller-General of Customs because of a breach of any condition to which the registration of the company as a special reporter was subject; and

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(e) whether any misleading information or document has been furnished in relation to the person by the applicant under subsection 67EC(2), 67ED(5) or 67EK(12); and

(f) if any information or document given by or in relation to the person was false—whether the applicant knew that the information or document was false; and

(g) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately before the decision.

(4) The Comptroller-General of Customs must, in deciding whether a company is a fit and proper company for the purpose of subparagraph (1)(e)(v), have regard to:

(a) any conviction of the company of an offence:

(i) against this Act; or

(ii) if it is punishable by a fine of $5,000 or more—against another law of the Commonwealth, or a law of a State or of a Territory;

committed:

(iii) within the 10 years immediately before that decision; and

(iv) at a time when any person who is presently a director, officer or shareholder of a kind referred to in subparagraph (1)(e)(iii) in relation to the company was such a director, officer or shareholder; and

(b) whether a receiver of the property, or part of the property, of the company has been appointed; and

(c) whether the company is under administration within the meaning of the *Corporations Act 2001*; and

(d) whether the company has executed, under Part 5.3A of that Act, a deed of company arrangement that has not yet terminated; and

(e) whether the company is under restructuring within the meaning of that Act; and

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(ea) whether the company has made, under Division 3 of Part 5.3B of that Act, a restructuring plan that has not yet terminated; and

(f) whether the company is being wound up.

(5) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieves persons from the requirement to disclose spent convictions and requires persons aware of such convictions to disregard them).

67EC The making of an application

(1) An applicant for registration as a special reporter in respect of low value cargo of a particular kind may make an application under this subsection in relation to cargo of that kind.

(2) An application must:

(a) be in writing; and

(b) be in an approved form; and

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

(d) be accompanied by such other documentation as the form requires; and

(e) be signed in the manner indicated in the form; and

(f) be lodged as required by subsection (4).

(3) Without limiting by implication the generality of the information that may be required by the approved form, the application must indicate the premises in Australia at which the dedicated computer facilities of the applicant are located and the premises in Australia at which documents relating to information required to be stored on those facilities are or will be located.

(4) An application is taken to have been lodged with the Department when the application is first received by an officer of Customs designated by the Comptroller-General of Customs to receive such applications.

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(5) The day on which an application is taken to have been lodged must be recorded on the application.

(6) For the avoidance of doubt, it is the intention of the Parliament that a person who seeks to be registered as a special reporter:

(a) if the person seeks that registration in relation to low value cargo consigned from more than one mail-order house—must make a separate application for such registration in relation to each such house; and

(c) if the person seeks that registration in relation to low value cargo of any other kind prescribed by the regulations—must make a separate application for such registration in relation to each prescribed kind of low value cargo.

67ED Consideration of the application

(1) If an application under section 67EC for registration as a special reporter in relation to low value cargo of a particular kind is lodged, the Comptroller-General of Customs must, having regard:

(a) to the terms of the application; and

(b) if additional information is supplied in response to a requirement under subsection (5)—to that additional information;

decide whether or not to register the applicant in relation to low value cargo of that kind.

(2) The Comptroller-General of Customs must make a decision within 60 days after:

(a) if paragraph (b) does not apply—the lodgment of the application; and

(b) if the Comptroller-General of Customs requires further information to be supplied under subsection (5) and the applicant supplies the information in accordance with that subsection—the receipt of the information.

(3) If the Comptroller-General of Customs decides to register the applicant in relation to low value cargo of the kind referred to in the application, the Comptroller-General of Customs must register

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the applicant as a special reporter in respect of low value cargo of that kind and notify the applicant, in writing, of that decision specifying the day on which the registration comes into force.

(4) If the Comptroller-General of Customs decides not to register the applicant in respect of low value cargo of that kind referred to in the application, the Comptroller-General of Customs must notify the applicant, in writing, of that decision setting out the reasons for so deciding.

(5) If, in considering the application, the Comptroller-General of Customs decides that he or she needs further information on any matter dealt with in the application:

(a) the Comptroller-General of Customs may, by notice in writing to the applicant, require the applicant to provide such additional information relating to that matter as the Comptroller-General of Customs specifies within a period specified in the notice; and

(b) unless the information is given to the Comptroller-General of Customs within that period—the applicant is taken to have withdrawn the application.

67EE Basic conditions attaching to registration as a special reporter

(1) The registration of a special reporter is subject to:

(a) the conditions set out in this section and section 67EF; and

(b) if the special reporter is registered as a special reporter in respect of low value cargo consigned from a mail-order house—section 67EG; and

(c) if regulations under section 67EH apply—that section.

(2) The special reporter must give the Comptroller-General of Customs written information of any of the following matters within 30 days after the occurrence of the matter:

(a) any matter that might, if the reporter were not a special reporter but were an applicant for registration, cause paragraph 67EB(1)(e) to apply in relation to the reporter;

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(b) if, after the registration, or renewal of registration, of a company as a special reporter, a person commences to participate, as a director, officer or shareholder, in the management of the affairs of the company—the fact of such commencement; and

(c) if, after the registration, or renewal of registration, of a special reporter, a person commences to participate as an employee of the special reporter in the management of the dedicated computer facilities of the special reporter—the fact of such commencement; and

(d) if the special reporter is a partnership—the fact of any change in the membership of the partnership.

(3) The special reporter must communicate such cargo reports by using dedicated computer facilities.

67EF Storage and record maintenance conditions

(1) A person who is or has been a special reporter must:

(a) store in dedicated computer facilities at notified premises all information relating to individual consignments that the reporter would, but for the reporter's registration under section 67ED or renewal of registration under section 67EK, be required to give to the Department under section 64AB; and

(b) for 2 years after the date that an abbreviated cargo report covering a consignment is transmitted to the Department, retain at notified premises all the information stored under paragraph (a) in relation to that consignment and also all physical documents of a prescribed kind that cover or relate to that consignment.

(2) If, at any time, while a person is, or within 2 years after the person ceased to be, a special reporter in relation to low value cargo of a particular kind, the person intends to change the location of notified premises at which:

(a) all or any of the dedicated computer facilities used to store information relating to cargo of that kind are situated; or

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(b) all or any documents containing information relating to cargo of that kind required to be stored in such facilities are situated;

the person must, before so doing, notify the Comptroller-General of Customs in writing of the intention to change the premises and include particulars of the changes proposed and of the date on which those changes will take effect.

(3) The special reporter must ensure that the changed premises referred to in subsection (2) are located in Australia.

(4) The special reporter must provide an officer of Customs with online access to the information stored and retained under subsection (1) and with the capacity to download that information, or a part of that information, at any time as required by an officer of Customs.

(5) The special reporter must, despite providing an officer of Customs with the capacity to download information referred to in subsection (4), electronically transfer that information, or a part of that information, to an officer of Customs at any reasonable time as required by an officer of Customs.

67EG Special mail-order house condition

If a person is registered as a special reporter in relation to low value cargo consigned from a particular mail-order house, the person must:

(a) ensure, at all times while that person continues to be a special reporter in relation to that mail-order house, that there is in force between the person and that mail-order house a house agreement within the meaning of section 63A; and

(b) if the agreement expires or for any reason is terminated or there is a breach or an alleged breach of the terms of that agreement—notify the Comptroller-General of Customs, in writing, of that expiration or termination or of that breach or alleged breach.

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67EH Further conditions may be imposed by regulations

The regulations may, at any time, provide that:

(a) if a person is first registered as a special reporter after that time; or

(b) if a person's registration as a special reporter is renewed after that time;

that registration, or registration as renewed, is subject to such further conditions relevant to registration or renewal of registration as a special reporter under this Subdivision as the regulations specify.

67EI Breach of conditions of registration

(1) A person who is or has been a special reporter must not breach a condition of the person's registration as a special reporter.

Penalty: 60 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

67EJ Duration of registration

If a person is registered as a special reporter in relation to low value cargo of a particular kind, that registration:

(a) unless paragraph (b) applies—comes into force on a date specified by the Comptroller-General of Customs under subsection 67ED(3); and

(b) if it is a renewed registration—comes into force on a date determined under subsection 67EK(8); and

(c) remains in force for 2 years after it comes into force unless, before that time, it is cancelled under section 67EM.

67EK Renewal of registration

(1) A person who is a special reporter in relation to low value cargo of a particular kind may seek renewal of registration in relation to

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cargo of that kind by making and lodging a further application in accordance with the requirements of section 67EC:

(a) unless paragraph (b) applies—not later than 30 days before the end of the current period of registration; or

(b) if the Comptroller-General of Customs is satisfied that, for reasons beyond the control of the special reporter, it was not possible to meet the requirements of paragraph (a)—not later than such later date before the end of the period of registration as the Comptroller-General of Customs specifies.

(2) Subject to subsection (3), sections 67EB and 67EC apply in relation to an application for renewal of registration in the same manner as they applied to the original application.

(3) Subsection 67EB(2) has effect in relation to an application for renewal of registration:

(a) if the registration relates to a low value cargo consigned from a particular mail-order house—as if that subsection required the applicant, as a special reporter, to have reported at least 3,000 consignments of such cargo from that house during the 3 months immediately before the making of the application; and

(c) if the registration relates to low value cargo of another prescribed kind—as if that subsection required the applicant, as a special reporter, to have reported at least the prescribed number of consignments of cargo of that kind during the 3 months before the making of the application.

(4) In considering an application for renewal of registration as a special reporter, if the Comptroller-General of Customs has varied the specifications in relation to dedicated computer facilities in any manner, the special reporter must ensure that the computer facilities meet the specifications as so varied.

(5) If an application for renewal of registration as a special reporter in relation to low value cargo of a particular kind is lodged, the Comptroller-General of Customs must, having regard to the terms of the application and, where additional information is supplied under subsection (12), to the additional information, decide

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whether or not to renew the registration of the applicant in relation to low value cargo of that kind.

(6) The Comptroller-General of Customs must make the decision before, or as soon as possible after, the end of the current period of registration.

(7) If, for any reason, the Comptroller-General of Customs has not completed the consideration of the application for renewal of registration at the time when the current period of registration would, but for this subsection, expire, the current period of registration is taken to continue until the consideration of the application is concluded and a resulting decision made.

(8) If the Comptroller-General of Customs decides to renew the registration of a special reporter in relation to low value cargo of a particular kind, the Comptroller-General of Customs must renew the registration and notify the applicant for renewal, in writing, of that decision specifying the day on which, in accordance with subsection (10), the renewal of registration comes into force.

(9) If the Comptroller-General of Customs decides not to renew the registration of a special reporter in relation to low value cargo of a particular kind, the Comptroller-General of Customs must notify the applicant for renewal, in writing, of that decision setting out the reasons for so deciding.

(10) If the Comptroller-General of Customs decides to renew the registration of a special reporter in relation to low value cargo of a particular kind, that renewal takes effect on the day following the end of the current period of registration, or of that period as it is taken to have been extended under subsection (7).

(11) If the Comptroller-General of Customs refuses to renew the registration of a special reporter in relation to low value cargo of a particular kind, the registration in relation to cargo of that kind continues:

(a) until the end of the current period of registration, unless it is earlier cancelled; or

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(b) if the current period of registration is taken to have been extended under subsection (7)—until the making of the decision to refuse to renew registration.

(12) If, in considering an application for renewal of registration, the Comptroller-General of Customs decides that he or she needs further information on any matter dealt with in the application:

(a) the Comptroller-General of Customs may, by notice in writing to the applicant, require the applicant to provide such additional information relating to the matter as the Comptroller-General of Customs specifies within a period specified in the notice; and

(b) unless the information is given to the Comptroller-General of Customs within that period—the applicant is taken to have withdrawn the application.

67EL Comptroller-General of Customs to allocate a special identifying code for each special reporter

If the Comptroller-General of Customs registers an applicant as a special reporter in respect of low value cargo of a particular kind, the Comptroller-General of Customs must allocate to the reporter a special identifying code for use by the special reporter when making an abbreviated cargo report in relation to cargo of that kind.

67EM Cancellation of registration as special reporter

(1) The Comptroller-General of Customs may, at any time, give to a special reporter a notice of intention to cancel the special reporter's registration if the Comptroller-General of Customs is satisfied that:

(b) if the special reporter were not a special reporter but were an applicant for registration—circumstances have arisen whereby paragraph 67EB(1)(e) applies in relation to the reporter; or

(c) the special reporter has breached any condition to which the registration as a special reporter is subject in accordance with section 67EE, 67EF, 67EG or 67EH; or

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(d) if the special reporter is registered as such in relation to low value cargo consigned from a particular mail-order house:
(i) there is no longer a house agreement in force between the special reporter and that house; or
(ii) the terms of such an agreement have been breached.

(2) For the purposes of paragraph (1)(b), the expression ***10 years immediately before the decision*** in subsections 67EB(3) and (4) is to be taken to be 10 years immediately before the notice.

(3) The notice of intention to cancel registration must:
(a) specify the ground or grounds for the intended cancellation; and
(b) invite the special reporter to provide a written statement to the Comptroller-General of Customs within 30 days after the notice is given (the ***submission period***) explaining why the registration should not be cancelled; and
(c) state that the Comptroller-General of Customs may decide to cancel the registration at any time within the 14 days following the end of the submission period, if the grounds or at least one of the grounds exists at that time.

(4) At any time within the 14 days referred to in paragraph (3)(c), the Comptroller-General of Customs may, by notice in writing, decide to cancel the registration of the special reporter generally in relation to low value cargo of all kinds or of a particular kind, as the Comptroller-General of Customs considers appropriate, if, having regard to any statements made by the special reporter in response to the notice, the Comptroller-General of Customs is satisfied that at least one of the grounds specified in the notice exists at the time of the decision.

(5) If the Comptroller-General of Customs decides to cancel the registration within the 14 days, the registration is cancelled:
(a) if paragraph (b) does not apply—28 days after the decision of the Comptroller-General of Customs; or

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(b) if the special reporter applies to the Administrative Review Tribunal for a review of the decision of the Comptroller-General of Customs—when:

(i) the Tribunal affirms the decision of the Comptroller-General of Customs; or

(ii) the application for review is withdrawn by the special reporter or dismissed by the Tribunal.

(6) The Comptroller-General of Customs must, by notice in writing, cancel a registration if the Comptroller-General of Customs receives a written request by the special reporter that the registration be cancelled on or after a specified day indicated in the request letter.

(7) A notice under subsection (1), (4) or (6) may be served:

(a) by post at the address indicated by the special reporter in the application for registration or renewal or at an address subsequently indicated by the special reporter; or

(b) if the special reporter is a company—by post at the registered office of the company; or

(c) by giving it personally to the special reporter, if the special reporter is a natural person.

(8) Failure to send a notice to a special reporter under subsection (6) does not affect the cancellation of the registration.

Subdivision E—Registering re-mail reporters

67F Applying to be a re-mail reporter

(1) A person or partnership may apply to be registered as a re-mail reporter.

Note: A re-mail reporter is generally not required to give information about individual re-mail items in a cargo report: see subsections 64AB(7A) and (7B).

(2) An application must:

(a) be in writing; and

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(b) be in an approved form; and
(c) contain the information that the form requires; and
(d) be accompanied by any other documentation that the form requires; and
(e) be signed in the manner indicated by the form; and
(f) be lodged with an authorised officer.

67G Registering re-mail reporters

(1) The Comptroller-General of Customs must register an applicant as a re-mail reporter if:
(a) the applicant applies under section 67F; and
(b) the Comptroller-General of Customs is satisfied that the applicant would be unlikely to have information, or access to information, about re-mail items that would allow the applicant to make cargo reports at a level of specificity below the level of submaster air waybill or ocean bill of lading; and
(c) the Comptroller-General of Customs is satisfied that the applicant meets the fit and proper person test under section 67H.

(2) For the purposes of deciding whether to register the applicant, the Comptroller-General of Customs may request, in writing, the applicant to provide additional information specified in the request within a specified period.

(3) The Comptroller-General of Customs must decide whether to register the applicant within:
(a) if no additional information has been requested under subsection (2)—60 days of the lodgment of the application under section 67F; or
(b) if additional information has been requested under subsection (2)—60 days of the Comptroller-General of Customs receiving the information.

(4) The Comptroller-General of Customs must:
(a) notify the applicant in writing of his or her decision; and

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(b) if the decision is to register the applicant—specify, in the notification, the day from which the applicant is registered as a re-mail reporter.

(5) The registration may be made subject to any conditions specified in the notification.

67H Fit and proper person test

(1) An applicant meets the fit and proper person test for the purposes of paragraph 67G(1)(c) if the Comptroller-General of Customs is satisfied that:

(a) if the applicant is a natural person—the applicant is a fit and proper person to be registered as a re-mail reporter; and

(b) if the applicant is a partnership—all of the partners are fit and proper persons to be members of a partnership registered as a re-mail reporter; and

(c) if the applicant is a company—all of the company's directors, officers and shareholders who would participate in managing the affairs of the company are fit and proper persons to do so; and

(d) each employee of the applicant who would participate in making cargo reports in relation to re-mail items under section 64AB is a fit and proper person to do so; and

(e) if the applicant is a company—the company is a fit and proper company to be registered as a re-mail reporter.

(2) The Comptroller-General of Customs must, in deciding 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 of an offence against this Act committed within the 10 years immediately before the decision; and

(b) any conviction of the person of an offence punishable by imprisonment for one year or longer:

(i) against another law of the Commonwealth; or

(ii) against a law of a State or Territory;

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if that offence was committed within the 10 years immediately before that decision; and

(c) whether the person is an insolvent under administration; and

(d) whether the person was, in the 2 years immediately before that decision, a director of, or concerned in the management of, a company that:

(i) had been, or is being, wound up; or

(ii) had had its registration as a re-mail reporter cancelled by the Comptroller-General of Customs under paragraph 67K(1)(a), (b) or (d); and

(e) whether any misleading information or document has been provided in relation to the person by the applicant under subsection 67F(2) or 67G(2); and

(f) if any information or document given by or in relation to the person was false—whether the applicant knew that the information or document was false; and

(g) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately before the decision.

(3) The Comptroller-General of Customs must, in deciding whether a company is a fit and proper company for the purpose of paragraph (1)(e), have regard to:

(a) any conviction of the company of an offence:

(i) against this Act; or

(ii) if it is punishable by a fine of $5,000 or more—against another law of the Commonwealth, or a law of a State or Territory;

committed:

(iii) within the 10 years immediately before that decision; and

(iv) at a time when any person who is presently a director, officer or shareholder of a kind referred to in paragraph (1)(c) in relation to the company, was such a director, officer or shareholder; and

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(b) whether a receiver of the property, or part of the property, of the company has been appointed; and

(c) whether the company is under administration within the meaning of the *Corporations Act 2001*; and

(d) whether the company has executed, under Part 5.3A of that Act, a deed of company arrangement that has not yet terminated; and

(e) whether the company is under restructuring within the meaning of that Act; and

(ea) whether the company has made, under Division 3 of Part 5.3B of that Act, a restructuring plan that has not yet terminated; and

(f) whether the company is being wound up.

(4) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and requires persons aware of such convictions to disregard them).

67I Obligation of re-mail reporters to notify Comptroller-General of Customs of certain matters

A re-mail reporter must notify the Comptroller-General of Customs in writing if:

(a) an event or circumstance occurs after the reporter's registration which section 67H would require the Comptroller-General of Customs to have regard to if the reporter were, at that time, an applicant for registration; or

(b) a person becomes, or ceases to be:

(i) if the reporter is a partnership—a member of the partnership; and

(ii) if the reporter is a company—a director, officer or shareholder of the company who would participate in managing the affairs of the company; and

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(iii) an employee of the reporter who would participate in making cargo reports in relation to re-mail items under section 64AB.

67J Varying etc. conditions of registration

(1) After registration, the Comptroller-General of Customs may impose a new condition on a re-mail reporter's registration by notifying the reporter in writing of the condition.

(2) The Comptroller-General of Customs may remove or vary any condition of a re-mail reporter's registration by notifying the reporter in writing of the removal or variation.

67K Cancelling the registration of a re-mail reporter

(1) The Comptroller-General of Customs may cancel the registration of a re-mail reporter if:

(a) the reporter reports an item of cargo in the approved form or statement referred to in subsection 64AB(7A) that was not a re-mail item; or

(b) the reporter uses the approved form or statement in breach of subsection 64AB(7B); or

(c) the Comptroller-General of Customs is no longer satisfied as mentioned in paragraph 67G(1)(b) or (c); or

(d) the reporter breaches a condition of the reporter's registration or section 67I.

(2) The Comptroller-General of Customs must notify the reporter in writing of the cancellation of the registration.

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Division 4—The entry, unshipment, landing, and examination of goods

Subdivision A—Preliminary

68 Entry of imported goods

(1) This section applies to:

(a) goods that are imported into Australia; and

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

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

but does not apply to:

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

(e) goods, other than prescribed goods:

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

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

(f) goods, other than prescribed goods:

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

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

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

(g) containers:

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

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

(h) containers:

(i) that were manufactured in Australia; and

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

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

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

(j) goods stated in a cargo report to be goods whose destination is a place outside Australia.

(2) The owner of goods to which this section applies may enter the goods for home consumption or, for goods other than tobacco products, enter the goods for warehousing:

(a) for goods carried on board a ship or aircraft—at any time before the ship or aircraft first arrives at a port or airport in Australia at which any goods are to be discharged; or

(b) for goods that are a ship or aircraft and that are not carried on board a ship or aircraft—at any time before the ship or aircraft first arrives at a port or airport in Australia.

Note: Tobacco products cannot be entered for warehousing (see section 71DG).

(3) If the owner of goods to which this section applies does not enter the goods under subsection (2), the owner must enter the goods for home consumption or, for goods other than tobacco products, enter the goods for warehousing:

(a) for goods carried on board a ship or aircraft—after the ship or aircraft first arrives at a port or airport in Australia at which any goods are to be discharged; or

(b) for goods that are a ship or aircraft and that are not carried on board a ship or aircraft—after the ship or aircraft first arrives at a port or airport in Australia.

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(3A) An entry of goods for home consumption is made by communicating to the Department an import declaration in respect of the goods.

(3B) An entry of goods (other than tobacco products) for warehousing is made by communicating to the Department a warehouse declaration in respect of the goods.

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

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

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

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

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

68A Goods imported for transhipment

If a cargo report in relation to goods states that the destination of the goods is a place outside Australia, an officer may direct a person who has possession of the goods:

(a) not to move the goods; or

(b) to move them to a place specified in the direction.

69 Like customable goods and excise-equivalent goods

(1A) This section does not apply to tobacco products.

(1) A person may apply to the Collector for permission to deliver into home consumption like customable goods or excise equivalent goods:

(a) of a kind specified in the application; and

(b) to which section 68 applies;

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without entering them for that purpose:

(c) in respect of a recurring 7 day period; or

(d) in respect of a calendar month if:

(ia) the person is a small business entity, or is a person covered by subsection (1AA), (an ***eligible business entity***); or

(i) the person is included in a class prescribed by the regulations; or

(ii) the like customable goods or excise-equivalent goods to be delivered into home consumption are of a kind prescribed by the regulations for the purposes of this subparagraph; or

(e) for excise equivalent goods—in respect of a quarter, if the person is an eligible business entity.

(1AA) A person is covered by this subsection if:

(a) the person is not a small business entity; and

(b) the person would be a small business entity if:

(i) each reference in Subdivision 328-C (about what is a small business entity) of the *Income Tax Assessment Act 1997* to $10 million were instead a reference to $50 million; and

(ii) the reference in paragraph 328-110(5)(b) of that Act to a small business entity were instead a reference to a person covered by this subsection.

(2) If a person applies in respect of a recurring 7 day period, the person may specify in the application the 7 day period that the person wishes to use.

(3) Despite the definition of ***days*** in section 4, Sundays and public holidays are counted as days for the purpose of determining a recurring 7 day period. This subsection does not affect the operation of section 36 of the *Acts Interpretation Act 1901*.

(4) An application must be made in writing in an approved form.

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(5) The Collector may, on receiving an application under subsection (1) or advice under subsection (13) or (14), by notice in writing:

(a) give permission to the person to deliver into home consumption, from a place specified in the permission:

(i) like customable goods to which section 68 applies; or

(ii) excise-equivalent goods to which section 68 applies;

to which the application relates without entering them for that purpose; or

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

(6) If a permission is to apply in respect of a 7 day period, the notice must specify:

(a) the 7 day period for which permission is given; and

(b) the first day of the 7 day period from which permission is given.

(7) If a permission is to apply in respect of a calendar month, the notice must specify the calendar month from which permission is given.

(7A) If a permission is to apply in respect of a quarter, the notice must specify the quarter from which permission is given.

(8) A permission given under subsection (5) in respect of like customable goods or excise-equivalent goods is subject to the following conditions:

(a) if a person's permission applies in respect of a 7 day period and specifies goods other than gaseous fuel—the condition that, to the extent that the permission relates to goods other than gaseous fuel, the person give the Collector a return, by way of a document or electronically, on the first day following the end of each 7 day period, providing particulars in accordance with section 71K or 71L in relation to the goods that have, during the period to which the return relates, been delivered into home consumption under the permission;

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(b) if a person's permission applies in respect of a 7 day period and specifies gaseous fuel—the condition that, to the extent that the permission relates to gaseous fuel, the person give the Collector a return, by way of a document or electronically, on or before the seventh day following the end of each 7 day period, providing particulars in accordance with section 71K or 71L in relation to the gaseous fuel that has, during the period to which the return relates, been delivered into home consumption under the permission;

(c) if a person is an eligible business entity and the person's permission applies in respect of a calendar month—the condition that the person give the Collector a return, by way of a document or electronically, on or before the 21st day of each calendar month, providing particulars in accordance with section 71K or 71L in relation to the goods that have, during the previous calendar month, been delivered into home consumption under the permission;

(d) if a person's permission applies in respect of a calendar month and the person is included in a class mentioned in subparagraph (1)(d)(i) or has permission to enter like customable goods or excise-equivalent goods of a kind prescribed by the regulations for the purposes of subparagraph (1)(d)(ii)—any condition prescribed by the regulations;

(da) if a person is an eligible business entity and the person's permission applies in respect of a quarter—the condition that the person give the Collector a return, by way of a document or electronically, on or before:

(i) for a quarter ending on 31 March, 30 June or 30 September—the 28th day after the end of the quarter; and

(ii) for a quarter ending on 31 December—the 28th day of the February after the end of the quarter;

providing particulars in accordance with section 71K or 71L in relation to the excise equivalent goods that have, during the quarter, been delivered into home consumption under the permission;

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(e) if a person ceases to be an eligible business entity—the condition that the person advise the Collector, in writing, of that fact as soon as practicable after ceasing to be an eligible business entity;

(f) if a person ceases to be included in a class mentioned in subparagraph (1)(d)(i)—the condition that the person advise the Collector, in writing, of that fact as soon as practicable after ceasing to be included in that class;

(g) in any case—the condition that on or after the goods are imported and before they are delivered into home consumption, the goods to which the permission relates must have been or must be entered for warehousing;

(h) the condition that, at the time when each return is given to the Collector, the person pay any duty owing at the rate applicable when the goods were delivered into home consumption;

(i) any other condition, specified in the permission, that the Collector considers appropriate.

Note: Paragraphs (8)(a), (b), (c), (d) and (da)—see also subsection (9).

(9) Despite paragraphs (8)(a), (b), (c), (d) and (da), the Collector may determine different conditions for giving the Collector a return if subsection (13) or (14) applies.

(10) A person to whom a permission is given under subsection (5) must comply with any conditions to which the permission is subject.

Penalty: 60 penalty units.

(11) Subsection (10) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(12) If the Collector is satisfied that a person to whom a permission has been given under subsection (5) has failed to comply with any condition to which the permission is subject, the officer may, at any time while the permission remains in force, by notice in writing, revoke the permission. The notice must set out the reasons for the revocation.

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(13) If:

(a) a person is an eligible business entity or included in a class mentioned in subparagraph (1)(d)(i); and

(b) the person's permission applies in respect of a calendar month or a quarter; and

(c) the person advises the Collector, in writing, that the person ceases to be an eligible business entity or included in a class mentioned in subparagraph (1)(d)(i);

the Collector must, by notice in writing:

(d) revoke the permission with effect from a specified day; and

(e) give another permission under subsection (5) in respect of a 7 day period.

(14) If a person advises the Collector, in writing, that the person wishes to change the 7 day period in respect of which their permission applies, the Collector may, by notice in writing:

(a) revoke the permission with effect from a specified day; and

(b) give another permission under subsection (5) in respect of another period.

(15) Subsections (12) to (14) do not, by implication, limit the application of subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

70 Special clearance goods

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

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

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

(c) perishable food.

(2) A person who has imported or proposes to import goods referred to in paragraph (a) of the definition of ***special clearance goods*** may

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apply to the Collector at any time, in writing, for permission to deliver the goods into home consumption without entering them for that purpose.

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

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

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

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

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

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

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

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

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

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

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

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

Penalty: 60 penalty units.

(7A) Subsection (7) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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

(9) In this section, a reference to the hours of business for dealing with import entries is a reference to a time when, under regulations made for the purposes of section 28, the applicant would be able to give a documentary import declaration to the Department.

71 Information and grant of authority to deal with goods not required to be entered

Information to be given under this section

(1) A person to whom section 71AAAB or 71AAAF applies must give information to the Department under this section in the circumstances mentioned in those sections.

Authority to deal granted under this section

(2) A Collector must, if circumstances mentioned in Subdivision AA or AB of this Division require it, give an authority to deal with goods under this section.

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Refusal to grant authority to deal under this section

(3) A Collector may, in the circumstances mentioned in section 71AAAB, refuse under this section to authorise the delivery of goods into home consumption.

Subdivision AA—Information and grant of authority to deal with Subdivision AA goods

71AAAA Meaning of *Subdivision AA goods*

In this Subdivision:

Subdivision AA goods means:

(a) goods of a kind referred to in paragraph 68(1)(d); and

(b) goods that are prescribed by regulations made for the purposes of subsection 71AAAE(1).

71AAAB Report and grant of authority to deal with Subdivision AA goods

Providing information about Subdivision AA goods

(1) A person:

(a) who is the owner of Subdivision AA goods; or

(b) who is covered by regulations made under subsection 71AAAE(2);

must, in the circumstances specified in the regulations, provide, under section 71, the information specified in the regulations:

(c) at the time; and

(d) in the manner and form;

specified in the regulations.

Authority to deal with Subdivision AA goods

(2) If Subdivision AA goods are imported into Australia, a Collector must, having regard to information about the goods given under subsection (1) and (if any) section 196C:

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(a) authorise the delivery of the goods into home consumption under section 71; or

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

(3) A decision of a Collector mentioned in subsection (2) must be communicated in writing, electronically, or by another method prescribed by the regulations.

Duty etc. to be paid before authority given

(4) A Collector must not give an authority to deal with Subdivision AA goods unless the duty (if any) and any other charge or tax (if any) payable on the importation of the goods has been paid.

71AAAC Suspension of authority to deal with Subdivision AA goods

Suspension of authority to deal

(1) If:

(a) a Collector has given an authority to deal with Subdivision AA goods; and

(b) before the goods are dealt with in accordance with the authority, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law;

the officer may suspend the authority for a specified period.

(2) An officer suspends an authority to deal with Subdivision AA goods by signing a notice:

(a) stating that the authority is suspended; and

(b) setting out the reasons for the suspension;

and serving a copy of the notice on:

(c) the owner of the goods; or

(d) if the owner does not have possession of the goods—on the person who has possession of the goods.

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Revoking a suspension of authority to deal

(3) If, during the period of a suspension of an authority to deal with Subdivision AA goods, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension.

(4) An officer revokes a suspension of an authority to deal with Subdivision AA goods by signing a notice:

(a) stating that the authority is suspended; and

(b) setting out the reasons for the suspension;

and serving a copy of the notice on:

(c) the owner of the goods; or

(d) if the owner does not have possession of the goods—on the person who has possession of the goods.

When suspension or revocation of suspension has effect

(5) A suspension of an authority to deal with Subdivision AA goods, or a revocation of a suspension of such an authority, has effect from the time when the relevant notice was given.

Subdivision AB—Information and grant of authority to deal with specified low value goods

71AAAD Meaning of *specified low value goods*

In this Subdivision:

specified low value goods means goods of a kind referred to in paragraph 68(1)(e), (f) or (i).

71AAAE Regulations

(1) The regulations may prescribe goods that are excluded from being specified low value goods.

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Note 1: These goods are Subdivision AA goods for the purposes of Subdivision AA of this Division.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) The regulations may prescribe persons who are not required to comply with the provisions of this Subdivision.

Note 1: These persons must comply with Subdivision AA of this Division.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

71AAAF Making a self-assessed clearance declaration

(1) Despite section 181, the owner of specified low value goods, or a person acting on behalf of the owner, must give the Department a declaration (a ***self-assessed clearance declaration***) under section 71 containing the information that is set out in an approved statement.

(2) A self-assessed clearance declaration must be communicated electronically to the Department.

(3) A self-assessed clearance declaration may be communicated together with a cargo report.

71AAAG Collector's response if a self-assessed clearance declaration is communicated separately from a cargo report

(1) If a self-assessed clearance declaration is communicated to the Department but not together with a cargo report, a Collector must communicate a self-assessed clearance declaration advice electronically to the person who made the declaration.

(2) A self-assessed clearance declaration advice:

(a) must refer to the number given by a Collector to identify the self-assessed clearance declaration to which the advice is a response; and

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(b) must contain:

(i) a statement that the goods covered by the declaration are cleared for home consumption; or

(ii) a direction that the goods covered by the declaration be held in their current location or further examined.

71AAAH Collector's response if a self-assessed clearance declaration is communicated together with a cargo report

If a self-assessed clearance declaration is communicated together with a cargo report, a Collector may communicate electronically to the person who made the declaration a direction that the goods covered by the declaration be held in their current location or further examined.

71AAAI Authority to deal with goods covered by a self-assessed clearance declaration

If declaration is communicated separately from a cargo report

(1) If a Collector gives a self-assessed clearance declaration advice in response to a self-assessed clearance declaration, a Collector must communicate electronically to the person to whom the advice was given an authority under section 71 to deliver into home consumption the goods covered by the declaration.

Note 1: Section 71AAAL prevents a Collector from authorising the delivery of goods into home consumption while certain duty etc. payable on the goods is outstanding.

Note 2: A Collector does not have to give an authority to deal with the goods while the goods are subject to a direction under subparagraph 71AAAG(2)(b)(ii) (see section 71AAAK) or while an officer is seeking further information (see section 71AAAO).

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If declaration is communicated together with a cargo report

(2) If the Department receives a self-assessed clearance declaration together with a cargo report, a Collector must communicate electronically:

(a) if a Collector gave a direction under section 71AAAH in response to the declaration—to the person who has possession of the goods covered by the declaration; or

(b) otherwise—to the person who made the declaration;

an authority under section 71 to deliver into home consumption the goods covered by the declaration.

Note 1: Section 71AAAL prevents a Collector from authorising the delivery of goods into home consumption while certain duty etc. payable on the goods is outstanding.

Note 2: A Collector does not have to give an authority to deal with the goods while the goods are subject to a direction under section 71AAAH (see section 71AAAK) or while an officer is seeking further information (see section 71AAAO).

71AAAJ Contents of authority to deal with specified low value goods

(1) An authority to deal with specified low value goods must set out:

(a) any condition under subsection (2) of this section that applies to the authority; and

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

(c) any other prescribed information.

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

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

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71AAAK No authority to deal with specified low value goods while subject to a direction to hold or further examine

A Collector is not required to grant an authority to deal with specified low value goods at any time while the goods are subject to a direction under subparagraph 71AAAG(2)(b)(ii) or section 71AAAH.

71AAAL No authority to deal with specified low value goods unless duty etc. paid

Duty etc. to be paid before authority given

(1) A Collector must not give an authority to deal with specified low value goods unless the duty (if any) and any other charge or tax (if any) payable on the importation of the goods has been paid.

First exception

(2) Subsection (1) does not apply in relation to an authority to deal with specified low value goods, if the goods are covered by item 2 of the table in subsection 132AA(1).

Note: Subsection 132AA(1) provides that import duty on goods covered by item 2 of the table in that subsection must be paid by a time worked out under the regulations.

Second exception

(3) Subsection (1) does not apply in relation to an authority to deal with specified low value goods, if:

(a) the only duty, charge or tax outstanding on the importation of the goods is one or more of the following:

(i) the assessed GST payable on the taxable importation, if any, that is associated with the import of the goods;

(ii) if a taxable importation of a luxury car is associated with the import of the goods—the assessed luxury car tax payable on that taxable importation;

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(iii) if a taxable dealing is associated with the import of the goods—the assessed wine tax payable on that dealing; and

(b) because of the following provisions, the unpaid assessed GST, assessed luxury car tax or assessed wine tax (as appropriate) is not payable until after duty on the goods was payable (or would have been payable if the goods had been subject to duty):

(i) paragraph 33-15(1)(b) of the GST Act;

(ii) paragraph 13-20(1)(b) of the Luxury Car Tax Act;

(iii) paragraph 23-5(1)(b) of the Wine Tax Act.

71AAAM Suspension of authority to deal with specified low value goods

Suspension of authority to deal

(1) If:

(a) a Collector has given an authority to deal with specified low value goods; and

(b) before the goods are dealt with in accordance with the authority, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law;

the officer may suspend the authority for a specified period.

(2) An officer suspends an authority to deal with specified low value goods by:

(a) if the authority was given in the circumstances mentioned in subsection 71AAAI(1)—sending electronically to the person who made the self-assessed clearance declaration a message stating that the authority is suspended and setting out the reasons for the suspension; or

(b) if the authority was given in the circumstances mentioned in subsection 71AAAI(2)—sending electronically to the person who has possession of the goods a message stating that the

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authority is suspended and setting out the reasons for the suspension.

Revoking a suspension of authority to deal

(3) If, during the period of a suspension of an authority to deal with specified low value goods, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension.

(4) An officer revokes a suspension of an authority to deal with specified low value goods by:

(a) if the authority was given in the circumstances mentioned in subsection 71AAAI(1)—sending electronically to the person who made the self-assessed clearance declaration relating to the goods a message stating that the suspension is revoked; or

(b) if the authority was given in the circumstances mentioned in subsection 71AAAI(2)—sending electronically to the person who has possession of the goods a message stating that the suspension is revoked.

When suspension or revocation of suspension has effect

(5) A suspension of an authority to deal with specified low value goods, or a revocation of a suspension of such an authority, has effect from the time when the relevant notice was given or the relevant message was sent.

71AAAN Cancellation of authority to deal with specified low value goods

(1) An officer may, at any time before specified low value goods are dealt with in accordance with an authority to deal, cancel the authority.

(2) An officer cancels an authority to deal with specified low value goods by sending electronically, to the person who has possession

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of the goods, a message stating that the authority is cancelled and setting out the reasons for the cancellation.

(3) A cancellation of an authority has effect from the time when the message was sent.

71AAAO Officer may seek further information in relation to self-assessed clearance declaration

(1) A Collector may refuse to grant an authority to deal with goods covered by a self-assessed clearance declaration until an officer doing duty in relation to self-assessed clearance declarations:

(a) has verified particulars of the goods; or

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

(2) If an officer doing duty in relation to self-assessed clearance declarations believes on reasonable grounds that the owner of goods covered by a self-assessed clearance declaration:

(a) has custody or control of commercial documents relating to the goods that will assist the officer to determine whether this Act has been or is being complied with in respect of the goods; or

(b) has or can obtain information that will so assist the officer;

the officer may require the owner:

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

(d) to deliver to the officer such information, in writing, relating to the goods (being information of a kind specified in the notice) as is within the knowledge of the owner or as the owner is reasonably able to obtain.

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(3) A requirement for the delivery of documents or information in respect of a self-assessed clearance declaration must:

(a) be communicated electronically to the person who made the declaration; and

(b) contain such particulars as are set out in an approved statement.

(4) If an owner of goods has been required to deliver documents or information in relation to the goods under subsection (2), a Collector must not grant an authority to deal with the goods unless the requirement has been complied with or withdrawn.

(5) An officer doing duty in relation to self-assessed clearance declarations may ask:

(a) the owner of goods covered by a self-assessed clearance declaration; or

(b) if another person made the declaration on behalf of the owner—the other person;

any questions relating to the goods.

(6) If a person has been asked a question in respect of goods under subsection (5), a Collector must not grant an authority to deal with the goods unless the question has been answered or withdrawn.

(7) If an officer doing duty in relation to self-assessed clearance declarations believes on reasonable grounds that the owner of goods covered by a self-assessed clearance declaration:

(a) has custody or control of documents relating to the goods that will assist the officer to verify the particulars shown in the declaration; or

(b) has or can obtain information that will so assist the officer;

the officer may require the owner to produce the documents or supply the information to the officer.

(8) If an owner of goods has been required to verify a matter in respect of the goods under subsection (7), a Collector must not grant an authority to deal with the goods unless the requirement has been

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complied with or withdrawn, or a security has been taken for compliance with the requirement.

(9) Subject to section 215, if a person delivers a commercial document to an officer doing duty in relation to self-assessed clearance declarations under this section, the officer must deal with the document and then return it to the person.

71AAAP Withdrawal of self-assessed clearance declarations

(1) A self-assessed clearance declaration may, at any time before the goods covered by the declaration are dealt with in accordance with an authority to deal, be withdrawn by either:

(a) the owner of the goods; or

(b) a person acting on behalf of the owner;

communicating the withdrawal electronically to an officer doing duty in relation to self-assessed clearance declarations.

(2) A person who makes a self-assessed clearance declaration in respect of goods may, at any time before the goods are dealt with in accordance with an authority to deal with the goods, change information in the declaration.

(3) If a person changes information in a self-assessed clearance declaration, the person is taken, at the time when the self-assessed clearance declaration advice is communicated in respect of the altered declaration, to have withdrawn the declaration as it previously stood.

(4) A withdrawal of a self-assessed clearance declaration has no effect during any period while a requirement under subsection 71AAAO(2) or (7) in respect of the goods to which the declaration relates has not been complied with.

(5) A withdrawal of a self-assessed clearance declaration is effected when it is, or is taken under section 71AAAT to have been, communicated to the Department.

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(6) If:

(a) a self-assessed clearance declaration is communicated to the Department; and

(b) any duty, fee, charge or tax in respect of goods covered by the declaration remains unpaid in respect of the goods for 30 days starting on:

(i) the day on which the self-assessed clearance declaration advice relating to the goods is communicated; or

(ii) if under subsection 132AA(1) the duty is payable by a time worked out under the regulations—the day on which that time occurs; and

(c) after that period ends, the Comptroller-General of Customs gives written notice to the owner of the goods requiring payment of the unpaid duty, fee, charge or tax (as appropriate) within a further period set out in the notice; and

(d) the unpaid duty, fee, charge or tax (as appropriate) is not paid within the further period;

the self-assessed clearance declaration is taken to have been withdrawn under subsection (1).

71AAAQ Further self-assessed clearance declaration not to be given while there is an existing self-assessed clearance declaration

(1) If goods are covered by a self-assessed clearance declaration, a person must not communicate a further self-assessed clearance declaration in respect of the goods or any part of the goods unless the first-mentioned self-assessed clearance declaration is withdrawn.

Penalty: 60 penalty units.

(2) An offence under subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code.*

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71AAAR Effect of withdrawal of a self-assessed clearance declaration

(1) When a withdrawal of a self-assessed clearance declaration takes effect, any authority to deal with the goods to which the declaration relates is revoked.

(2) Despite the withdrawal:

(a) a person may be prosecuted under Division 4 of Part XIII, or an infringement notice may be given to a person, in respect of the self-assessed clearance declaration; and

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

as if it had not been withdrawn.

71AAAS Annotation of self-assessed clearance declaration by Collector for certain purposes not to constitute withdrawal

Any annotation of a self-assessed clearance declaration that is made by a Collector as a result of the acceptance by a Collector of an application for:

(a) a refund or rebate of all or part of the duty paid on goods covered by the declaration; or

(b) a remission of all or part of the duty payable on goods covered by the declaration;

is not taken to constitute a withdrawal of the declaration for the purposes of this Act.

71AAAT Manner and effect of communicating self-assessed clearance declarations to Department

(1) The Comptroller-General of Customs may approve different statements for electronic communications to be made in relation to different classes of goods for which a self-assessed clearance declaration is required.

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(2) For the purposes of this Act, a self-assessed clearance declaration is taken to have been communicated to the Department electronically:

(a) when a self-assessed clearance declaration advice is communicated by a Collector electronically to the person identified in the declaration as the person sending the declaration; or

(b) in the case of a self-assessed clearance declaration communicated to the Department together with a cargo report—when a Collector communicates electronically to the person who made the declaration an acknowledgment of the declaration.

(3) For the purposes of this Act, a withdrawal of a self-assessed clearance declaration is taken to have been communicated to the Department electronically when an acknowledgment of the withdrawal is communicated by a Collector electronically to the person identified in the withdrawal as the person sending the withdrawal.

Subdivision B—Import declarations

71A Making an import declaration

(1) An import declaration is a communication to the Department in accordance with this section of information about:

(a) goods to which section 68 applies; or

(b) warehoused goods;

that are intended to be entered for home consumption.

(2) An import declaration can be communicated by document or electronically.

(3) A documentary import declaration must be communicated to the Department:

(a) by giving or sending it to an officer doing duty in relation to import declarations at the place at which the goods are to be delivered for home consumption; or

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(b) by leaving it at a place:

(i) that has been allocated for lodgement of import declarations by notice published on the Department's website; and

(ii) that is where the goods are to be delivered for home consumption.

(5) If the information communicated to the Department in an import declaration relating to goods adequately identifies any permission (however it is described) that has been given for the importation of those goods, the identification of the permission in that information is taken, for the purposes of any law of the Commonwealth (including this Act), to be the production of the permission to an officer.

(6) However, subsection (5) does not affect any power of an officer, under this Act, to require the production of a permission referred to in that subsection.

(7) If:

(a) an import declaration is, or is taken under section 71L to have been, communicated to the Department; and

(b) before the time when the declaration is, or is so taken to have been, communicated to the Department, the goods to which the declaration relates:

(i) have been imported; or

(ii) for goods carried on board a ship or aircraft—have been brought to the first port or airport in Australia at which any goods are to be discharged; or

(iii) for goods that are a ship or aircraft and that are not carried on board a ship or aircraft—have arrived at a port or airport in Australia;

the goods are taken to have been entered for home consumption.

(8) If:

(a) an import declaration is, or is taken under section 71L to have been, communicated to the Department; and

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(b) at the time when the declaration is, or is so taken to have been, communicated to the Department, the goods to which the declaration relates:

(i) for goods carried on board a ship or aircraft—have not been brought to the first port or airport in Australia at which any goods are to be discharged; or

(ii) for goods that are a ship or aircraft and that are not carried on board a ship or aircraft—have not arrived at a port or airport in Australia;

the goods are taken to be entered for home consumption only when they are brought to that first port or airport in Australia or when they arrive at a port or airport in Australia (as the case requires).

71B Liability for import declaration processing charge

(1) When an import declaration (including an altered import declaration) in respect of goods to which section 68 applies (other than warehoused goods) is, or is taken to have been, communicated to the Department under section 71A, the owner of the goods becomes liable to pay import declaration processing charge in respect of the declaration.

(2) If a person who is an owner of goods pays import declaration processing charge in respect of an import declaration relating to particular goods, any other person who is an owner of those goods ceases to be liable to pay charge in respect of that declaration.

(3) If an import declaration is withdrawn under subsection 71F(1), or is taken, under subsection 71F(2) or (7), to have been withdrawn, before the issue of an authority to deal in respect of goods covered by the declaration, then, despite subsection (1), the owner of the goods is not liable to pay import declaration processing charge in respect of the declaration.

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Exemptions from charge

(4) The Minister may, by legislative instrument, determine one or more of the following:

(a) that specified persons are exempt from liability to pay import declaration processing charge;

(b) that persons are exempt from liability to pay import declaration processing charge in respect of import declarations relating to specified goods;

(c) that specified persons are exempt from liability to pay import declaration processing charge in respect of import declarations relating to specified goods.

(5) An instrument under subsection (4) takes effect on the day specified in the instrument (which may be earlier or later than the day the instrument is made).

Refund of charge

(6) If:

(a) a person pays an amount of import declaration processing charge on or after the day an instrument under subsection (4) takes effect; and

(b) the person is exempt from liability to pay that amount of charge because of that instrument;

the Comptroller-General of Customs must, on behalf of the Commonwealth, refund to the person an amount equal to the amount of charge paid.

Debt

(7) An amount of import declaration processing charge that a person is liable to pay:

(a) is a debt due by the person to the Commonwealth; and

(b) may be recovered by action in a court of competent jurisdiction.

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71BA Warehoused goods declaration fee

(1) An owner of warehoused goods who makes an import declaration in respect of the goods is liable to pay a fee (the ***warehoused goods declaration fee***) for the processing of the declaration.

(2) The amount of the warehoused goods declaration fee is:
   (a) if the import declaration is made electronically—$23.00 or, if another amount (not exceeding $34.00) is prescribed by the regulations, the amount so prescribed; or
   (b) if the import declaration is made by document—$63.00 or, if another amount (not exceeding $94.00) is prescribed by the regulations, the amount so prescribed.

(3) If a person who is an owner of warehoused goods pays the warehoused goods declaration fee for the processing of an import declaration in respect of the goods, any other person who is an owner of the goods ceases to be liable to pay the fee for the processing of the import declaration.

(4) In this section:

warehoused goods includes goods that, under section 100, may be dealt with as warehoused goods.

71C Authority to deal with goods in respect of which an import declaration has been made

(1) If an import declaration in respect of goods has been communicated to the Department, a Collector must give an import declaration advice, by document or electronically, in accordance with this section.

(2) An import declaration advice relating to goods entered by documentary import declaration:
   (a) must be given to the owner of the goods or be made available for collection by leaving it at a place that has been allocated for collection of such advices by notice published on the Department's website; and

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(b) must contain:

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

(ii) a statement that the goods are directed to be held in their current location or are directed for further examination.

(3) An import declaration advice relating to goods entered by an electronic import declaration:

(a) must refer to the number given by a Collector to identify the particular import declaration; and

(b) must be communicated electronically to the person who made the declaration; and

(c) must contain:

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

(ii) a statement that the goods are directed to be held in their current location or are directed for further examination.

(4) Subject to subsection (5), if:

(a) an import declaration advice is given or communicated under this section; and

(b) a payment is made of any duty, assessed GST, assessed luxury car tax, assessed wine tax, import declaration processing charge or other charge or fee payable at the time of entry of, or in respect of, the goods covered by the import declaration advice;

a Collector must:

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

(d) if the advice was communicated electronically under subsection (3)—communicate electronically, to the person to whom the advice was communicated, an authority to take the goods into home consumption.

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(5) A Collector is not required to give or communicate an authority under subsection (4) while the goods concerned are subject to a direction referred to in subparagraph (2)(b)(ii) or (3)(c)(ii).

(6) A Collector must give an authority under subsection (4) in relation to goods covered by item 2 of the table in subsection 132AA(1) if subsection (4) would require a Collector to do so apart from paragraph (4)(b).

Note: Subsection 132AA(1) provides that import duty on goods covered by item 2 of the table in that subsection must be paid by a time worked out under the regulations.

(7) A Collector must give an authority under subsection (4) in relation to goods if:

(a) that subsection would require a Collector to do so apart from the fact that any or all of the following were not paid when duty on the goods was paid (or would have been payable if the goods had been subject to duty):

(i) the assessed GST payable on the taxable importation, if any, that is associated with the import of the goods;

(ii) if a taxable importation of a luxury car is associated with the import of the goods—the assessed luxury car tax payable on that taxable importation;

(iii) if a taxable dealing is associated with the import of the goods—the assessed wine tax payable on that dealing; and

(b) because of the following provisions, the unpaid assessed GST, assessed luxury car tax or assessed wine tax (as appropriate) was not payable until after duty on the goods was payable (or would have been payable if the goods had been subject to duty):

(i) paragraph 33-15(1)(b) of the GST Act;

(ii) paragraph 13-20(1)(b) of the Luxury Car Tax Act;

(iii) paragraph 23-5(1)(b) of the Wine Tax Act.

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(8) If goods are authorised to be taken into home consumption, the authority to deal, whether given by a document or electronically, must set out:

(a) any condition of the kind referred to in subsection (9) to which the authority is subject; and

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

(c) such other information as is prescribed.

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

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

(11) An officer may, at any time before goods authorised to be taken into home consumption are so dealt with, cancel the authority:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the authority is cancelled and setting out the reasons for the cancellation; and

(ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is cancelled and setting out the reasons for the cancellation.

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(12) If, at any time before goods authorised to be taken into home consumption are so dealt with, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of any Customs-related law, the officer may suspend the authority for a specified period:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the authority is so suspended and setting out the reasons for the suspension; and

(ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is so suspended and setting out the reasons for the suspension.

(13) If, during the suspension under subsection (12) of an authority, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the suspension is revoked; and

(ii) serving a copy of the notice on the person to whom the notice of the suspension was given; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person to whom the message notifying the suspension was sent, a message stating that the suspension is revoked.

(14) A cancellation or suspension of an authority, or a revocation of a suspension of an authority, has effect from the time when the

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relevant notice is served or the relevant message is sent, as the case may be.

71D Visual examination in presence of officer

(1) If a person who is permitted or required to make an import declaration in respect of goods to which section 68 applies does not have the information to complete the declaration, the person may apply to the Department, by document or electronically, for permission to examine the goods in the presence of an officer.

(2) A documentary application must be communicated to the Department by giving it to an officer doing duty in relation to import declarations.

(3) When an application is given to an officer under subsection (2) or is sent electronically, an officer must, by writing or by message sent electronically, give the applicant permission to examine the goods on a day and at a place specified in the notice.

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

71DA An officer may seek additional information

(1) Without limiting the information that may be required to be included in an import declaration, if an import declaration has been made in respect of goods, authority to deal with the goods may be refused until an officer doing duty in relation to import declarations:

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

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

(2) If an officer doing duty in relation to import declarations believes, on reasonable grounds, that the owner of goods to which an import declaration relates has custody or control of commercial documents, or has, or can obtain, information, relating to the goods

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that will assist the officer to determine whether this Act has been or is being complied with in respect of the goods, the officer may require the owner:

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

(b) to deliver to the officer such information, in writing, relating to the goods (being information of a kind specified in the notice) as is within the knowledge of the owner or as the owner is reasonably able to obtain.

(3) A documentary requirement for the delivery of documents or information in respect of an import declaration must:

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

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

(4) An electronic requirement for the delivery of documents or information in respect of an import declaration must:

(a) be communicated electronically to the person who made the declaration; and

(b) contain such particulars as are set out in an approved statement.

(5) An officer doing duty in relation to import declarations may ask:

(a) the owner of goods in respect of which an import declaration has been made; and

(b) if another person made the declaration on behalf of the owner—that other person;

any questions relating to the goods.

(6) If an officer doing duty in relation to import declarations believes, on reasonable grounds, that the owner of goods to which an import declaration relates has custody or control of documents, or has, or can obtain, information, relating to the goods that will assist the

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officer to verify the particulars shown in the import declaration, the officer may require the owner to produce the documents or supply the information to the officer.

(7) If:

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

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

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

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

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

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

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

as the case requires.

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

Subdivision D—Warehouse declarations

71DG Subdivision does not apply to tobacco products

This Subdivision does not apply to tobacco products.

Note: Tobacco products cannot be warehoused (see subsections 68(2) and (3)).

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71DH Making a warehouse declaration

(1) A warehouse declaration is a communication to the Department in accordance with this section of information about goods to which section 68 applies that are intended to be entered for warehousing.

(2) A warehouse declaration may be communicated by document or electronically.

(3) A documentary warehouse declaration must be communicated to the Department:

(a) by giving or sending it to an officer doing duty in relation to warehouse declarations at the place at which the goods are to be delivered for warehousing; or

(b) by leaving it at a place:

(i) that has been allocated for lodgement of warehouse declarations by notice published on the Department's website; and

(ii) that is where the goods are to be delivered for warehousing.

(5) If the information communicated to the Department in a warehouse declaration relating to goods adequately identifies any permission (however it is described) that has been given for the importation of those goods, the identification of the permission in that information is taken, for the purposes of any law of the Commonwealth (including this Act), to be the production of the permission to an officer.

(6) However, subsection (5) does not affect any power of an officer, under this Act, to require the production of a permission referred to in that subsection.

(7) If:

(a) a warehouse declaration is, or is taken under section 71L to have been, communicated to the Department; and

(b) before the time when the declaration is, or is so taken to have been, communicated to the Department, the goods to which the declaration relates have been imported or have been

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brought to the first port or airport in Australia at which any goods are to be discharged;

the goods are taken to have been entered for warehousing.

(8) If:

(a) a warehouse declaration is, or is taken under section 71L to have been, communicated to the Department; and

(b) at the time when the warehouse declaration is, or is so taken to have been, communicated to the Department, the goods to which the declaration relates have not been brought to the first port or airport in Australia at which any goods are to be discharged;

the goods are taken to be entered for warehousing only when they are brought to that port or airport.

71DI Liability for warehouse declaration processing charge

(1) When a warehouse declaration (including an altered warehouse declaration) in respect of goods is, or is taken to have been, communicated to the Department under section 71DH, the owner of the goods becomes liable to pay warehouse declaration processing charge in respect of the declaration.

(2) If a person who is an owner of goods pays warehouse declaration processing charge in respect of a warehouse declaration relating to particular goods, any other person who is an owner of those goods ceases to be liable to pay charge in respect of that declaration.

(3) If a warehouse declaration is withdrawn under subsection 71F(1), or is taken, under subsection 71F(2) or (7), to have been withdrawn, before the issue of an authority to deal in respect of goods covered by the declaration, then, despite subsection (1), the owner of the goods is not liable to pay warehouse declaration processing charge in respect of the declaration.

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Debt

(4) An amount of warehouse declaration processing charge that a person is liable to pay:

(a) is a debt due by the person to the Commonwealth; and

(b) may be recovered by action in a court of competent jurisdiction.

71DJ Authority to deal with goods in respect of which a warehouse declaration has been made

(1) If a warehouse declaration in respect of goods has been communicated to the Department, a Collector must give a warehouse declaration advice, by document or electronically, in accordance with this section.

(2) A warehouse declaration advice relating to goods entered by documentary warehouse declaration:

(a) must be given to the owner of the goods or be made available for collection by leaving it at a place that has been allocated for collection of such advices by notice published on the Department's website; and

(b) must contain:

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

(ii) a statement that the goods are directed to be held in their current location or are directed for further examination.

(3) A warehouse declaration advice relating to goods entered by an electronic warehouse declaration:

(a) must refer to the number given by a Collector to identify the particular warehouse declaration; and

(b) must be communicated electronically to the person who made the declaration; and

(c) must contain:

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

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(ii) a statement that the goods are directed to be held in their current location or are directed for further examination.

(4) Subject to subsection (5), if:

(a) a warehouse declaration advice is given or communicated under this section; and

(b) a payment is made of any warehouse declaration processing charge or other charge or fee payable at the time of entry of, or in respect of, the goods covered by the warehouse declaration advice;

a Collector must:

(c) if the advice was given under subsection (2)—give the person to whom the advice was given an authority, in writing, to take the goods into warehousing; and

(d) if the advice was communicated electronically under subsection (3)—communicate electronically, to the person to whom the advice was communicated, an authority to take the goods into warehousing.

(5) A Collector is not required to give or communicate an authority under subsection (4) while the goods concerned are subject to a direction referred to in subparagraph (2)(b)(ii) or (3)(c)(ii).

(6) If goods are authorised to be taken into warehousing, the authority to deal, whether given by a document or electronically, must set out:

(a) any condition of the kind referred to in subsection (7) to which the authority is subject; and

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

(c) such other information as is prescribed.

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

(8) If an authority to deal with goods is expressed to be subject to the condition that a specified permission be obtained, the authority is

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taken not to have been given until the permission has been obtained.

(9) An officer may, at any time before goods authorised to be taken into warehousing are so dealt with, cancel the authority:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the authority is cancelled and setting out the reasons for the cancellation; and

(ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is cancelled and setting out the reasons for the cancellation.

(10) If, at any time before goods authorised to be taken into warehousing are so dealt with, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of any Customs-related law, the officer may suspend the authority for a specified period:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the authority is so suspended and setting out the reasons for the suspension; and

(ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is so suspended and setting out the reasons for the suspension.

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(11) If, during the suspension under subsection (10) of an authority, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the suspension is revoked; and

(ii) serving a copy of the notice on the person to whom the notice of the suspension was given; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person to whom the message notifying the suspension was sent, a message stating that the suspension is revoked.

(12) A cancellation or suspension of an authority, or a revocation of a suspension of an authority, has effect from the time when the relevant notice is served or the relevant message is sent, as the case may be.

71DK Visual examination in presence of officer

(1) If a person who is permitted or required to make a warehouse declaration in respect of goods to which section 68 applies does not have the information to complete the declaration, the person may apply to the Department, by document or electronically, for permission to examine the goods in the presence of an officer.

(2) A documentary application must be communicated to the Department by giving it to an officer doing duty in relation to warehouse declarations.

(3) When an application is given to an officer under subsection (2) or is sent electronically, an officer must, by writing or by message sent electronically, give the applicant permission to examine the goods on a day and at a place specified in the notice.

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

71DL An officer may seek additional information

(1) Without limiting the information that may be required to be included in a warehouse declaration, if a warehouse declaration has been made in respect of goods, authority to deal with the goods may be refused until an officer doing duty in relation to warehouse declarations:

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

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

(2) If an officer doing duty in relation to warehouse declarations believes, on reasonable grounds, that the owner of goods to which a warehouse declaration relates has custody or control of commercial documents, or has, or can obtain, information, relating to the goods that will assist the officer to determine whether this Act has been or is being complied with in respect of the goods, the officer may require the owner:

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

(b) to deliver to the officer such information, in writing, relating to the goods (being information of a kind specified in the notice) as is within the knowledge of the owner or as the owner is reasonably able to obtain.

(3) A documentary requirement for the delivery of documents or information in respect of a warehouse declaration must:

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

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

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(4) An electronic requirement for the delivery of documents or information in respect of a warehouse declaration must:

(a) be communicated electronically to the person who made the declaration; and

(b) contain such particulars as are set out in an approved statement.

(5) An officer doing duty in relation to warehouse declarations may ask:

(a) the owner of goods in respect of which a warehouse declaration has been made; and

(b) if another person made the declaration on behalf of the owner—that other person;

any questions relating to the goods.

(6) If an officer doing duty in relation to warehouse declarations believes, on reasonable grounds, that the owner of goods to which a warehouse declaration relates has custody or control of commercial documents, or has, or can obtain, information, relating to the goods that will assist the officer to verify the particulars shown in the warehouse declaration, the officer may require the owner to produce the documents or supply the information to the officer.

(7) If:

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

(b) the owner of, or the person making a warehouse declaration in respect of, goods has been asked a question in respect of the goods under subsection (5); or

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

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

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

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

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

as the case requires.

(8) Subject to section 215, if a person delivers a commercial document to an officer doing duty in relation to warehouse declarations under this section, the officer must deal with the document and then return it to the person.

Subdivision E—General

71E Movement permissions

Movement permissions—movement to specified places

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

(2) A documentary movement application must:

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

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

(2A) If:

(a) the goods are goods to which section 68 applies; and

(b) the goods have not been entered for home consumption or warehousing; and

(c) subsection (2C) does not apply to the goods;

a movement application may be made only by:

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(d) for goods carried on board a ship or aircraft—the operator of the ship or aircraft, a cargo reporter in relation to the goods, or a stevedore or depot operator who has, or intends to take, possession of the goods; or

(e) for goods that are a ship or aircraft and that are not carried on board a ship or aircraft—the owner of the goods.

(2B) A movement application under subsection (2A) must be made electronically.

(2C) This subsection applies to goods if:

(a) the goods are:

(i) accompanied by, and described in, temporary admission papers issued in accordance with an agreement between Australia and one or more other countries that provides for the temporary importation of goods without payment of duty; or

(ii) subject to an application under section 162AA for permission to take delivery of goods; and

(b) neither of the following applies:

(i) the Comptroller-General of Customs has refused to accept a security or undertaking under section 162A in relation to the goods;

(ii) a Collector has refused to grant permission under section 162A to take delivery of the goods.

(3) If a movement application is duly communicated to the Department, subsections (3AA) and (3AB) apply.

(3AA) An officer may direct the applicant to ensure that the goods are held in the place where they are currently located until the decision is made on the application.

(3AB) If a direction is not given under subsection (3AA), or a reasonable period has elapsed since the giving of such a direction to enable the making of an informed decision on the application, an officer must:

(a) if the application is a document movement application—by notice in writing to the applicant; or

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(b) if the application is an electronic movement application—by sending a message electronically to the applicant;

do either of the following:

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

(d) refuse the application and set out in the notice or message the reasons for the refusal.

Movement permissions—excise-equivalent warehouse licences

(3AC) The Comptroller-General of Customs may give permission in writing to the holder of an excise-equivalent warehouse licence to remove excise-equivalent goods from the warehouse or warehouses covered by the licence to any other warehouse at which excise-equivalent goods of the kind being removed are authorised to be warehoused (whether by that or any other excise-equivalent warehouse licence).

(3AD) The Comptroller-General of Customs:

(a) must give a permission under subsection (3AC) to the holder of an excise-equivalent warehouse licence:

(i) on the grant of the licence if the licence covers more than one warehouse; or

(ii) for a licence that when granted covered only one warehouse—if the Comptroller-General varies the licence to cover more than one warehouse; and

(b) otherwise, may give a permission under that subsection on application by the licence holder.

(3AE) A permission given under subsection (3AC) has effect subject to any conditions that apply to the licence that covers the warehouse from which the goods are removed.

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Effect of movement permissions

(3AF) A permission given under paragraph (3AB)(c) or subsection (3AC) is, until revoked, authority for the person to whom the permission is given to move goods to which the permission relates accordingly.

Forfeiture of goods moved otherwise than as permitted

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

Certain cargo reports taken to be movement applications

(3C) If a cargo report states that goods specified in the report are proposed to be moved from a Customs place to another Customs place, then, despite section 71L, the statement is taken to be a movement application in respect of the goods duly made under this section.

(3D) In subsection (3C):

Customs place has the meaning given by subsection 183UA(1).

Directions to move goods to a warehouse

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

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

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

71F Withdrawal of import entries

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

(2) If, at any time after a person has communicated an import entry to the Department and before the goods are dealt with in accordance with the entry, the person changes information included in the entry, the person is taken, at the time when the import entry advice is given or communicated in respect of the altered entry, to have withdrawn the entry as it previously stood.

(3) A documentary withdrawal of an import entry must:
  (a) be communicated by the person by whom, or on whose behalf, the entry was communicated; and
  (b) be communicated to the Department by giving it to an officer doing duty in relation to import entries.

(5) A withdrawal of an import entry has no effect during any period while a requirement under subsection 71DA(2) or (6) or 71DL(2) or (6) in respect of the goods to which the entry relates has not been complied with.

(6) A withdrawal of an import entry is effected when it is, or is taken under section 71L to have been, communicated to the Department.

(7) If:
  (a) an import entry is communicated to the Department; and
  (b) any duty, fee, charge or tax in respect of goods covered by the entry remains unpaid in respect of the goods concerned for 30 days starting on:

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(i) the day on which the import entry advice relating to the goods is communicated; or

(ii) if under subsection 132AA(1) the duty is payable by a time worked out under the regulations—the day on which that time occurs; and

(c) after that period ends, the Comptroller-General of Customs gives written notice to the owner of the goods requiring payment of the unpaid duty, fee, charge or tax (as appropriate) within a further period set out in the notice; and

(d) the unpaid duty, fee, charge or tax (as appropriate) is not paid within the further period;

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

71G Goods not to be entered while an entry is outstanding

(1) If goods have been entered for home consumption under subsection 68(2) or (3), a person must not communicate a further import declaration or a warehouse declaration in respect of the goods or any part of the goods unless the import declaration that resulted in the goods being entered for home consumption is withdrawn.

Penalty: 60 penalty units.

(2) An offence for a contravention of subsection (1) is an offence of strict liability.

71H Effect of withdrawal

(1) When a withdrawal of an import entry in respect of goods takes effect, any authority to deal with the goods is revoked.

(2) Despite the withdrawal:

(a) a person may be prosecuted under Division 4 of Part XIII, or an infringement notice may be given to a person, in respect of the import entry; and

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

as if it had not been withdrawn.

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

71J Annotation of import entry by Collector for certain purposes not to constitute withdrawal

Any annotation of an import entry that is made by a Collector as a result of the acceptance by a Collector of an application for a refund or rebate of all or a part of the duty paid, or for a remission of all or part of the duty payable, on goods covered by the entry, is not to be taken to constitute a withdrawal of the entry for the purposes of this Act.

71K Manner of communicating with Department by document

(1) An import entry, a withdrawal of an import entry, a visual examination application, a movement application, or a return for the purposes of subsection 69(8) or 70(7) or section 105C, that is communicated to the Department by document:

(a) must be in an approved form; and

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

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

(2) The Comptroller-General of Customs may approve different forms for documentary communications to be made in different circumstances or by different classes of persons.

71L Manner and effect of communicating with Department electronically

(1) An import entry, a withdrawal of an import entry, a visual examination application, a movement application, or a return for

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the purposes of subsection 69(8) or 70(7) or section 105C that is communicated to the Department electronically must communicate such information as is set out in an approved statement.

(2) The Comptroller-General of Customs may approve different statements for electronic communications to be made in different circumstances or by different classes of persons.

(3) For the purposes of this Act, an import entry, a withdrawal of an import entry or a return for the purposes of subsection 69(8) or 70(7) or section 105C, is taken to have been communicated to the Department electronically when an import entry advice, or an acknowledgment of the withdrawal or the return, is communicated by a Collector electronically to the person identified in the import entry, withdrawal or return as the person sending it.

(4) A movement application that is communicated to the Department electronically must communicate such information as is set out in an approved statement.

(5) For the purposes of this Act, a movement application is taken to have been communicated to the Department electronically when an acknowledgment of the application is communicated by a Collector electronically to the person identified in the application as the person sending it.

71M Requirements for communicating to Department electronically

A communication that is required or permitted by this Division to be made to the Department electronically must:

(a) be signed by the person who makes it (see paragraph 126DA(1)(c)); and

(b) otherwise meet the information technology requirements determined under section 126DA.

72 Failure to make entries

(1) Where:

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

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

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

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

(3) A Collector has a lien on goods for any expenses incurred by him or her 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, including the making of an entry in respect of the goods, are not done within:

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

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

a Collector may sell, or otherwise dispose of, the goods.

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

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73 Breaking bulk

(1) Subject to subsections (2B) and (3), a person shall not break the bulk cargo of a ship arriving in, or on a voyage to, Australia while the ship is within waters of the sea within the outer limits of the territorial sea of Australia, including such waters within the limits of a State or an internal Territory.

Penalty: 250 penalty units.

(2) Subject to subsections (2B) and (3), 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; or

(b) in, or flying over, waters of the sea within the outer limits of the territorial sea of Australia.

Penalty: 250 penalty units.

(2A) Subsections (1) and (2) are offences of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2B) Subsections (1) and (2) do not apply if the person has the permission of a Collector.

(3) Subsections (1) and (2) do not apply in respect of goods authority to deal with which has been given under section 71B.

74 Officer may give directions as to storage or movement of certain goods

(1) If an officer has reasonable grounds to suspect that a report of the cargo made in respect of a ship or aircraft:

(a) has not included particular goods that are intended to be unloaded from the ship or aircraft at a port or airport in Australia; or

(b) has incorrectly described particular goods;

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the officer may give written directions to the cargo reporter as to how and where the goods are to be stored, and as to the extent (if any) to which the goods may be moved.

(2) An officer who has given a written direction under subsection (1) may, by writing, cancel the direction if the officer is satisfied that a report of the cargo made in respect of the ship or aircraft has included, or correctly described, as the case may be, the goods.

(3) If an officer has reasonable grounds to suspect that particular goods in the cargo that is to be, or has been, unloaded from a ship or aircraft are prohibited goods, the officer may give written directions to:

(a) the cargo reporter; or

(b) the stevedore or depot operator whose particulars have been communicated to the Department by the operator of the ship or aircraft under section 64AAC;

as to how and where the goods are to be stored, and as to the extent (if any) to which the goods may be moved.

(4) An officer who has given a written direction under subsection (3) may, by writing, cancel the direction if the officer is satisfied that the cargo does not contain prohibited goods.

(5) A person who intentionally contravenes a direction given to the person under subsection (1) or (3) commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

(6) A person who contravenes a direction given to the person under subsection (1) or (3) commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

76 Goods landed at ship's risk etc.

Goods unshipped 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

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the Collector, and shall until lawfully removed therefrom be at the risk of the master or owner of the ship or the pilot or owner of the aircraft as if they had not been unshipped.

77 Repacking on wharf

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

77AA Disclosure of information to cargo reporter or owner of goods

(1) If a cargo reporter in relation to goods that are on a ship or aircraft on a voyage or flight to a place in Australia requests a Collector to inform the cargo reporter:

(a) whether a report of the impending arrival of the ship or aircraft has been made and, if so, the estimated time of arrival specified in the report; or

(b) whether a report of the arrival of the ship or aircraft has been made and, if so, the time of arrival;

a Collector may comply with the request.

(2) If goods have been entered for home consumption or warehousing, a Collector may, at the request of the owner of the goods, inform the owner of the stage reached by a Collector in deciding whether or not to give an authority to deal with the goods.

(3) If a movement application has been made in respect of goods, a Collector may, at the request of the owner of the goods, inform the owner of the stage reached by a Collector in its consideration of the application.

(4) If goods have been entered for export by the making of an export declaration, a Collector may, at the request of the owner of the goods, inform the owner of the stage reached by a Collector in deciding whether or not to give an authority to deal with the goods.

(5) If a submanifest in respect of goods has been sent to the Department under section 117A, a Collector may, at the request of the owner of the goods, inform the owner of the stage reached by a

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Collector in preparing to give a submanifest number in respect of the submanifest.

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Division 5—Detention of goods in the public interest

77EA Minister may order goods to be detained

(1) The Minister may, if the Minister considers that it is in the public interest to do so, order a Collector to detain the goods specified in the Minister's order.

(2) At the time an order is made to detain goods:
  (a) the goods must be goods the importation of which is restricted by the *Customs (Prohibited Imports) Regulations 1956*; and
  (b) the goods must have been imported into Australia; and
  (c) the importation of the goods must not breach this Act; and
  (d) the goods must not have been:
    (i) delivered into home consumption in accordance with an authority to deal with the goods; or
    (ii) exported from Australia.

(3) An order to detain goods has effect despite any provision of this Act to the contrary.

77EB Notice to person whose goods are detained

If the Minister orders goods to be detained, the Minister must, as soon as practicable after making the order, give written notice of the order to:
  (a) the owner of the goods; or
  (b) if the owner of the goods cannot be identified after reasonable inquiry—the person in whose possession or under whose control the goods were at the time the order was given.

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77EC Detention of goods by Collector

If the Minister orders a Collector to detain goods under section 77EA, a Collector must:

(a) move the goods to a place that is approved by a Collector for the purpose of detaining goods under this Subdivision (unless the goods are already in such a place); and

(b) detain the goods in that place until the goods are dealt with under section 77ED, 77EE or 77EF.

77ED Minister may authorise delivery of detained goods into home consumption

(1) On application by the owner of goods detained under section 77EC, the Minister may authorise the delivery of the goods, or so much of the goods as the Minister specifies in the authority, into home consumption.

(2) An authority is subject to any conditions, or other requirements, specified in the authority in relation to the goods.

(3) An application under subsection (1) must be made before the end of the period of 12 months after the date of the order.

(4) The owner of goods authorised to be taken into home consumption under subsection (1) must comply with any other provision of this Act in relation to taking goods into home consumption.

77EE Minister may authorise export of detained goods

(1) On application by the owner of goods detained under section 77EC, the Minister may authorise the exportation of the goods, or so much of the goods as the Minister specifies in the authority, from Australia.

(2) An authority is subject to any conditions, or other requirements, specified in the authority in relation to the goods.

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(3) An application under subsection (1) must be made before the end of the period of 12 months after the date of the order.

(4) The owner of goods authorised to be exported under subsection (1) must comply with any other provision of this Act in relation to exporting goods.

77EF When goods have been detained for 12 months

Goods to be exported or disposed of

(1) This section applies if, at the end of the period of 12 months after an order to detain goods is given, some or all of the goods (the ***remaining goods***) have not been:

(a) delivered into home consumption in accordance with an authority given under section 77ED; or

(b) exported in accordance with an authority given under section 77EE.

(2) The Minister may grant an authority to export the remaining goods from Australia.

(3) The owner of goods authorised to be exported under subsection (2) must comply with any other provision of this Act in relation to exporting goods.

(4) If:

(a) the Minister does not grant an authority to export the remaining goods from Australia within 1 month of the end of the period of 12 months after the date of the order; or

(b) the remaining goods have not been exported from Australia within 2 months after the date of an authority to export the goods under subsection (2);

the Minister must authorise a Collector to dispose of the goods in the manner the Minister considers appropriate.

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Compensation for detained goods

(5) Nothing in this section prevents a person from seeking compensation in relation to the remaining goods, or other goods ordered to be detained under this Subdivision, in accordance with section 4AB.

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Part IVA—Depots

77F Interpretation

(1) In this Part:

Australia Post means the Australian Postal Corporation.

depot, in relation to a depot licence, means the place to which the licence relates.

depot licence means a licence granted under section 77G and includes such a licence that has been renewed under section 77T.

depot licence application charge means the depot licence application charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 77H.

depot licence charge means the depot licence charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 77U.

depot licence variation charge means the depot licence variation charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 77LA of this Act.

International Mail Centre means a place approved in an instrument under subsection (1A) as a place for the examination of international mail.

place includes an area, a building and a part of a building.

receptacle means a shipping or airline container, a pallet or other similar article.

(1A) For the purposes of the definition of ***International Mail Centre*** in subsection (1), the Comptroller-General of Customs may, by writing, approve a place as a place for the examination of international mail.

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(2) A reference in this Part to a conviction of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to a person in respect of an offence.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

(3) Nothing in this Part affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).

(4) For the purposes of this Part, a person is taken to participate in the management or control of a depot if:

(a) the person has authority:

(i) to direct the operations, or an important or substantial part of the operations, of the depot; or

(ii) to direct activities in the depot; or

(iii) to remove goods from the depot; or

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

77G Depot licences

(1) Subject to this Part, the Comptroller-General of Customs may, on an application made by a person or partnership in accordance with section 77H, grant the person or partnership a licence in writing, to be known as a depot licence, to use a place described in the licence for any one or more of the following purposes:

(a) the holding of imported goods that are subject to customs control under section 30;

(b) the unpacking of goods referred to in paragraph (a) from receptacles;

(c) the holding of goods for export that are subject to customs control under section 30;

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(d) the packing of goods referred to in paragraph (c) into receptacles;
(e) the examination of goods referred to in paragraph (a) or (c) by officers of Customs.

(2) A depot licence may be granted:
(a) in relation to all the purposes referred to in subsection (1) or only to a particular purpose or purposes referred to in subsection (1) as specified in the licence; and
(b) in relation to goods generally or to goods of a specified class or classes as specified in the licence.

77H Application for a depot licence

(1) An application for a depot licence to cover a place must be made by a person or partnership who would occupy and control the place as a depot if the licence were granted.

(1A) An application under subsection (1) may be made by document or electronically.

(2) A documentary application must:
(a) be in writing; and
(b) be in an approved form; and
(c) contain such information as the form requires; and
(ca) be accompanied by any documents required by the form; and
(d) be signed in the manner indicated in the form; and
(e) subject to subsection (3), be accompanied by a depot licence application charge.

(2A) An electronic application must:
(a) communicate such information as is set out in an approved statement; and
(b) be accompanied by any documents required by the approved statement; and
(c) subject to subsection (3), be accompanied by the depot licence application charge.

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(3) If Australia Post makes an application under this section for the whole or a part of an International Mail Centre to be covered by a depot licence, it is not liable to pay the depot licence application charge under subsection (2) or (2A).

77J Comptroller-General of Customs may require applicant to supply further information or documents

(1) The Comptroller-General of Customs may, by written notice given to an applicant for a depot licence, require the applicant to supply further information or documents in relation to the application within the period that is specified in the notice.

Note: See section 77ZA for the ways in which the notice may be given to the applicant.

(2) The Comptroller-General of Customs may extend the specified period if the applicant, in writing, requests the Comptroller-General of Customs to do so.

(3) If the applicant:

(a) fails to supply the further information or documents within the specified period, or that period as extended under subsection (2); but

(b) supplies the information or documents at a subsequent time;

the Comptroller-General of Customs must not take the information or documents into account in determining whether to grant the depot licence.

77K Requirements for grant of depot licence

(1) The Comptroller-General of Customs must not grant a depot licence if, in his or her opinion:

(a) if the applicant is a natural person:

(i) the applicant is not a fit and proper person to hold a depot licence; or

(ii) the applicant would not be in a position to occupy and control the proposed depot if the licence were granted; or

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(iii) a person who would participate in the management or control of, or in the operations carried out at, the proposed depot (whether or not the person would be present at the proposed depot) is not a fit and proper person to so participate; or

(b) if the applicant is a partnership:

(i) any of the partners is not a fit and proper person to be a member of a partnership holding a depot licence; or

(ii) none of the partners in the partnership would be in a position to occupy and control the proposed depot if the licence were granted; or

(iii) a person who would participate in the management or control of, or in the operations carried out at, the proposed depot (whether or not the person would be present at the proposed depot) is not a fit and proper person to so participate; or

(c) if the applicant is a company:

(i) any of the directors of the company is not a fit and proper person to be a director of a company holding a depot licence; or

(ii) the company would not be in a position to occupy and control the proposed depot if the licence were granted; or

(iii) a person who would participate in the management or control of, or in the operations carried out at, the proposed depot (whether or not the person would be present at the proposed depot) is not a fit and proper person to so participate; or

(iv) the company is not a fit and proper company to hold a depot licence; or

(h) the physical security of the proposed depot is not adequate having regard to:

(i) the nature of the place; or

(ii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the proposed depot if the licence were granted; or

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(i) the records that would be kept in relation to the proposed depot would not be suitable to enable an officer of Customs adequately to audit those records; or

(j) it is inappropriate in all the circumstances to grant the licence, having regard to the matters covered by subsection (3A).

(2) The Comptroller-General of Customs must, in deciding whether a person is a fit and proper person for the purposes of paragraph (1)(a), (b) or (c) (other than subparagraph (1)(c)(iv)), have regard to:

(a) any conviction of the person of an offence against this Act committed within the 10 years immediately before that decision; and

(b) any conviction of the person of an offence against another law of the Commonwealth, or a law of a State or of a Territory, that is punishable by imprisonment for one year or longer, being an offence committed within the 10 years immediately before that decision; and

(c) whether the person is an insolvent under administration; and

(d) any misleading statement made under section 77H or 77J in relation to the application for the licence by or in relation to the person; and

(e) if any such statement made by the person was false—whether the person knew that the statement was false; and

(f) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately before the decision.

(3) The Comptroller-General of Customs must, in deciding whether a company is a fit and proper company for the purposes of subparagraph (1)(c)(iv), have regard to:

(a) any conviction of the company of an offence against this Act committed within the 10 years immediately before that decision and at a time when any person who is presently a

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director, officer or shareholder of the company was a director, officer or shareholder of the company; and

(b) any conviction of the company of an offence against another law of the Commonwealth, or a law 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 before that decision and at a time when a person who is presently a director, officer or shareholder of the company was a director, officer or shareholder of the company; and

(c) whether a receiver of the property, or part of the property, of the company has been appointed; and

(d) whether the company is under administration within the meaning of the *Corporations Act 2001*; and

(e) whether the company has executed under Part 5.3A of that Act a deed of company arrangement that has not yet terminated; and

(f) whether the company is under restructuring within the meaning of that Act; and

(fa) whether the company has made, under Division 3 of Part 5.3B of that Act, a restructuring plan that has not yet terminated; and

(g) whether the company is being wound up.

(3A) For the purposes of paragraph (1)(j), the matters covered by this subsection are the following:

(a) if the applicant is a natural person—the experience of the following in operations that would be performed upon, or in relation to, goods at the proposed depot:

(i) the applicant;

(ii) each person, known to the Comptroller-General of Customs, who would participate in the management or control of, or in the operations carried out at, the proposed depot (whether or not the person would be present at the proposed depot);

(b) if the applicant is a partnership—the experience of the following in operations that would be performed upon, or in relation to, goods at the proposed depot:

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(i) each partner in the partnership;

(ii) each person, known to the Comptroller-General of Customs, who would participate in the management or control of, or in the operations carried out at, the proposed depot (whether or not the person would be present at the proposed depot);

(c) if the applicant is a company—the experience of the following in operations that would be performed upon, or in relation to, goods at the proposed depot:

(i) the company;

(ii) each director of the company;

(iii) each person, known to the Comptroller-General of Customs, who would participate in the management or control of, or in the operations carried out at, the proposed depot (whether or not the person would be present at the proposed depot);

(d) in any case—the applicant's operating procedures and processes that would apply at the proposed depot in relation to goods at the proposed depot.

(4) The Comptroller-General of Customs may refuse to grant a depot licence if, in his or her opinion, the place in relation to which the licence is sought would be too remote from the nearest place where officers of Customs regularly perform their functions for those officers to be able to conveniently check whether the Customs Acts are being complied with at the place.

(5) If the place in relation to which the application for a depot licence is sought (the ***proposed depot***) is proposed to be used as a depot for imported goods, the Comptroller-General of Customs must not grant the licence unless the applicant has, at the proposed depot, facilities that would enable the applicant to communicate with the Department electronically.

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77L Granting of a depot licence

(1) The Comptroller-General of Customs must decide whether or not to grant a depot licence within 60 days after:

(a) if paragraph (b) does not apply—the receipt of the application for the licence; or

(b) if the Comptroller-General of Customs requires further information or documents relating to the application to be supplied by the applicant under section 77J and the applicant supplied the information or documents in accordance with that section—the receipt of the information or documents.

(2) If the Comptroller-General of Customs has not made a decision whether or not to grant a depot licence within 60 days under subsection (1), the Comptroller-General of Customs is taken to have refused the application.

77LA Variation of places covered by depot licence

Variation on application

(1) The Comptroller-General of Customs may, on application by the holder of a depot licence, vary the licence by:

(a) omitting the description of the place that is currently described in the licence and substituting a description of another place; or

(b) altering the description of the place that is currently described in the licence.

Note: See subsection (8) for variation on the Comptroller-General's own initiative.

(1A) An application under subsection (1) may be made by document or electronically.

(2) A documentary application must:

(a) be in writing; and

(b) be in an approved form; and

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

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(d) be signed in the manner indicated in the form; and

(e) be accompanied by payment of the depot licence variation charge.

(2A) An electronic application must:

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

(b) be accompanied by payment of the depot licence variation charge.

(3) The Comptroller-General of Customs may, by written notice given to an applicant for the variation of a depot licence, require the applicant to supply further information in relation to the application within the period that is specified in the notice or within such further period as the Comptroller-General of Customs allows.

Note: See section 77ZA for the ways in which the notice may be given to the applicant.

(4) The Comptroller-General of Customs must not grant an application for the substitution of the description of a place not currently described in the licence, or for the alteration to the description of a place currently described in the licence, if, in his or her opinion:

(a) the physical security of the place whose description is to be substituted, or of the place that would have the altered description, as the case may be, would not be adequate having regard to:

(i) the nature of the place; or

(ii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the place if the variation were made; or

(b) the records that would be kept in relation to the place would not be suitable to enable an officer of Customs adequately to audit those records.

(5) The Comptroller-General of Customs must not grant an application for the substitution of the description of a place not currently described in the licence if, in his or her opinion, the place would be

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too remote from the nearest place where officers of Customs regularly perform their functions for those officers to be able to conveniently check whether the Customs Acts are being complied with at the place.

(6) The Comptroller-General of Customs must decide whether or not to grant the application within 60 days after:

(a) if paragraph (b) does not apply—the receipt of the application; or

(b) if the Comptroller-General of Customs requires further information relating to the application to be supplied by the applicant under subsection (3) and the applicant supplied the information in accordance with that subsection—the receipt of the information.

(7) If the Comptroller-General of Customs has not made the decision whether or not to grant the application within the period applicable under subsection (6), the Comptroller-General of Customs is taken to have refused the application.

Variation on own initiative

(8) The Comptroller-General of Customs may, on the Comptroller-General's own initiative, vary a depot licence by:

(a) omitting the description of the place that is currently described in the licence and substituting a description of another place; or

(b) altering the description of the place that is currently described in the licence.

(9) The Comptroller-General of Customs must give the holder of the depot licence a copy of the variation under subsection (8). The variation takes effect at the time the copy is given.

77N Conditions of a depot licence—general

(1) A depot licence is subject to the conditions set out in subsections (2) to (10).

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(2) The holder of a licence must, within 30 days after the occurrence of an event referred to in any of the following paragraphs, give the Comptroller-General of Customs particulars in writing of that event:

(a) a person not described in the application for the licence as participating in the management or control of the depot commences so to participate;

(aa) a person described in the application for the licence as participating in the management or control of the depot ceases to do so;

(b) in the case of a licence held by a partnership—there is a change in the membership of the partnership;

(c) in the case of a licence held by a company:

(i) the company is convicted of an offence of a kind referred to in paragraph 77K(3)(a) or (b); or

(ii) a receiver of the property, or part of the property, of the company is appointed; or

(iii) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or

(iv) the company executes a deed of company arrangement under Part 5.3A of that Act; or

(v) a small business restructuring practitioner for the company is appointed under section 453B of that Act; or

(vi) the company makes a restructuring plan under Division 3 of Part 5.3B of that Act;

(d) a person who participates in the management or control of, or in the operations carried out at, the depot, the holder of the licence or, if a licence is held by a partnership, a member of the partnership:

(i) is convicted of an offence referred to in paragraph 77K(2)(a) or (b); or

(ii) becomes an insolvent under administration; or

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(iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, within the applicable period referred to in paragraph 77V(2)(e).

(2A) The holder of a licence must not cause or permit a substantial change to be made:

(a) to a matter affecting the physical security of the depot; or

(b) to the keeping of records in relation to the depot; or

(c) to the holder's operating procedures or processes that apply at the depot in relation to goods at the depot;

unless the holder has given to the Comptroller-General of Customs 30 days' notice of the proposed change.

(3) The holder of the licence must pay to the Commonwealth any prescribed travelling expenses payable by the holder under the regulations in relation to travelling to and from the depot by a Collector for the purposes of the Customs Acts. For that purpose, the regulations may prescribe particular rates of travelling expenses in relation to particular circumstances concerning travelling to and from a depot by a Collector for the purposes of the Customs Acts.

(4) The holder of the licence must stack and arrange goods in the depot so that authorised officers have reasonable access to, and are able to examine, the goods.

(5) The holders of the licence must provide authorised officers with:

(a) adequate space and facilities for the examination of goods in the depot; and

(b) secure storage space for holding those goods.

(6) The holder of the licence must, when requested to do so, allow an authorised officer to enter and remain in the depot to examine goods:

(a) which are subject to customs control; or

(b) which an authorised officer has reasonable grounds to believe are subject to customs control.

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(7) The holder of the licence must, when requested to do so, provide an authorised officer with information, which is in the holder's possession or within the holder's knowledge, in relation to determining whether or not goods in the depot are subject to customs control.

(8) The holder of the licence must retain all commercial records and records created in accordance with the Customs Acts that:

(a) relate to goods received into a depot; and

(b) come into the possession or control of the holder of the licence;

for 5 years beginning on the day on which the goods were received into the depot.

(9) The holder of the licence must keep the records referred to in subsection (8) at:

(a) the depot; or

(b) if the holder has notified the Department in writing of the location of any other places occupied and controlled by the holder where the records are to be kept—those other places.

(10) At any reasonable time within the 5 years referred to in subsection (8), the holder of the licence must, when requested to do so:

(a) permit an authorised officer:

(i) to enter and remain in a place that is occupied and controlled by the holder and which the officer has reasonable grounds to believe to be a place where records referred to in subsection (8) are kept; and

(ii) to have full and free access to any such records in that place; and

(iii) to inspect, examine, make copies of, or take extracts from any such records in that place; and

(b) provide the officer with all reasonable facilities and assistance for the purpose of doing all of the things referred to in subparagraphs (a)(i) to (iii) (including providing access to any electronic equipment in the place for those purposes).

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(11) The holder of the licence is not obliged to comply with a request referred to in subsection (6), (7) or (10) unless the request is made by a person who produces written evidence of the fact that the person is an authorised officer.

77P Conditions of a depot licence—imported goods

(1) If imported goods were received into a depot during a particular month, it is a condition of the licence that the holder of the licence must:

(a) if paragraph (b) does not apply—cause the removal of those goods into a warehouse before the end of the following month; or

(b) if the Comptroller-General of Customs, on written request by the holder made before the end of that following month, grants an extension under this section—cause the removal of the goods into a warehouse within 30 days after the end of that following month.

(2) In this section:

month means month of a year.

77Q Comptroller-General of Customs may impose additional conditions to which a depot licence is subject

Imposition of additional conditions

(1) The Comptroller-General of Customs may, at any time, impose additional conditions to which a depot licence is subject if the Comptroller-General of Customs considers the conditions to be necessary or desirable:

(a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or

(c) for any other purpose.

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(1A) If the Comptroller-General of Customs imposes conditions under subsection (1) when granting the depot licence, the Comptroller-General of Customs must specify the conditions in the licence.

(1B) If the Comptroller-General of Customs imposes conditions under subsection (1) after the depot licence has been granted:

(a) the Comptroller-General of Customs must, by written notice to the holder of the licence, notify the holder of the conditions; and

(b) the conditions cannot take effect before:

(i) the end of 30 days after the giving of the notice; or

(ii) if the Comptroller-General of Customs considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

Note: See section 77ZA for the ways in which the notice may be given to the holder of the licence.

Variation of imposed conditions

(2) The Comptroller-General of Customs may, by written notice to the holder of the licence, vary conditions imposed under subsection (1) in relation to that licence.

Note: See section 77ZA for the ways in which the notice may be given to the holder of the licence.

(3) A variation under subsection (2) cannot take effect before:

(a) the end of 30 days after the giving of the notice under that subsection; or

(b) if the Comptroller-General of Customs considers that it is necessary for the variation to take effect earlier—the end of a shorter period specified in the notice given under that subsection.

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77R Breach of conditions of depot licence

(1) The holder of a depot licence must not breach a condition of the licence set out in section 77N or 77P, or a condition imposed under section 77Q (including a condition varied under that section).

Penalty: 60 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply if a breach of a condition of the depot licence occurs only as a result of the holder's compliance, or attempted compliance, with:

(a) a direction given under section 21 of the *Aviation Transport Security Act 2004* that applies to the holder; or

(b) a special security direction (within the meaning of section 9 of that Act) that applies to the holder.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

77S Duration of depot licences

Subject to this Part, a depot licence:

(a) comes into force on a date specified in the licence; and

(b) remains in force until the end of the 30 June next following the grant of the licence;

but may be renewed under section 77T.

Note: Section 77T provides that a licence may continue to be in force for a further period of 30 days after the 30 June referred to in this section under certain circumstances. Another provision that might affect the operation of this section is section 77VC (cancellation of depot licences).

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77T Renewal of depot licences

(1) The Comptroller-General of Customs must, before the end of a financial year (the ***current financial year***), notify each holder of a depot licence of the terms of this section.

Licence renewed if holder pays charge before end of current financial year

(2) If the holder pays the depot licence charge for the renewal of the licence before the end of the current financial year, the licence is renewed for another period of 12 months beginning on 1 July of the next financial year after the current financial year.

Consequences if charge not paid before end of current financial year

(3) If the holder fails to pay the depot licence charge for the renewal of the licence before the end of the current financial year, the licence is taken to be suspended for the period beginning on 1 July of the next financial year after the current financial year and ending at the earlier of the following times:

(a) the time the holder pays the charge;

(b) the end of 30 July of that next financial year.

Licence renewed if holder pays charge before 30 July of the next financial year

(4) If the holder pays the depot licence charge for the renewal of the licence during the period of 30 days beginning on 1 July of the next financial year after the current financial year, the licence is taken to have been renewed for another period of 12 months beginning on 1 July of that next financial year.

Licence expires if holder does not pay charge before 30 July of the next financial year

(5) If the holder fails to pay the depot licence charge for the renewal of the licence before the end of 30 July of the next financial year after

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the current financial year, the licence expires at the end of that 30 July.

Multiple renewals

(6) A depot licence that has been renewed may be further renewed.

77U Licence charges

(1) A depot licence charge is payable in respect of the grant of a depot licence by the person or partnership seeking the grant.

(2) A person liable to pay a depot licence charge for the grant of a depot licence must pay the charge within 30 days of the decision to grant that licence.

(3) A depot licence charge in respect of the renewal of a depot licence is payable by the holder of the licence in accordance with section 77T.

(4) Australia Post is not liable to pay a depot licence charge under this section in respect of each grant or renewal of a depot licence that covers the whole or a part of an International Mail Centre.

77V Notice of intended cancellation etc. of a depot licence

(1) The Comptroller-General of Customs may give a notice under this subsection to the holder of a depot licence if:

(a) the Comptroller-General of Customs is satisfied that:

(i) the physical security of the depot is no longer adequate having regard to the matters referred to in paragraph 77K(1)(h); or

(vii) a condition to which the licence is subject has not been complied with; or

(viii) the depot licence charge payable in respect of the grant of the licence remains unpaid more than 30 days after the grant of the licence; or

(aa) if the licence is held by a natural person—the Comptroller-General of Customs is satisfied that:

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(i) the applicant is not a fit and proper person to hold a depot licence; or

(ii) a person participating in the management or control of, or in the operations carried out at, the depot (whether or not the person is present at the depot) is not a fit and proper person to so participate; or

(ab) if the licence is held by a partnership—the Comptroller-General of Customs is satisfied that:

(i) a member of the partnership is not a fit and proper person to be a member of a partnership holding a depot licence; or

(ii) a person participating in the management or control of, or in the operations carried out at, the depot (whether or not the person is present at the depot) is not a fit and proper person to so participate; or

(ac) if the licence is held by a company—the Comptroller-General of Customs is satisfied that:

(i) a director of the company is not a fit and proper person to be a director of a company holding a depot licence; or

(ii) a person participating in the management or control of, or in the operations carried out at, the depot (whether or not the person is present at the depot) is not a fit and proper person to so participate; or

(iii) the company is not a fit and proper company to hold a depot licence; or

(ad) the Comptroller-General of Customs is satisfied that it is appropriate in all the circumstances to cancel the licence, having regard to the matters covered by subsection (3A); or

(b) the Comptroller-General of Customs is satisfied on any other grounds that it is necessary to cancel the licence for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations.

Note: See section 77ZA for the ways in which the notice may be given to the holder of the licence.

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(2) In deciding whether a person is a fit and proper person for the purposes of paragraph (1)(aa), (ab) or (ac) (other than subparagraph (1)(ac)(iii)), the Comptroller-General of Customs must have regard to:

(a) whether or not the person is an insolvent under administration; and

(b) any conviction of the person of an offence against this Act, or of an offence against another law of the Commonwealth, or a law of a State or of a Territory, punishable by imprisonment for one year or longer, that is committed:

(i) if the licence has not been renewed previously—after the grant of the licence or within 10 years immediately before the grant of the licence; or

(ii) if the licence has been renewed on one or more occasions—after the renewal or latest renewal of the licence or within 10 years immediately before that renewal; and

(c) any misleading statement made under section 77H or 77J in relation to the application for the depot licence by or in relation to the person; and

(d) if any such statement made by the person was false—whether the person knew that the statement was false; and

(e) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled:

(i) if the licence has not been renewed previously—after the grant of the licence or within 10 years immediately before the grant of the licence; or

(ii) if the licence has been renewed on one or more occasions—after the renewal or latest renewal of the licence or within 10 years immediately before that renewal.

(3) In deciding whether a company is a fit and proper company for the purposes of subparagraph (1)(ac)(iii), the Comptroller-General of Customs must have regard to:

(a) the matters referred to in paragraphs 77K(3)(c) to (g); and

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(b) any conviction of the company of an offence against this Act or of an offence against another law of the Commonwealth, or a law of a State or of a Territory, punishable by a fine of $5,000 or more, that is committed:

(i) if the licence has not been renewed previously—after the grant of the licence or within 10 years immediately before the grant of the licence; or

(ii) if the licence has been renewed on one or more occasions—after the renewal or the latest renewal of the licence or within 10 years immediately before that renewal;

and at a time when a person who is presently a director, officer or shareholder of the company was a director, officer or shareholder of the company.

(3A) For the purposes of paragraph (1)(ad), the matters covered by this subsection are the following:

(a) if the licence is held by a natural person—the experience of the following in operations that are performed upon, or in relation to, goods at the depot:

(i) the holder;

(ii) each person, known to the Comptroller-General of Customs, who is participating in the management or control of, or in the operations carried out at, the depot (whether or not the person is present at the depot);

(b) if the licence is held by a company—the experience of the following in operations that are performed upon, or in relation to, goods at the depot:

(i) the company;

(ii) each director of the company;

(iii) each person, known to the Comptroller-General of Customs, who is participating in the management or control of, or in the operations carried out at, the depot (whether or not the person is present at the depot);

(c) if the licence is held by a partnership—the experience of the following in operations that are performed upon, or in relation to, goods at the depot:

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(i) each partner in the partnership;

(ii) each person, known to the Comptroller-General of Customs, who is participating in the management or control of, or in the operations carried out at, the depot (whether or not the person is present at the depot);

(d) in any case—the holder's operating procedures or processes that apply at the depot in relation to goods at the depot.

(5) The notice under subsection (1):

(a) must state that, if the holder of the depot licence wishes to prevent the cancellation of the licence, he or she may, within 7 days after the day on which the notice is given, give to the Comptroller-General of Customs at an address specified in the notice a written statement showing cause why the licence should not be cancelled; and

(b) may state that the licence is suspended if the notice is given because of the operation of paragraph (1)(ad) or (b).

(6) If the notice under subsection (1) states that the depot licence is suspended, the licence is suspended on and from the giving of the notice.

Note: For revocation of the suspension, see section 77VB.

(7) Despite the giving of a notice under subsection (1) in relation to a depot licence, nothing in this Part prevents:

(a) the Comptroller-General of Customs giving a notice under subsection 77T(1) in relation to the renewal of the licence; or

(b) the holder of the licence obtaining a renewal of the licence by paying a depot licence charge in accordance with section 77T.

Note: A depot licence charge paid in the circumstances described in this subsection may be refunded under section 77W.

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77VA Depot must not be used if depot licence is suspended etc.

Offence

(1) If a depot licence is suspended under section 77T or 77V, a person must not use the depot for a purpose referred to in subsection 77G(1).

Penalty: 50 penalty units.

Collector may permit use of depot etc. during suspension

(2) If a depot licence is suspended under section 77T or 77V, a Collector may, while the licence is so suspended and despite subsection (1) of this section:

(a) permit imported goods, or goods for export, that are subject to customs control to be held in the depot; and

(b) permit the unpacking or packing of such goods; and

(c) permit the removal of such goods from the depot, including the removal of such goods to another depot; and

(d) by notice given to the owner of such goods, require the owner to remove the goods to another depot, or to a warehouse, approved by the Collector; and

(e) take such control of the depot, or all or any goods in the depot, as may be necessary:

(i) for the protection of the revenue; or

(ii) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; and

(f) by notice in writing to the holder of the licence, require the holder to pay to the Commonwealth, in respect of the services of officers required as the result of the suspension, such fee as the Comptroller-General of Customs determines having regard to the cost of the services.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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Note 2: See section 77ZA for the ways in which a notice may be given to the owner of goods or the holder of the licence.

(3) Without limiting paragraph (2)(f), the services referred to in that paragraph include services relating to:

(a) the enforcement of the suspension; and

(b) the supervision of activities in relation to the depot that are permitted by a Collector.

(4) If an amount that the holder of a depot licence is required to pay in accordance with a notice under paragraph (2)(f) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

77VB Revocation of suspension of depot licences

If a depot licence is suspended under section 77V, the Comptroller-General of Customs:

(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—must revoke the suspension.

Note: For the cancellation of depot licences, see section 77VC.

77VC Cancellation of depot licences

(1) The Comptroller-General of Customs may, by notice in writing given to the holder of a depot licence, cancel the licence if the Comptroller-General of Customs is satisfied of a matter mentioned in subsection 77V(1) in relation to the licence.

Note: See section 77ZA for the ways in which the notice may be given to the holder of the licence.

(2) The Comptroller-General of Customs may, by notice in writing given to the holder of a depot licence, cancel the licence if the Comptroller-General of Customs receives a written request from the holder of the licence that the licence be cancelled on and after a specified day.

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Note: See section 77ZA for the ways in which the notice may be given to the holder of the licence.

(4) If under this section the Comptroller-General of Customs cancels a depot licence and goods remain in the former depot, the Comptroller-General must publish a notice, by any means the Comptroller-General considers appropriate, informing owners of goods in that former depot of the cancellation and the date of the cancellation.

77W Refund of depot licence charge on cancellation of a depot licence on request

(1) If:

(a) a depot licence is cancelled under subsection 77VC(2) before the end of a financial year; and

(b) the person or partnership (the ***former holder***) who held the licence before its cancellation has paid the depot licence charge for that financial year;

the former holder is entitled to a refund of an amount worked out using the formula in subsection (1A).

(1A) For the purposes of subsection (1), the formula is:

$$\text{Annual rate} \times \frac{\text{Post-cancellation days}}{\text{Days in the year}}$$

where:

annual rate means the amount of $4,000, or, if another amount is prescribed under subsection 6(2) of the *Customs Licensing Charges Act 1997*, that other amount.

days in the year means:

(a) if the financial year in which the licence is in force is not constituted by 365 days—the number of days in that financial year; or

(b) otherwise—365.

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post-cancellation days means the number of days in the financial year during which the depot licence is not in force following the cancellation of the licence.

(2) If subsection (1) applies and the former holder has paid the depot licence charge in respect of the renewal of the licence for the following financial year, the former holder is entitled to a refund of the full amount of that charge.

77X Collector's powers in relation to a place that is no longer a depot

(2) If a place ceases to be covered by a depot licence, a Collector may:

(a) permit goods that are subject to customs control to be received into the place during a period of 30 days after the place ceased to be covered by a depot licence; and

(b) permit imported goods to be unpacked from receptacles in the place; and

(c) permit goods for export to be packed into receptacles in the place; and

(d) permit examination of goods that are subject to customs control (the ***controlled goods***) by officers of Customs in the place; and

(e) permit removal of any controlled goods from the place to a depot covered by a depot licence or to a warehouse; and

(f) by notice in writing to the person who was, or who was taken to be, the holder of the licence (the ***former holder***) covering that place, require the former holder to remove any controlled goods to a depot covered by a depot licence or to a warehouse; and

(g) while controlled goods are in the place, take such control of the place as may be necessary for the protection of the revenue or for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; and

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(h) by notice in writing to the former holder, require the former holder to pay to the Commonwealth, in respect of the services of officers required in relation to any controlled goods as a result of the licence ceasing to be in force (including services relating to the supervision of activities in relation to the place, the stocktaking of goods in the place or the reconciliation of records relating to such goods), such fees as the Comptroller-General of Customs determines having regard to the cost of the services; and

(i) if the former holder fails to comply with a requirement under paragraph (f) in relation to any controlled goods, remove the goods from the place to a depot covered by a depot licence or a warehouse; and

(j) if goods have been removed under paragraph (i), by notice in writing to the former holder, require the former holder to pay to the Commonwealth in respect of the cost of the removal such fees as the Comptroller-General of Customs determines having regard to that cost.

Note: See section 77ZA for the ways in which the notice may be given to the former holder.

(3) If an amount that a former holder is required to pay in accordance with a notice under paragraph (2)(h) or (j) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

77Y Collector may give directions in relation to depot or goods subject to customs control

(1) A Collector may, for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations, give written directions under this section to:

(a) the holder of a depot licence; or

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(b) a person participating in the management or control of the depot;

in relation to the depot or to goods in the depot that are subject to customs control (the ***controlled goods***).

(2) A direction under subsection (1) must be a direction:

(a) to move, or not to move, controlled goods within a depot; or

(b) about the storage of controlled goods in the depot; or

(c) to move controlled goods to another depot or a warehouse; or

(d) about the unpacking from receptacles of controlled goods; or

(e) about the packing into receptacles of controlled goods; or

(f) about the physical security of the depot; or

(g) to give to the Collector, within the specified period and in the specified manner, specified information in relation to the management of controlled goods; or

(h) to produce to the Collector, within the specified period and in the specified manner, specified documents in relation to the management of controlled goods; or

(i) to make specified changes, within the specified period, to specified information, or specified documents, in relation to the management of controlled goods.

(2A) For the purposes of paragraph (2)(g), (h) or (i), the period specified in the direction must be at least 7 days after the day the direction is given.

(3) A Collector may, for the purpose of:

(a) preventing interference with controlled goods in a depot; or

(b) preventing interference with the exercise of the powers or the performance of the functions of a Collector in respect of a depot or of controlled goods in a depot;

give directions, in relation to the controlled goods, to any person in the depot.

(3A) A person who has been given a direction under subsection (1) or (3) must not intentionally refuse or fail to comply with the direction.

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Penalty: 120 penalty units.

(4) A person who has been given a direction under subsection (1) or (3) must not refuse or fail to comply with the direction.

Penalty: 60 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

(6) This section does not limit the directions that a Collector may give under section 112C.

77Z Licences cannot be transferred

(1) Subject to subsection (2), a depot licence cannot be transferred to another person.

(2) A depot licence may be transferred to another person in the circumstances prescribed by the regulations.

77ZAA Access to depots

A Collector may, at any time, gain access to and enter, if necessary by force, any place covered by a depot licence and examine any goods at the place.

77ZA Giving of notices

Notices to persons

(1) A notice under this Part from the Comptroller-General of Customs or a Collector to a person must be given to the person by:

(a) sending it by email to the last known email address of the person; or

(b) sending it by other electronic means to the person; or

(c) delivering it personally to the person; or

(d) sending it to the person by pre-paid post or registered post to the person's last known place of residence or business; or

(e) leaving it at:

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(i) the person's last known place of residence with some person apparently a resident of that place and apparently not less than 16 years of age; or

(ii) the person's last known place of business with some person apparently employed at that place and apparently not less than 16 years of age; or

(f) for a notice to the holder of a depot licence (and in addition to paragraphs (a) to (e))—delivering it personally to a person who, at the time of delivery, apparently participates in the management or control of the depot.

Notices to partnerships

(2) A notice under this Part from the Comptroller-General of Customs or a Collector to a partnership must be given to the partnership by:

(a) sending it by email to the last known email address of the partnership or a partner in the partnership; or

(b) sending it by other electronic means to the partnership or a partner in the partnership; or

(c) delivering it personally to a partner in the partnership; or

(d) sending it to the partnership by pre-paid post or registered post to the partnership's last known place of business; or

(e) leaving it at the partnership's last known place of business with some person apparently employed at that place and apparently not less than 16 years of age; or

(f) for a notice to the holder of a depot licence (and in addition to paragraphs (a) to (e))—delivering it personally to a person who, at the time of delivery, apparently participates in the management or control of the depot.

Common rule

(3) For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the sending by post of a notice under this Part on a person or partnership who holds or held a depot licence, if the notice is posted as a letter addressed to the person or

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partnership at the address of the place that is or was the depot, the notice is taken to be properly addressed.

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Part V—Warehouses

78 Interpretation

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

excise-equivalent warehouse licence means a warehouse licence that authorises the warehousing of excise-equivalent goods, but does not include a warehouse licence that:

(a) covers an outwards duty free shop (as defined in subsection 96A(1)); or

(b) covers an inwards duty free shop (as defined in subsection 96B(1)); or

(c) authorises the storage of goods (other than fuel) to be supplied to aircraft or ships as aircraft's stores or ship's stores.

An expression used in paragraph (c) of this definition that is defined in section 130C has the same meaning when used in that paragraph as it has in Part VII.

place includes an area, a building and a part of a building.

warehouse, in relation to a warehouse licence, means a warehouse covered by the licence.

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

warehouse licence application charge means the warehouse licence application charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 80.

warehouse licence charge means the warehouse licence charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 85.

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warehouse licence variation charge means the warehouse licence variation charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 81B of this Act.

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

(a) the person has authority:

(i) to direct the operations, or an important or substantial part of the operations, of the warehouse; or

(ii) to direct activities in the warehouse; or

(iii) to remove goods from the warehouse; or

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

79 Warehouse licences

(1) Subject to this Part, the Comptroller-General of Customs may grant a person or partnership a licence in writing, to be known as a warehouse licence, to warehouse goods at a place covered by the licence.

(2) A warehouse licence may cover:

(a) if the licence is an excise-equivalent warehouse licence—one or more places; or

(b) otherwise—just one place.

(3) A warehouse licence may authorise, at a place covered by the licence, the warehousing of:

(a) goods generally; or

(b) goods included in one or more classes.

(4) A warehouse licence may also authorise, at a place covered by the licence and in relation to all or particular classes of goods warehoused at the place, any of the following activities to be carried on:

(a) blending;

(b) packaging;

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(c) processing;
(d) manufacturing excisable goods;
(e) trading;
(f) other activities specified in the licence.

80 Application for a warehouse licence

(1) An application for a warehouse licence may be made to the Comptroller-General of Customs.

(2) An application under subsection (1) may be made by document or electronically.

(3) A documentary application must:
(a) be in writing; and
(b) be in an approved form; and
(c) contain such information as the form requires; and
(d) be accompanied by any documents required by the form; and
(e) be signed in the manner indicated in the form; and
(f) except if the application is for an excise-equivalent warehouse licence—be accompanied by the warehouse licence application charge.

(4) An electronic application must:
(a) communicate such information as is set out in an approved statement; and
(b) be accompanied by any documents required by the approved statement; and
(c) except if the application is for an excise-equivalent warehouse licence—be accompanied by the warehouse licence application charge.

(5) An application cannot be made under subsection (1) to use a place described in the application to warehouse tobacco products.

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80A Comptroller-General of Customs may require applicant to supply further information or documents

(1) The Comptroller-General of Customs may, by written notice given to an applicant for a warehouse licence, require the applicant to supply further information or documents in relation to the application within the period that is specified in the notice.

Note: See section 102AA for the ways in which the notice may be given to the applicant.

(2) The Comptroller-General of Customs may extend the specified period if the applicant, in writing, requests the Comptroller-General of Customs to do so.

(3) If the applicant:

(a) fails to supply the further information or documents within the specified period, or that period as extended under subsection (2); but

(b) supplies the information or documents at a later time;

the Comptroller-General of Customs must not take the information or documents into account in determining whether to grant the warehouse licence.

81 Requirements for grant of warehouse licence

(1) The Comptroller-General of Customs must not grant a warehouse licence if, in the Comptroller-General's opinion:

(a) where the applicant is a natural person—the applicant is not a fit and proper person to hold a warehouse licence; or

(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; or

(da) where the applicant is a company:

(i) the company is not a fit and proper company to hold a warehouse licence; or

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(ii) any of the directors of the company is not a fit and proper person to be a director of a company holding a warehouse licence.

(1A) The Comptroller-General must not grant a warehouse licence that covers a particular place if, in the Comptroller-General's opinion:

(a) if the applicant is a natural person:

(i) the applicant would not be in a position to occupy and control the place if the licence were granted; or

(ii) a person who would participate in the management or control of, or in the operations carried out at, the place (whether or not the person would be present at the place) is not a fit and proper person to so participate; or

(b) if the applicant is a partnership:

(i) none of the partners in the partnership would be in a position to occupy and control the place if the licence were granted; or

(ii) a person who would participate in the management or control of, or in the operations carried out at, the place (whether or not the person would be present at the place) is not a fit and proper person to so participate; or

(ba) if the applicant is a company:

(i) the company would not be in a position to occupy and control the place if the licence were granted; or

(ii) a person who would participate in the management or control of, or in the operations carried out at, the place (whether or not the person would be present at the place) is not a fit and proper person to so participate; or

(c) in any case—the physical security of the place is not adequate having regard to:

(i) the nature of the place; or

(ii) the kinds and quantity of goods that would be kept in the place; or

(iii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the place; or

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(d) in any case—the plant and equipment that would be used in relation to goods at the place are not suitable having regard to the nature of those goods and that place; or

(e) in any case—the books of account or records that would be kept in relation to the place would not be suitable to enable an officer of Customs to adequately audit those books or records; or

(f) it is inappropriate in all the circumstances to grant the licence covering the place, having regard to the matters covered by subsection (3A).

(2) The Comptroller-General of Customs must, in determining whether a person is a fit and proper person for the purposes of paragraph (1)(a) or (b) or subparagraph (1)(da)(ii) or (1A)(a)(ii), (b)(ii) or (ba)(ii), 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; and

(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; and

(c) whether the person is an undischarged bankrupt; and

(d) any misleading statement made under section 80 or 80A in relation to 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; and

(f) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately preceding the making of the application.

(3) The Comptroller-General of Customs must, in determining whether a company is a fit and proper company for the purposes of subparagraph (1)(da)(i), have regard to:

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(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; or

(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 50 penalty units 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; or

(c) whether a receiver of the property, or part of the property, of the company has been appointed; or

(ca) whether the company is under administration within the meaning of the *Corporations Act 2001*; or

(cb) whether the company has executed under Part 5.3A of that Act a deed of company arrangement that has not yet terminated; or

(d) whether the company is under restructuring within the meaning of that Act; or

(da) whether the company has made, under Division 3 of Part 5.3B of that Act, a restructuring plan that has not yet terminated; or

(e) whether the company is being wound up.

(3A) For the purposes of paragraph (1A)(f), the matters covered by this subsection are the following:

(a) if the applicant is a natural person—the experience of the following in operations that would be performed upon, or in relation to, goods at the place:

(i) the applicant;

(ii) each person, known to the Comptroller-General of Customs, who would participate in the management or control of, or in the operations carried out at, the place

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(whether or not the person would be present at the place);

(b) if the applicant is a partnership—the experience of the following in operations that would be performed upon, or in relation to, goods at the place:

(i) each partner in the partnership;

(ii) each person, known to the Comptroller-General of Customs, who would participate in the management or control of, or in the operations carried out at, the place (whether or not the person would be present at the place);

(c) if the applicant is a company—the experience of the following in operations that would be performed upon, or in relation to, goods at the place:

(i) the company;

(ii) each director of the company;

(iii) each person, known to the Comptroller-General of Customs, who would participate in the management or control of, or in the operations carried out at, the place (whether or not the person would be present at the place);

(d) in any case—the applicant's operating procedures and processes that would apply at the place in relation to goods at that place.

(4) Subject to subsections (1) and (1A) of this section and subsection 79(2), if an application is made for a warehouse licence that would cover more than one place, the Comptroller-General of Customs may decide:

(a) to grant a warehouse licence that covers any or all of the places; or

(b) to refuse the application in its entirety.

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81A Grant of a warehouse licence

(1) If an application for a warehouse licence is made, the Comptroller-General of Customs must decide whether or not to grant the licence within 60 days after:

(a) if paragraph (b) does not apply—the receipt of the application; or

(b) if the Comptroller-General of Customs, under section 80A, requires the applicant to supply further information or documents in relation to the application and the applicant supplies the information or documents in accordance with that section—the receipt of the information or documents.

(2) If the Comptroller-General of Customs has not made a decision whether or not to grant the warehouse licence before the end of the period referred to in subsection (1), the Comptroller-General of Customs is taken to have refused the application at the end of that period.

81AA Notice of refusal to grant a warehouse licence

If, in relation to an applicant for a warehouse licence, the Comptroller-General of Customs refuses to grant a warehouse licence, or refuses to grant a warehouse licence in relation to a particular place, the Comptroller-General must give the applicant written notice of the refusal and of the reasons for the refusal.

Note: See section 102AA for the ways in which the notice may be given to the applicant.

81B Variation of the place covered by a warehouse licence

Variation on application

(1) On application by the holder of a warehouse licence, the Comptroller-General of Customs may (subject to subsections (4) to (5A)), by written notice given to the licence holder, vary the licence to do one or more of the following:

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(a) remove a place from the places covered by the licence without substituting or adding any places;

(b) remove a place from the places covered by the licence and substitute a different place;

(c) add a place to the places covered by the licence, subject to subsection 79(2).

Note 1: To change the boundaries or other details of a place covered by a warehouse licence, the licence may be varied as mentioned in paragraph (b).

Note 2: See subsection (9) for variation on the Comptroller-General's own initiative.

(1A) An application under subsection (1) may be made by document or electronically.

(2) A documentary application must:

(a) be in writing; and

(b) be in an approved form; and

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

(d) be signed in the manner indicated in the form; and

(e) except if the application is in relation to an excise-equivalent warehouse licence—be accompanied by the warehouse licence variation charge.

(2AA) An electronic application must:

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

(b) except if the application is in relation to an excise-equivalent warehouse licence—be accompanied by the warehouse licence variation charge.

(2A) If:

(a) a licence (the ***first licence***) covers a particular place; and

(b) the Comptroller-General of Customs varies another warehouse licence held by the same licence holder to cover the place;

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the Comptroller-General must, by written notice given to the licence holder:

(c) unless paragraph (d) applies—vary the first licence to no longer cover the place; or

(d) if the effect of varying the first licence as mentioned in paragraph (c) would be that no places are covered by the licence—cancel the first licence.

(3) The Comptroller-General of Customs may, by written notice given to an applicant for the variation of a warehouse licence, require the applicant to give further information in relation to the application:

(a) within the period that is specified in the notice; or

(b) within such further period as the Comptroller-General of Customs allows.

Note: See section 102AA for the ways in which the notice may be given to the applicant.

(4) If an application for the variation of a warehouse licence is made under subsection (1), the Comptroller-General of Customs must not grant the application if, in the Comptroller-General's opinion:

(a) the physical security of a place that would be covered by the licence as varied would not be adequate having regard to:

(i) the nature of the place; or

(ii) the kinds and quantity of goods that would be kept in the place if the variation were made; or

(iii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the place if the variation were made; or

(b) the plant and equipment that would be used in relation to goods in a place that would be covered by the licence as varied would not be suitable having regard to the nature of those goods and that place; or

(c) the books of account or records that would be kept in relation to a place that would be covered by the licence as varied would not be suitable to enable an officer of Customs adequately to audit those books or records.

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(5) The Comptroller-General of Customs must not grant an application under subsection (1) to vary a warehouse licence to substitute or add a place to the places covered by the licence if, in the Comptroller-General's opinion, the place would be too remote from the nearest place where officers, who regularly perform their functions, would be able conveniently to check whether the Customs Acts are being complied with at the place.

(5A) If paragraph (1)(a) applies, the Comptroller-General must vary the licence to remove the place unless the effect of doing so would be that no place is covered by the licence.

Note: The Comptroller-General must cancel the licence if this subsection prevents the variation of the licence (see paragraph 87(1A)(b)).

(5B) Subject to subsections (4), (5) and (5A) of this section and subsection 79(2), if an application is made to vary a warehouse licence in relation to more than one place, the Comptroller-General need not vary the licence in relation to each of those places.

(6) If an application is made under subsection (1), the Comptroller-General of Customs must decide whether or not to grant the application:

(a) if paragraph (b) of this subsection does not apply—within 60 days after receiving the application; or

(b) if:

(i) the Comptroller-General of Customs requires the applicant to give further information under subsection (3); and

(ii) the applicant supplies the information in accordance with that subsection;

within 60 days after receiving the information.

(7) If the Comptroller-General of Customs has not made a decision whether or not to grant an application made under subsection (1) before the end of the period that applies under subsection (6), the Comptroller-General of Customs is taken to have refused the application at the end of that period.

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(8) If a warehouse licence is varied under subsection (1) to remove a place (the ***former warehouse***) from the places that are covered by the licence, a Collector may:

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

(b) permit the removal of goods from the former warehouse, including the removal of goods to a warehouse; and

(c) by notice in writing to the licence holder, require the licence holder to remove all or specified goods in the former warehouse to a warehouse approved by the Collector; and

(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, any other law of the Commonwealth prescribed by the regulations, or a law of a State or Territory prescribed by the regulations; and

(e) by notice in writing to the licence holder, require the licence holder to pay to the Commonwealth in respect of the services of officers required as the result of the licence being varied (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-General of Customs determines having regard to the cost of the services; and

(f) if the licence holder 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) if goods have been removed in accordance with paragraph (f)—by notice in writing to the licence holder, require the licence holder to pay to the Commonwealth in respect of the cost of the removal such fee as the Comptroller-General of Customs determines having regard to that cost.

Note: See section 102AA for the ways in which the notice may be given to the licence holder.

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Variation on own initiative

(9) The Comptroller-General of Customs may, on the Comptroller-General's own initiative, vary a warehouse licence by:

(a) in any case—removing any place covered by the licence and substituting a different place; or

(b) if the licence is an excise-equivalent warehouse licence:

(i) removing a place from the places covered by the licence without substituting or adding any places, provided that after the variation there is at least one place that is covered by the licence; or

(ii) adding a place to the places covered by the licence.

Note: To change the boundaries or other details of a place covered by a warehouse licence, the licence may be varied as mentioned in paragraph (a).

(10) The Comptroller-General of Customs must give the holder of the warehouse licence a copy of the variation under subsection (9). The variation takes effect at the time the copy is given.

82 Conditions of a warehouse licence—general

(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 a warehouse covered by the licence commences so to participate; or

(aa) a person described in the application for the licence as participating in the management or control of a warehouse covered by the licence ceases to do so; or

(b) in the case of a licence held by a partnership—there is a change in the membership of the partnership; or

(ba) in the case of a licence held by a company—any of the following events occurs:

(i) the company is convicted of an offence of a kind referred to in paragraph 81(3)(a) or (b);

(ii) a receiver of the property, or part of the property, of the company is appointed;

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(iii) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;

(iv) the company executes a deed of company arrangement under Part 5.3A of that Act;

(iva) a small business restructuring practitioner for the company is appointed under section 453B of that Act;

(ivb) the company makes a restructuring plan under Division 3 of Part 5.3B of that Act;

(v) the company begins to be wound up; or

(c) a person who participates in the management or control of, or in the operations carried out at, a warehouse covered by the licence, the holder of the licence or, in the case of a licence held by a partnership, a member of the partnership:

(i) is convicted of an offence referred to in paragraph 81(2)(a) or (b); or

(ii) becomes bankrupt; or

(iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, within the applicable period referred to in paragraph 86(1A)(d);

the holder of the licence shall, within 30 days after the occurrence of the event referred to in whichever of the preceding paragraphs applies, give the Comptroller-General of Customs particulars in writing of that event.

(1A) A warehouse licence is subject to the condition that the holder of the licence must not cause or permit a substantial change to be made:

(a) to a matter affecting the physical security of a warehouse covered by the licence; or

(b) to plant or equipment used in relation to goods in a warehouse covered by the licence; or

(c) to the keeping of accounts or records in relation to a warehouse covered by the licence; or

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(d) to the holder's operating procedures or processes that apply at a warehouse covered by the licence in relation to goods at the warehouse;

unless the holder has given to the Comptroller-General of Customs 30 days' notice of the proposed change.

(2) A warehouse licence is subject to the condition that no tobacco products will be warehoused in a warehouse covered by the licence.

(3) A warehouse licence is subject to such other conditions (if any) as are specified in the licence that the Comptroller-General of Customs considers to be necessary or desirable:

(a) for the protection of the revenue; or

(b) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or

(c) for any other purpose.

(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 any one or more of the warehouses covered by the licence; and

(b) conditions limiting the operations that may be performed upon, or in relation to, goods in any one or more of the warehouses covered by the licence.

(5) The Comptroller-General of Customs must, in writing and upon application by the holder of a warehouse licence for a variation of the conditions to which the licence is subject:

(a) vary those conditions; or

(b) refuse to vary those conditions.

(6) Subsection (5) does not limit section 82B.

Kind of application

(7) An application under subsection (5) may be made by document or electronically.

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(8) A documentary application must:
  (a) be in writing; and
  (b) be in an approved form; and
  (c) contain such information as the form requires; and
  (d) be accompanied by any documents required by the form; and
  (e) be signed in the manner indicated in the form.

(9) An electronic application must:
  (a) communicate such information as is set out in an approved statement; and
  (b) be accompanied by any documents required by the approved statement.

Notification of decisions

(10) If the Comptroller-General of Customs, under subsection (5), varies the conditions to which the licence is subject, the Comptroller-General must give the holder of the licence a copy of the variation. The variation takes effect at the time the copy is given.

(11) If the Comptroller-General of Customs, under subsection (5), refuses to vary the conditions to which the licence is subject, the Comptroller-General must give the holder of the licence written notice of the refusal and of the reasons for the refusal.

Note: See section 102AA for the ways in which the notice may be given to the holder of the licence.

82A Comptroller-General of Customs may impose additional conditions to which a warehouse licence is subject

(1) The Comptroller-General of Customs may, at any time, impose additional conditions to which the licence is subject if the Comptroller-General of Customs considers the conditions to be necessary or desirable:
  (a) for the protection of the revenue; or

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(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or

(c) for any other purpose.

(2) If the Comptroller-General of Customs imposes conditions under subsection (1):

(a) the Comptroller-General of Customs must, by written notice to the holder of the warehouse licence, notify the holder of the conditions; and

(b) the conditions cannot take effect before:

(i) the end of 30 days after the giving of the notice; or

(ii) if the Comptroller-General of Customs considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

Note: See section 102AA for the ways in which the notice may be given to the holder of the licence.

82B Comptroller-General of Customs may vary the conditions to which a warehouse licence is subject

(1) The Comptroller-General of Customs may, by written notice to the holder of a warehouse licence, vary:

(a) the conditions specified in the warehouse licence under section 82; or

(b) the conditions imposed under section 82A to which the licence is subject.

Note: See section 102AA for the ways in which the notice may be given to the holder of the licence.

(2) A variation under subsection (1) cannot take effect before:

(a) the end of 30 days after the giving of the notice under that subsection; or

(b) if the Comptroller-General of Customs considers that it is necessary for the variation to take effect earlier—the end of a

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shorter period specified in the notice given under that subsection.

(3) This section does not limit subsection 82(5).

82C Breach of conditions of a warehouse licence

(1) The holder of a warehouse licence must not breach a condition to which the licence is subject under section 82 or 82A (including a condition varied under subsection 82(5) or section 82B).

Penalty: 60 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

83 Duration of warehouse licence

(1) A warehouse licence comes into force on the date on which the licence is granted, unless the Comptroller-General specifies a different date in a written notice given to the applicant, in which case the licence comes into force on the specified date.

(1A) A warehouse licence that is not an excise-equivalent warehouse licence remains in force until the cancellation or expiry of the licence, whichever occurs first.

(1B) For the purposes of subsection (1A), a licence expires at the end of:

(a) unless paragraph (b) of this subsection applies—the next 30 June following the grant of the licence; or

(b) if the licence is renewed one or more times under section 84—subject to that section, the last day of the 12 month-period beginning on the 1 July following the most recent renewal.

(1C) An excise-equivalent warehouse licence remains in force until the licence is cancelled.

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(2) Notwithstanding that a warehouse licence has not been renewed, a Collector may:

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

(b) permit the removal of goods from the former warehouse, including the removal of goods to a warehouse; and

(c) by notice in writing to the last holder of the licence, require him or her to remove all or specified goods in the former warehouse to a warehouse approved by the Collector; and

(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, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; and

(e) by notice in writing to the last holder of the licence, require him or her to pay to the Commonwealth 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-General of Customs determines having regard to the cost of the services; and

(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 or her to pay to the Commonwealth in respect of the cost of the removal such fee as the Comptroller-General of Customs determines having regard to that cost.

Note: See section 102AA for the ways in which the notice may be given to the last holder of the licence.

(3) Subject to subsection (4), if a warehouse licence has not been renewed and goods remain in the former warehouse, the

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Comptroller-General of Customs must publish a notice, by any means the Comptroller-General considers appropriate, informing owners of goods in the former warehouse:

(a) that they are required, within a time specified in the notice or any further time allowed by the Comptroller-General, 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

(b) that, if they do not comply with the requirements of the notice, their goods in that former warehouse will be sold.

(4) If the Comptroller-General of Customs is satisfied that all the goods in the former warehouse are the property of the person who held the licence, the Comptroller-General is not required to publish a notice under subsection (3) in relation to the former warehouse. Instead, the Comptroller-General must give a notice to the person informing the person:

(a) that the person is required, within a time specified in the notice or any further time allowed by the Comptroller-General, to:

(i) pay to the Collector duty payable in respect of the person's goods in the former warehouse; or

(ii) remove the person's goods in the former warehouse to another place in accordance with permission obtained from the Collector; and

(b) that, if the person does not comply with the requirements of the notice, the person's goods in the former warehouse will be sold.

Note: See section 102AA for the ways in which the notice may be given to the person.

(5) Where the owner of goods to which a notice under subsection (3) or (4) applies fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed

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by the Comptroller-General of Customs, 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.

84 Renewal of warehouse licences that are not excise-equivalent warehouse licences

(1) The Comptroller-General of Customs must, before the end of a financial year (the ***current financial year***), notify each holder of a warehouse licence, that is not an excise-equivalent warehouse licence, of the terms of this section.

Note: An excise-equivalent warehouse licence remains in force unless it is cancelled.

Licence renewed if holder pays charge before end of current financial year

(2) If the holder pays the warehouse licence charge for the renewal of the licence before the end of the current financial year, the licence is renewed for another period of 12 months beginning on 1 July of the next financial year after the current financial year.

Consequences if charge not paid before end of current financial year

(3) If the holder fails to pay the warehouse licence charge for the renewal of the licence before the end of the current financial year, the licence is taken to be suspended for the period beginning on 1 July of the next financial year after the current financial year and ending at the earlier of the following times:

(a) the time the holder pays the charge;

(b) the end of 30 July of that next financial year.

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Licence renewed if holder pays charge before 30 July of the next financial year

(4) If the holder pays the warehouse licence charge for the renewal of the licence during the period of 30 days beginning on 1 July of the next financial year after the current financial year, the licence is taken to have been renewed for another period of 12 months beginning on 1 July of that next financial year.

Licence expires if holder does not pay charge before 30 July of the next financial year

(5) If the holder fails to pay the warehouse licence charge for the renewal of the licence before the end of 30 July of the next financial year after the current financial year, the licence expires at the end of that 30 July.

Multiple renewals

(6) A warehouse licence that has been renewed under this section may be further renewed.

85 Licence charges

Grant of licence

(1) Subject to subsection (2A), a warehouse licence charge is payable in respect of the grant of a warehouse licence by the person or partnership seeking the grant.

(2) A person or partnership liable to pay a warehouse licence charge in respect of the grant of a warehouse licence must pay the charge in accordance with section 85A.

(2A) A warehouse licence charge is not payable in respect of the grant of an excise-equivalent warehouse licence.

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Renewal of licence

(3) A warehouse licence charge in respect of the renewal of a warehouse licence, that is not an excise-equivalent warehouse licence, is payable by the holder of the licence in accordance with section 84.

85A Payment of warehouse licence charge in respect of grant of warehouse licence

(1) A warehouse licence charge in respect of the grant of a warehouse licence, that is not an excise-equivalent warehouse licence, must be paid in accordance with the regulations.

(2) Without limiting subsection (1), the regulations may make provision for and in relation to the following:

(a) the payment of the charge in instalments;

(b) the day or days before the end of which the charge, or instalments of the charge, must be paid.

86 Suspension of warehouse licences

(1) The Comptroller-General of Customs may give a notice under subsection (1AA) to the holder of a warehouse licence if the Comptroller-General has reasonable grounds for believing that:

(a) one or more of the matters mentioned in any of paragraphs 86(1AC)(a) to (g) exists for each warehouse covered by the licence (whether or not the one or more matters existing for each warehouse are the same); or

(c) where the licence is held by a natural person—that person is not a fit and proper person to hold a warehouse licence; or

(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; or

(fa) where the licence is held by a company:

(i) the company is not a fit and proper company to hold a warehouse licence; or

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(ii) a director of the company is not a fit and proper person to be a director of a company holding a warehouse licence; or

(g) a condition, other than a condition that relates to at least one, but not all, of the warehouses covered by the licence, to which the licence is subject has not been complied with; or

(h) an amount of the warehouse licence charge payable in respect of the grant of the licence remains unpaid more than 28 days after the day the amount was due to be paid;

or it otherwise appears to him or her to be necessary for the protection of the revenue, or for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations, to give the notice.

(1AA) A notice under this subsection:

(a) must state that, if the licence holder wishes to prevent the cancellation of the licence, the holder may, within 7 days after the day on which the notice was given, give to the Comptroller-General of Customs at an address specified in the notice a written statement showing cause why the licence should not be cancelled; and

(aa) must state the reasons for the giving of the notice; and

(b) may, if it appears to the Comptroller-General of Customs to be necessary to do so:

(i) for the protection of the revenue; or

(ii) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations, or a law of a State or Territory prescribed by the regulations;

state that the licence is suspended.

Note: See section 102AA for the ways in which the notice may be given to the licence holder.

(1AB) If a notice under subsection (1AA) states that a licence is suspended, the licence is suspended on and from the giving of the notice.

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(1AC) If a warehouse licence covers more than one warehouse, the Comptroller-General of Customs may give a notice under subsection (1AD) to the licence holder if the Comptroller-General has reasonable grounds for believing that:

(a) the physical security of a warehouse covered by the licence is no longer adequate having regard to the matters referred to in paragraph 81(1A)(c); or

(b) the plant and equipment used in a warehouse covered by the licence are such that the protection of the revenue in relation to goods in the warehouse is inadequate; or

(c) a person participating in the management or control of, or in the operations carried out at, a warehouse covered by the licence (whether or not the person is present at the warehouse) is not a fit and proper person to so participate; or

(e) a condition to which the licence is subject that relates to a warehouse covered by the licence has not been complied with; or

(f) the licence holder has not, for a period of at least 3 years, warehoused excise-equivalent goods at a warehouse covered by the licence; or

(g) it is appropriate in all the circumstances to vary the licence to no longer cover a particular warehouse, having regard to the matters covered by subsection (2).

(1AD) A notice under this subsection:

(a) must state that, if the licence holder wants the warehouse licence to continue to cover the warehouse, the licence holder may, within 7 days after the day on which the notice was given, give to the Comptroller-General of Customs at an address specified in the notice a written statement showing cause why the warehouse should continue to be covered by the licence; and

(aa) must state the reasons for the giving of the notice; and

(b) may, if it appears to the Comptroller-General of Customs to be necessary to do so:

(i) for the protection of the revenue; or

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(ii) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations;

state that the licence is suspended in relation to the warehouse.

Note: See section 102AA for the ways in which the notice may be given to the licence holder.

(1AE) If a notice under subsection (1AD) states that a licence is suspended in relation to a warehouse, the licence is suspended in relation to the warehouse on and from the giving of the notice.

(1A) The Comptroller-General of Customs must, in considering whether a person is a fit and proper person for the purposes of paragraph (1)(c) or (d), subparagraph (1)(fa)(ii) or paragraph (1AC)(c), 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; and

(ii) if the licence has been renewed on one or more occasions—after the latest renewal or within 10 years immediately before the latest renewal; and

(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; and

(ii) if the licence has been renewed on one or more occasions—after the latest renewal or within 10 years immediately before the latest renewal; and

(c) whether the person is an undischarged bankrupt; and

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(d) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled:

(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; and

(ii) if the licence has been renewed on one or more occasions—after the latest renewal or within 10 years immediately before the latest renewal.

(1B) The Comptroller-General of Customs must, in considering whether a company is a fit and proper company for the purposes of subparagraph (1)(fa)(i) 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; or

(ii) if the licence has been renewed on one or more occasions—committed after the latest renewal; or

(iv) committed:

(A) where the licence has not been renewed—within 10 years immediately preceding the making of the application for the licence; and

(B) if the licence has been renewed on one or more occasions—within 10 years immediately before the latest renewal;

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; and

(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; or

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(ii) if the licence has been renewed on one or more occasions—committed after the latest renewal; or

(iv) committed:

(A) where the licence has not been renewed—within 10 years immediately preceding the making of the application for the licence; and

(B) if the licence has been renewed on one or more occasions—within 10 years immediately before the latest renewal;

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; and

(c) the matters mentioned in paragraphs 81(3)(c) and (e).

(2) For the purposes of paragraph (1AC)(g), the matters covered by this subsection are the following:

(a) if the licence is held by a natural person—the experience of the following in operations that are performed upon, or in relation to, goods at a warehouse covered by the licence:

(i) the holder;

(ii) each person, known to the Comptroller-General of Customs, who is participating in the management or control of, or in the operations carried out at, the warehouse (whether or not the person is present at the warehouse);

(b) if the licence is held by a partnership—the experience of the following in operations that are performed upon, or in relation to, goods at a warehouse covered by the licence:

(i) each partner in the partnership;

(ii) each person, known to the Comptroller-General of Customs, who is participating in the management or control of, or in the operations carried out at, the warehouse (whether or not the person is present at the warehouse);

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(c) if the licence is held by a company—the experience of the following in operations that are performed upon, or in relation to, goods at a warehouse covered by the licence:

(i) the company;

(ii) each director of the company;

(iii) each person, known to the Comptroller-General of Customs, who is participating in the management or control of, or in the operations carried out at, the warehouse (whether or not the person is present at the warehouse);

(d) in any case—the holder's operating procedures or processes that apply at a warehouse covered by the licence in relation to goods at the warehouse.

(5) If a warehouse licence is suspended under subsection (1AB) or (1AE), the Comptroller-General of Customs:

(a) may at any time revoke the suspension; and

(b) must revoke the suspension if, within 28 days after the day on which the licence was suspended:

(i) for a suspension under subsection (1AB)—the licence is not cancelled; or

(ii) for a suspension under subsection (1AE)—the licence is not varied to no longer cover the warehouse to which the suspension relates.

(6) Subject to subsection (7), during a period in which a warehouse licence is suspended under subsection (1AB) or (1AE) in relation to a warehouse, a person must not use the warehouse with the intention of warehousing goods.

Penalty: 50 penalty units.

(7) During a period in which a warehouse licence is suspended under subsection (1AB) or (1AE) in relation to a warehouse, a Collector may:

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

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

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

(d) by notice given to the owner of goods in the warehouse, require the owner to remove his or her goods to another warehouse approved by the Collector; and

(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, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; and

(f) by notice in writing to the holder of the licence, require him or her to pay to the Commonwealth 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-General of Customs determines, having regard to the cost of the services.

Note: See section 102AA for the ways in which the notice may be given to the owner of goods or the holder of the licence.

(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.

87 Cancellation of warehouse licences

(1) The Comptroller-General of Customs may cancel a warehouse licence if:

(a) the Comptroller-General is satisfied in relation to the licence as to any of the matters mentioned in paragraphs 86(1)(a) to (i); or

(b) the Comptroller-General 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

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with the Customs Acts, any other law of the Commonwealth prescribed by the regulations, or a law of a State or Territory prescribed by the regulations.

(1A) The Comptroller-General of Customs may cancel a warehouse licence if:

(a) the Comptroller-General receives a written request from the holder of the licence that the licence be cancelled on and after a specified day; or

(b) the holder of the licence has applied for the Comptroller-General to vary the licence as mentioned in paragraph 81B(1)(a) and the effect of doing so would be that no place is covered by the licence.

(2) The Comptroller-General of Customs must, under this section, cancel a warehouse licence by notice in writing:

(a) given to the holder of the licence; and

(b) setting out the reasons for the cancellation.

Note: See section 102AA for the ways in which the notice may be given to the holder of the licence.

(4) Subject to subsection (5), if under this section the Comptroller-General of Customs cancels a warehouse licence and goods remain in a place that was a warehouse covered by the licence (a ***former warehouse***), the Comptroller-General must publish a notice, by any means the Comptroller-General considers appropriate, informing owners of goods in the former warehouse:

(a) that they are required, within a time specified in the notice or any further time allowed by the Comptroller-General, 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

(b) that, if they do not comply with the requirements of the notice, their goods in the former warehouse will be sold.

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(5) If the Comptroller-General of Customs is satisfied that all the goods in a former warehouse are the property of the person who held the licence, the Comptroller-General is not required to publish a notice under subsection (4) in relation to the former warehouse. Instead, the Comptroller-General must give a notice to the person informing the person:

(a) that the person is required, within a time specified in the notice or any further time allowed by the Comptroller-General, to:

(i) pay to the Collector duty payable in respect of the person's goods in the former warehouse; or

(ii) remove the person's goods in the former warehouse to another place in accordance with permission obtained from the Collector; and

(b) that, if the person does not comply with the requirements of the notice, the person's goods in the former warehouse will be sold.

Note 1: The Comptroller-General of Customs will still need to publish the notice as required by subsection (4) in relation to a former warehouse in respect of which the Comptroller-General is not so satisfied.

Note 2: See section 102AA for the ways in which the notice may be given to the person.

(6) Where the owner of goods to which a notice under subsection (4) or (5) 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-General of Customs, the goods may be sold by a Collector.

87A Refund of warehouse licence charge on cancellation of a warehouse licence on request

(1) If:

(a) a warehouse licence is cancelled under subsection 87(1A) before the end of a financial year; and

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(b) the person or partnership (the ***former holder***) who held the licence before its cancellation has paid some or all of the warehouse licence charge for that financial year;

the former holder is entitled to a refund of an amount worked out in accordance with the regulations.

(2) If subsection (1) applies and the former holder has paid the warehouse licence charge in respect of the renewal of the licence for the following financial year, the former holder is entitled to a refund of the full amount of that charge.

87B Variation of excise-equivalent warehouse licence to remove warehouse

(1) Subject to subsection (2), the Comptroller-General of Customs may vary an excise-equivalent warehouse licence to no longer cover a particular warehouse if:

(a) the licence covers more than one warehouse; and

(b) the Comptroller-General is satisfied as to any of the matters mentioned in paragraphs 86(1AC)(a) to (g) in relation to the particular warehouse.

(2) The Comptroller-General must not vary a warehouse licence under subsection (1) if the effect of varying the licence would be that no warehouses are covered by the licence.

Note: If this subsection prevents the variation of a licence, the licence may be cancelled (see paragraphs 86(1)(a) and 87(1)(a)).

(3) The Comptroller-General must, under subsection (1), vary a licence by written notice given to the licence holder.

Note: See section 102AA for the ways in which the notice may be given to the licence holder.

(4) If a warehouse licence is varied under subsection (1) to no longer cover a warehouse (a ***former warehouse***), the Collector may:

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

(b) permit the removal of goods from the former warehouse, including the removal of goods to a warehouse; and

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(c) by notice in writing to the licence holder, require the licence holder to remove all or specified goods in the former warehouse to a warehouse approved by the Collector; and

(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, any other law of the Commonwealth prescribed by the regulations, or a law of a State or Territory prescribed by the regulations; and

(e) by notice in writing to the licence holder, require the licence holder to pay to the Commonwealth in respect of the services of officers required as the result of the licence being varied (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-General of Customs determines having regard to the cost of the services; and

(f) if the licence holder fails to comply with a requirement under paragraph (c) of this subsection in relation to goods—remove the goods from the former warehouse to a warehouse; and

(g) if goods have been removed in accordance with paragraph (f) of this subsection—by notice in writing to the licence holder, require the licence holder to pay to the Commonwealth in respect of the cost of the removal such fee as the Comptroller-General of Customs determines having regard to that cost.

Note: See section 102AA for the ways in which the notice may be given to the licence holder.

(5) Subject to subsection (6), if under subsection (1) the Comptroller-General of Customs varies a warehouse licence and goods remain in a former warehouse, the Comptroller-General must publish a notice, by any means the Comptroller-General considers appropriate, informing owners of goods in the former warehouse:

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(a) that they are required, within a time specified in the notice or any further time allowed by the Comptroller-General, 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

(b) that, if they do not comply with the requirements of the notice, their goods in the former warehouse will be sold.

(6) If the Comptroller-General of Customs is satisfied that all the goods in a former warehouse are the property of the person who holds the licence, the Comptroller-General is not required to publish a notice under subsection (5) in relation to the former warehouse. Instead, the Comptroller-General must give a notice to the person informing the person:

(a) that the person is required, within a time specified in the notice or any further time allowed by the Comptroller-General, to:

(i) pay to the Collector duty payable in respect of the person's goods in the former warehouse; or

(ii) remove the person's goods in the former warehouse to another place in accordance with permission obtained from the Collector; and

(b) that, if the person does not comply with the requirements of the notice, the person's goods in the former warehouse will be sold.

Note 1: The Comptroller-General of Customs will still need to publish the notice as required by subsection (5) in relation to a former warehouse in respect of which the Comptroller-General is not so satisfied.

Note 2: See section 102AA for the ways in which the notice may be given to the person.

(7) If the owner of goods to which a notice under subsection (5) or (6) applies fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed by the

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Comptroller-General of Customs, the goods may be sold by a Collector.

87C Collector may give directions in relation to warehouse or to goods subject to customs control

(1) A Collector may, for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations, give written directions under this section to:

(a) the holder of a warehouse licence; or

(b) a person participating in the management or control of a warehouse covered by a warehouse licence;

in relation to a warehouse covered by the licence or to goods in a warehouse covered by the licence that are subject to customs control (the ***controlled goods***).

(2) A direction under subsection (1) must be a direction:

(a) to move, or not to move, controlled goods within the warehouse; or

(b) about the storage of controlled goods in the warehouse; or

(c) to move controlled goods to another warehouse or a depot; or

(d) about the unpacking from receptacles of controlled goods; or

(e) about the packing into receptacles of controlled goods; or

(f) about the physical security of the warehouse; or

(g) about plant or equipment used in relation to controlled goods; or

(h) to give to the Collector, within the specified period and in the specified manner, specified information in relation to the management of controlled goods; or

(i) to produce to the Collector, within the specified period and in the specified manner, specified documents in relation to the management of controlled goods; or

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(j) to make specified changes, within the specified period, to specified information, or specified documents, in relation to the management of controlled goods.

(3) For the purposes of paragraph (2)(h), (i) or (j), the period specified in the direction must be at least 7 days after the day the direction is given.

(4) A Collector may, for the purpose of:

(a) preventing interference with controlled goods in a warehouse covered by a warehouse licence; or

(b) preventing interference with the exercise of the powers or the performance of the functions of a Collector in respect of a warehouse covered by a warehouse licence or of controlled goods at the warehouse;

give directions, in relation to the controlled goods, to any person at the warehouse.

(5) A person commits an offence if:

(a) the person is given a direction under subsection (1) or (4); and

(b) the person refuses or fails to comply with the direction.

Penalty: 120 penalty units.

(6) A person commits an offence of strict liability if:

(a) the person is given a direction under subsection (1) or (4); and

(b) the person refuses or fails to comply with the direction.

Penalty: 60 penalty units.

(7) This section does not limit the directions that a Collector may give under section 112C.

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89 Death of licence holder

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

90 Obligations of holders of warehouse licences

(1) The holder of a warehouse licence must, at each warehouse covered by the licence:

(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: 30 penalty units.

(1A) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) A requirement imposed on the holder of a warehouse licence under paragraph (1)(c) shall be set out in a notice in writing given to the holder of the licence.

Note: See section 102AA for the ways in which the notice may be given to the holder of the licence.

91 Access to warehouses

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

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92 Repacking in warehouse

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

93 Regauging etc. of goods

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.

94 Goods not worth duty may be destroyed

(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 or she 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.

95 Revaluation

Where a Collector is satisfied that warehoused goods that have been valued for the purposes of this Act in accordance with

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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.

96 Arrears of warehouse charges

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

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

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

a Collector may sell the goods.

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

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

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

96A Outwards duty free shops

(1) In this section:

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

international voyage means a voyage, whether direct or indirect, by a ship between a place in Australia and a place outside Australia.

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

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

relevant traveller means a person:

(a) who intends to make an international flight, whether as a passenger on, or as a pilot or member of the crew of, an aircraft; or

(b) who intends to make an international voyage, whether as a passenger on, or as the master or a member of the crew of, a ship.

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

(a) delivered to the relevant traveller personally for export by him or her when making the international flight or voyage in relation to which he or she is a relevant traveller; and

(b) exported by the relevant traveller when making that flight or voyage without the goods having been entered for export;

and, subject to subsection (13), the permission is authority for such goods to be so delivered and so exported.

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

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

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

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

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(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:

(a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations;

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; or

(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 an employee or agent of that proprietor a ticket or other document, being a document approved by a Collector for the purposes of this paragraph, showing that the relevant traveller is entitled to make the international flight or voyage in relation to which he or she 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

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the regulations and will notify a Collector of all sales made by him or her 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 given to 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 given.

Note: See section 102AA for the ways in which the notice may be given to the proprietor of the shop.

(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 or she commits an offence against this Act punishable upon conviction by a penalty not exceeding 60 penalty units.

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(11A) Subsection (11) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(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 or her 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), the Collector must give the proprietor of the shop written notice of the decision and of the reasons for the decision.

Note: See section 102AA for the ways in which the notice may be given to the proprietor of the shop.

96B Inwards duty free shops

(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.

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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 under this Act 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;

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(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:

(a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations;

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 given to 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 given.

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Note: See section 102AA for the ways in which the notice may be given to the proprietor of the shop.

(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 commits an offence against this Act punishable upon conviction by a fine not exceeding 60 penalty units.

(11A) Subsection (11) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(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 must give the proprietor of the shop written notice of the decision and of the reasons for the decision.

Note: See section 102AA for the ways in which the notice may be given to the proprietor of the shop.

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97 Goods for public exhibition

(1) Subject to subsection (3), a Collector may, by writing signed by him or her, 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.

98 Goods blended or packaged in warehouse

Subject to the regulations, where a warehouse licence authorizes blending or packaging in a warehouse covered by the licence, 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.

99 Entry of warehoused goods

(1) Warehoused goods may be entered:

(a) for home consumption; or

(b) for export.

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(2) Subject to sections 69 and 70, the holder of a warehouse licence must not permit warehoused goods to be delivered for home consumption unless:

(a) they have been entered for home consumption; and

(b) an authority to deal with them is in force.

Penalty: 60 penalty units.

(3) Subject to section 96A, the holder of a warehouse licence must not permit goods to be taken from a warehouse covered by the licence for export unless:

(a) they have been entered for export; and

(b) an authority to deal with them is in force; and

(c) if the goods are, or are included in a class of goods that are, prescribed by the regulations—the holder of the relevant warehouse licence has ascertained, from information made available by a Collector, the matters mentioned in paragraphs (a) and (b).

Penalty: 60 penalty units.

(4) An offence for a contravention of subsection (3) is an offence of strict liability.

100 Entry of goods without warehousing with permission of Collector

Applying for permission to enter goods without warehousing

(1) A person may apply to the Department for permission for goods that have been entered for warehousing to be:

(a) further entered in accordance with section 99 without having been warehoused; and

(b) dealt with in accordance with that further entry as if they had been warehoused.

(2) An application under subsection (1) may be made by document or electronically.

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(3) A documentary application must:
  (a) be communicated to the Department by sending or giving it to a Collector; and
  (b) be in an approved form; and
  (c) contain such information as is required by the form; and
  (d) be signed in a manner specified in the form.

(4) An electronic application must communicate such information as is set out in an approved statement.

(5) The Comptroller-General of Customs may approve different forms for documentary applications, and different statements for electronic applications, made under this section in different circumstances or by different classes of persons.

Giving permission to enter goods without warehousing

(6) A Collector must, on receiving an application under subsection (1), by notice in writing given to the person either:
  (a) grant the permission, which has effect accordingly; or
  (b) refuse to grant the permission.

Note: See section 102AA for the ways in which the notice may be given to the person.

Giving particulars of further entry to warehouse licence holder

(7) A person who makes a further entry in accordance with a permission under subsection (6) must, as soon as practicable, give particulars of the further entry to the holder of the warehouse licence for the warehouse in which the goods were intended to have been warehoused.

Penalty: 60 penalty units.

(8) Subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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101 Delivery of warehousing authority

(1) 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, the owner must, as soon as practicable, before the goods are delivered to a 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: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

102 Holder of licence to inform Collector of certain matters

(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 or she 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.

Penalty: 30 penalty units.

(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: 30 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

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Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

102A Notices to Department by holder of warehouse licence

(1) This section applies only to goods that are, or are included in a class of goods that are, prescribed by the regulations.

(2) If goods are to be released from a warehouse for export, the holder of the warehouse licence must give notice to the Department electronically, within the period that begins at the prescribed time and ends at the prescribed time, stating that the goods are to be released and giving such particulars of the release of the goods as are required by an approved statement.

(3) The holder of a warehouse licence must give the Department notice in accordance with subsection (3A) if:

(a) goods that have previously been released for export from a warehouse covered by the licence are returned to the warehouse; or

(b) excise-equivalent goods that have previously been released for export from a warehouse covered by the licence are returned to a different warehouse covered by that or any other excise-equivalent warehouse licence.

(3A) A notice under subsection (3) must:

(a) be given electronically; and

(b) be given within the period prescribed by the regulations; and

(c) state that the goods have been returned; and

(d) include such particulars of the return of the goods as are required by an approved statement.

(4) A person who contravenes subsection (2) or (3) commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

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102AA Giving of notices

Notices to persons

(1) A notice under this Part from the Comptroller-General of Customs or a Collector to a person must be given to the person by:

(a) sending it by email to the last known email address of the person; or

(b) sending it by other electronic means to the person; or

(c) delivering it personally to the person; or

(d) sending it to the person by pre-paid post or registered post to the person's last known place of residence or business; or

(e) leaving it at:

(i) the person's last known place of residence with some person apparently a resident of that place and apparently not less than 16 years of age; or

(ii) the person's last known place of business with some person apparently employed at that place and apparently not less than 16 years of age; or

(f) for a notice to the holder of a warehouse licence (and in addition to paragraphs (a) to (e))—delivering it personally to a person who, at the time of delivery, apparently participates in the management or control of a warehouse covered by the licence.

Notices to partnerships

(2) A notice under this Part from the Comptroller-General of Customs or a Collector to a partnership must be given to the partnership by:

(a) sending it by email to the last known email address of the partnership or a partner in the partnership; or

(b) sending it by other electronic means to the partnership or a partner in the partnership; or

(c) delivering it personally to a partner in the partnership; or

(d) sending it to the partnership by pre-paid post or registered post to the partnership's last known place of business; or

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(e) leaving it at the partnership's last known place of business with some person apparently employed at that place and apparently not less than 16 years of age; or

(f) for a notice to the holder of a warehouse licence (and in addition to paragraphs (a) to (e))—delivering it personally to a person who, at the time of delivery, apparently participates in the management or control of a warehouse covered by the licence.

Common rule

(3) For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the sending by post of a notice under this Part on a person or partnership who holds or held a warehouse licence, if the notice is posted as a letter addressed to the person or partnership at the address of a place that is or was covered by the licence, the notice is taken to be properly addressed.

102AB Disclosure of excise-equivalent warehouse licence information

An officer of Customs must disclose information relating to an excise-equivalent warehouse licence (within the meaning of this Part) to a taxation officer if the officer of Customs reasonably believes that the disclosure is necessary for the purposes of the Commissioner of Taxation performing a function or exercising a power in relation to the register established under subsection 40(1) of the *Excise Act 1901*.

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Part VAAA—Cargo terminals

Division 1—Preliminary

102B Definitions

In this Part:

cargo handler means a person who is involved in any of the following activities at a cargo terminal:

(a) the movement of goods subject to customs control into, within or out of the terminal;

(b) the loading, unloading or handling of goods subject to customs control at the terminal;

(c) the storage, packing or unpacking of goods subject to customs control at the terminal.

cargo terminal means a place (other than a depot to which a depot licence relates or a warehouse to which a warehouse licence relates), within the limits of a port, airport or wharf, where:

(a) goods are located immediately after being unloaded from a ship that:

(i) has taken the goods on board at a place outside Australia; and

(ii) carried the goods to a port or wharf in a State or Territory where some or all of the goods are unloaded; or

(b) goods are located immediately after being unloaded from an aircraft that:

(i) has taken the goods on board at a place outside Australia; and

(ii) carried the goods to an airport in a State or Territory where some or all of the goods are unloaded; or

(c) goods are located immediately before being loaded on a ship or aircraft in which they are to be exported.

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cargo terminal operator, in relation to a cargo terminal, means a person who manages the cargo terminal.

establishment identification, in relation to a cargo handler and a port, airport or wharf, means the handler's identification code provided by a Collector for the port, airport or wharf.

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

place includes an area, a building and a part of a building.

102BA Meaning of *fit and proper person*

(1) In deciding whether a natural person is a ***fit and proper person*** for the purposes of this Part, the decision-maker must have regard to:

(a) any conviction of the person of an offence against this Act committed within the 10 years immediately before the decision; and

(b) any conviction of the person of an offence punishable by imprisonment for 1 year or longer:

(i) against another law of the Commonwealth; or

(ii) against a law of a State or Territory;

if that offence was committed within the 10 years immediately before the decision; and

(c) whether the person has been refused a transport security card, or has had such a card suspended or cancelled, within the 10 years immediately before the decision; and

(d) if a request has been made of the person under subsection 102CF(2) and the Comptroller-General of Customs is considering giving a direction to the person under Division 5—any misleading statement given by the person in response to the request.

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(2) In deciding whether a company is a ***fit and proper person*** for the purposes of this Part, the decision-maker must have regard to:

(a) any conviction of the company of an offence:

(i) against this Act; or

(ii) if punishable by a fine of 100 penalty units or more—against another law of the Commonwealth, or a law of a State or of a Territory;

committed:

(iii) within the 10 years immediately before the decision; and

(iv) at a time when any person who is presently a director, officer or shareholder of the company was such a director, officer or shareholder; and

(b) whether a receiver of the property, or part of the property, of the company has been appointed; and

(c) whether the company is under administration within the meaning of the *Corporations Act 2001*; and

(d) whether the company has executed, under Part 5.3A of that Act, a deed of company arrangement that has not yet terminated; and

(e) whether the company is under restructuring within the meaning of that Act; and

(f) whether the company has made, under Division 3 of Part 5.3B of that Act, a restructuring plan that has not yet terminated.

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Division 2—Obligations of cargo terminal operators

102C Notifying Department of cargo terminal

(1) The cargo terminal operator of a cargo terminal must notify the Department of:
  (a) the terminal managed by the operator; and
  (b) the terminal's physical address.

(2) A notification must:
  (a) be in a form approved, in writing, by the Comptroller-General of Customs for the purposes of this section; and
  (b) provide all the information, and be accompanied by any documents, required by the form.

102CA Physical security of cargo terminal and goods

(1) The cargo terminal operator of a cargo terminal must ensure:
  (a) adequate physical security of the terminal; and
  (b) adequate security of goods at the terminal.

(2) At a minimum, the following requirements must be met in relation to a cargo terminal:
  (a) the terminal must be protected by:
    (i) adequate fencing; and
    (ii) a monitored alarm system;
  (b) entry or exit to the terminal must be controlled or limited;
  (c) appropriate procedures and methods for ensuring the security of goods at the terminal must be in place.

(3) The cargo terminal operator of a cargo terminal must give the Department written notice of any substantial change that would affect:
  (a) the physical security of the terminal; or
  (b) the security of goods at the terminal.

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(4) A notice must be given at least 30 days before the change occurs, unless the change is required in response to an emergency or disaster, in which case a notice must be given as soon as practicable.

(5) Within 30 days of being requested to do so by an authorised officer, the cargo terminal operator must provide documentation of the procedures and methods in place for ensuring the security of goods at the terminal.

102CB Movement of signs at or near cargo terminal

(1) If an officer of Customs has placed a sign at or near a cargo terminal, the cargo terminal operator of the terminal must ensure that the sign is not concealed, moved or removed without the written approval of an authorised officer.

(2) Subsection (1) does not apply if:
  (a) the sign is temporarily moved while maintenance or construction work is carried out; and
  (b) the sign is moved for no more than 5 days.

102CC Notification requirements relating to goods

(1) The cargo terminal operator of a cargo terminal must, within the time and in the manner mentioned in subsection (2), notify the Department of any of the following events:
  (a) an unauthorised movement of goods subject to customs control in or from the cargo terminal;
  (b) an unauthorised access to goods subject to customs control:
    (i) in the cargo terminal; or
    (ii) on a ship or aircraft within, or adjacent to, the terminal;
  (c) an unauthorised access to an information system, whether electronic or paper based, relating to goods subject to customs control;
  (d) an enquiry relating to goods subject to customs control from a person who does not have a commercial connection with the goods;

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(e) a theft, loss or damage of goods subject to customs control;
(f) a break in and entry, or attempted break in, of the cargo terminal;
(g) a change that may adversely affect the security of the terminal;
(h) a suspected breach of a Customs-related law in the cargo terminal.

(2) The notification of an event must:
(a) be in writing; and
(b) be made as soon as practicable, but not later than 5 days after the cargo terminal operator becomes aware of the event.

102CD Unclaimed goods

(1) The cargo terminal operator of a cargo terminal must notify the Department, within the time and in the manner mentioned in subsection (2), of goods not belonging to the operator that remain at the terminal for more than 30 days.

(2) The notification must:
(a) be in writing, including:
(i) a description of the goods; and
(ii) the date the goods were received; and
(b) be made no later than 35 days after the date the goods were received.

102CE Record keeping requirements

(1) The cargo terminal operator of a cargo terminal must keep a record of each person who enters the terminal.

(2) The record may be kept by electronic means.

(3) The record must include such particulars for each person as are prescribed by the regulations.

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(4) Within 30 days of being requested to do so by an authorised officer, the cargo terminal operator must provide to the officer the records kept under this section for the period specified in the request.

(5) The disclosure of personal information in response to a request by an authorised officer is taken to be a disclosure that is authorised by this Act for the purposes of the *Privacy Act 1988*.

(6) Subsection (1) does not apply in relation to a person who is:
  (a) an employee of the cargo terminal operator; or
  (b) an officer or employee of, or of an authority of, the Commonwealth, a State or a Territory.

102CF Fit and proper person

(1) The cargo terminal operator of a cargo terminal must take all reasonable steps to ensure that:
  (a) the operator is a fit and proper person; and
  (b) if the operator is a body corporate—each executive officer of the body corporate is a fit and proper person.

(2) Within 30 days of being requested to do so by an authorised officer, the cargo terminal operator must provide to the officer information that would support an assessment that:
  (a) the operator is a fit and proper person; and
  (b) if the operator is a body corporate—each executive officer of the body corporate is a fit and proper person.

102CG Adequate training of staff

The cargo terminal operator of a cargo terminal must take all reasonable steps to educate and train its employees or other persons involved in the operator's business to ensure their awareness of the operator's responsibilities and obligations in relation to goods subject to customs control.

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102CH Complying with directions

The cargo terminal operator of a cargo terminal must comply with a written direction given by an authorised officer under section 102EB.

102CI Responsibility to provide facilities and assistance

The cargo terminal operator of a cargo terminal must provide an authorised officer with all reasonable facilities and assistance for the effective exercise of their powers under a Customs-related law.

102CJ Comptroller-General of Customs may impose additional obligations

The Comptroller-General of Customs may, by legislative instrument, impose additional obligations on cargo terminal operators generally if the Comptroller-General of Customs considers the obligations to be necessary or desirable:

(a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or

(c) for any other purpose.

102CK Offence—failure to comply with obligations or requirements

(1) A person commits an offence if:

(a) the person is a cargo terminal operator; and

(b) the person fails to comply with an obligation or requirement:

(i) set out in this Division; or

(ii) set out in a legislative instrument made under section 102CJ.

Penalty: 60 penalty units.

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(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Division 3—Obligations of cargo handlers

102D Certain provisions of Division 2 apply

Sections 102CC and 102CF to 102CI apply to a cargo handler in the same way as they apply to a cargo terminal operator.

102DA Unpacking of goods in containers at cargo terminal

If goods are in a container at a cargo terminal, a cargo handler must not allow the container to be unpacked without the written approval of an authorised officer.

102DB Facilitating transhipment or export of goods

If goods are imported into Australia and are subject to customs control, a cargo handler must not facilitate the transhipment or export of the goods without the written approval of an authorised officer.

102DC Using establishment identification when communicating with Department

(1) When communicating electronically with the Department about activities undertaken at a port, airport or wharf, a cargo handler must use his, her or its correct establishment identification for the port, airport or wharf.

(2) Subsection (1) does not apply in relation to a particular port, airport or wharf if a cargo handler has the written approval of an authorised officer for the handler to use a contingency code for the port, airport or wharf.

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102DD Comptroller-General of Customs may impose additional obligations

The Comptroller-General of Customs may, by legislative instrument, impose additional obligations on cargo handlers generally if the Comptroller-General of Customs considers the obligations to be necessary or desirable:

(a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or

(c) for any other purpose.

102DE Offence—failure to comply with obligations or requirements

(1) A person commits an offence if:

(a) the person is a cargo handler; and

(b) the person fails to comply with an obligation or requirement:

(i) set out in section 102CC, 102CF, 102CG, 102CH or 102CI; or

(ii) set out in this Division; or

(iii) set out in a legislative instrument made under section 102DD.

Penalty: 60 penalty units.

Note: For subparagraph (b)(i), see section 102D.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Division 4—Powers of authorised officers

102E General powers

(1) For the purpose of determining whether a provision of any Customs-related law has been, or is being, complied with, an authorised officer may enter a cargo terminal and exercise the following powers:

(a) the power to inspect any document at the terminal;

(b) the power to take extracts from, or make copies of, any such document;

(c) the power to take into the terminal such equipment and materials as the authorised person requires for the purpose of exercising powers under a Customs-related law in relation to the terminal.

(2) While at a cargo terminal, an authorised officer may:

(a) access electronic equipment at the terminal; and

(b) use a disk, tape or other storage device that:

(i) is at the terminal; or

(ii) can be used with the equipment or is associated with it;

if the authorised officer has reasonable grounds for suspecting that the electronic equipment, disk, tape or other storage device is or contains information relating to a matter mentioned in subsection (3).

(3) For the purposes of subsection (2), the matters are:

(a) the unloading of goods subject to customs control from a ship or aircraft or their movement to a particular part of the cargo terminal; or

(b) the receipt of goods subject to customs control at the cargo terminal; or

(c) access to goods subject to customs control:

(i) in the cargo terminal; or

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(ii) on a ship or aircraft within, or adjacent to, the terminal; or

(d) the security of goods subject to customs control in the cargo terminal; or

(e) where goods subject to customs control are stacked in the terminal; or

(f) ship bay plans relating to the terminal; or

(g) the rostering and attendance of staff at the terminal.

102EA Power to make requests

(1) An authorised officer may request, in writing, that a cargo terminal operator of a cargo terminal:

(a) provide documentation to the officer of the procedures and methods in place for ensuring the security of goods at the terminal; or

(b) provide to the officer the records relating to each person who enters the terminal for the period specified in the request.

(2) An authorised officer may request, in writing, that a cargo terminal operator of a cargo terminal or a cargo handler:

(a) provide information to the officer that would support an assessment that:

(i) the operator or handler is a fit and proper person; and

(ii) if the operator or handler is a body corporate—each executive officer of the body corporate is a fit and proper person; or

(b) give the officer access to electronic equipment at the terminal for the purpose of obtaining information relating to a matter mentioned in subsection 102E(3).

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102EB Power to give directions

Directions relating to cargo terminals

(1) An authorised officer may give a written direction to a cargo terminal operator of a cargo terminal requiring the operator to:
  (a) carry out remedial work at or near the terminal to address security concerns; or
  (b) install a closed-circuit television system for the terminal; or
  (c) keep all footage from a closed-circuit television system.

Directions relating to goods

(2) An authorised officer may give a written direction to:
  (a) a cargo terminal operator of a cargo terminal; or
  (b) a cargo handler in relation to a cargo terminal.

(3) A direction given under subsection (2) may relate to all or any of the following:
  (a) the movement of goods subject to customs control into, within or out of the terminal;
  (b) the loading, unloading or handling of goods subject to customs control at the terminal;
  (c) the storage, packing or unpacking of goods subject to customs control at the terminal.

(4) A direction given under subsection (1) or (2) is not a legislative instrument.

Other directions

(5) An authorised officer may, for the purpose of:
  (a) preventing interference with goods subject to customs control at a cargo terminal; or
  (b) preventing interference with the exercise of the powers or the performance of the functions of the authorised person or another authorised person in respect of a cargo terminal or of goods subject to customs control at the terminal;

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give directions to any person at the terminal.

(6) If a direction is given under subsection (5) in writing, the direction is not a legislative instrument.

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Division 5—Directions to cargo terminal operators or cargo handlers

102F Directions to cargo terminal operators or cargo handlers etc.

(1) The Comptroller-General of Customs may give a written direction to:

(a) a cargo terminal operator; or

(b) if a cargo terminal operator is a body corporate—an executive officer of the operator;

that the person may not be involved, either indefinitely or for a specified period, in any way in the loading, unloading, handling or storage of goods subject to customs control in the terminal.

(2) The Comptroller-General of Customs may give a written direction to:

(a) a cargo handler; or

(b) if a cargo handler is a body corporate—an executive officer of the handler;

that the person may not be involved, either indefinitely or for a specified period, in any way in the loading, unloading, handling or storage of goods subject to customs control in a cargo terminal specified in the direction.

(3) Before giving a direction, the Comptroller-General of Customs must be satisfied that:

(a) the person to whom the direction will be given is not a fit and proper person; or

(b) the direction is necessary:

(i) for the protection of the revenue; or

(ii) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations.

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102FA Offence—failure to comply with direction

(1) A person commits an offence if:

(a) the person is given a direction under section 102F; and

(b) the person fails to comply with the direction.

Penalty: 100 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Part VA—Special provisions relating to beverages

103 Interpretation

In this Part:

bulk container means a container that has the capacity to have packaged in it more than 2 litres of customable beverage.

container means any article capable of holding liquids.

customable beverage means like customable goods:

(a) that are described in Chapter 22 of Schedule 3 to the Customs Tariff; and

(b) that are prescribed by the regulations for the purposes of this definition.

104 Customable beverage imported in bulk must be entered for warehousing

All customable beverage imported into Australia in bulk containers must initially be entered for warehousing under subsection 68(2) or (3).

105 Certain customable beverage not to be entered for home consumption in bulk containers without approval of Comptroller-General of Customs

(1) Customable beverage that has been imported into Australia in bulk containers and entered for warehousing must not be entered for home consumption unless:

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

(b) the Comptroller-General of Customs, by notice in writing, permits the customable beverage to be entered for home consumption packaged in bulk containers.

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(2) The Comptroller-General of Customs must not permit customable beverage 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 the Comptroller-General of Customs approves in writing; and

(b) the Comptroller-General of Customs is satisfied that the customable beverage will not be repackaged in any other container for the purposes of retail sale.

105A Delivery from customs control of brandy, whisky or rum

(1) Brandy, whisky or rum imported into Australia must not be delivered from customs control unless a Collector is satisfied that it has been matured by storage in wood for at least 2 years.

(2) In this section:

brandy means a spirit distilled from grape wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy.

grape wine has the same meaning as in Subdivision 31-A of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

rum means a spirit obtained by the distillation of a fermented liquor derived from the products of sugar cane, being distillation carried out in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to rum.

whisky means a spirit obtained by the distillation of a fermented liquor of a mash of cereal grain in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to whisky.

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Part VAA—Special provisions relating to excise-equivalent goods

105B Extinguishment of duty on excise-equivalent goods

Extinguishing duty on excise-equivalent goods

(1) The liability to pay import duty on excise-equivalent goods is wholly or partly extinguished if:

(a) the goods are entered for warehousing; and

(b) excisable goods are manufactured and the excise-equivalent goods are used in that manufacture; and

(c) the excise-equivalent goods are subject to customs control at the time they are used in that manufacture; and

(d) that manufacture occurs at a place that is both:

(i) a warehouse covered by a warehouse licence granted under Part V of this Act; and

(ii) premises covered by a manufacturer licence granted under the *Excise Act 1901*.

(1A) The liability is:

(a) wholly extinguished unless paragraph (b) applies; or

(b) if the excise-equivalent goods are a biofuel blend—extinguished except for an amount equal to any duty that would have been payable on the biofuel constituents of the blend if they had not been included in the blend.

(2) The liability is so extinguished at the time the excisable goods are manufactured.

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Exceptions

(3) Subsection (1) does not apply to an amount of duty if:

(a) it is calculated as a percentage of the value of the excise-equivalent goods because of section 9 of the *Customs Tariff Act 1995*; or

(b) the excise-equivalent goods are classified to:

(i) subheading 2207.20.10 (denatured ethanol) or 3826.00.10 (biodiesel) of Schedule 3 to the *Customs Tariff Act 1995*; or

(ii) an item in the table in Schedule 4A, 5, 6, 6A, 7, 8, 8A, 8B, 9, 9A, 10, 10A, 11, 12, 13, 14, 15 or 16 to that Act that relates to a subheading mentioned in subparagraph (i).

Note: Subsection 105C(2) deals with the payment of the amount.

Definitions

(4) In this section:

biofuel blend means goods classified to:

(a) subheading 2710.12.62, 2710.19.22, 2710.20.00, 2710.91.22, 2710.91.62, 2710.91.80, 2710.99.22, 2710.99.62, 2710.99.80, 3824.99.30, 3824.99.40 or 3826.00.20 of Schedule 3 to the *Customs Tariff Act 1995*; or

(b) an item in the table in Schedule 4A, 5, 6, 6A, 7, 8, 8A, 8B, 9, 9A, 10, 10A, 11, 12, 13, 14, 15 or 16 to that Act that relates to a subheading mentioned in paragraph (a).

biofuel constituent, for a biofuel blend, means a constituent of the blend that is:

(a) biodiesel; or

(b) denatured ethanol;

(within the meaning of the subheading of Schedule 3 to the *Customs Tariff Act 1995* to which the blend is classified or relates).

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105C Returns

(1) This section applies if:

(a) excisable goods are manufactured within a manufacture period; and

(b) excise-equivalent goods are used in that manufacture (whether or not in that period); and

(c) the excise-equivalent goods are subject to customs control at the time they are used in that manufacture; and

(d) that manufacture occurs at a place that is both:

(i) a warehouse covered by a warehouse licence granted under Part V of this Act; and

(ii) premises covered by a manufacturer licence granted under the *Excise Act 1901*.

(2) The legal owner of the excise-equivalent goods at the time they are used in that manufacture must:

(a) give the Department a return within 8 days after the end of the manufacture period, providing particulars in accordance with section 71K or 71L in relation to the excise-equivalent goods; and

(b) at the time when each return is given to the Department, pay any amount of duty referred to in paragraph 105B(1A)(b) or subsection 105B(3) that is owing at the rate applicable at the time the excisable goods are manufactured.

Penalty: 60 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) In this section:

manufacture period means:

(a) a 7-day period beginning on a Monday; or

(b) if the regulations prescribe a different period for the purposes of this definition—that period.

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(5) If the regulations do prescribe such a different period, the regulations may also prescribe matters of a transitional nature relating to the change to the different period.

105D GST matters

(1) This section applies if:

(a) excise-equivalent goods are entered for warehousing; and

(b) excisable goods are manufactured and the excise-equivalent goods are used in that manufacture; and

(c) the excise-equivalent goods are subject to customs control at the time they are used in that manufacture.

Taxable importation

(2) For the purposes of the GST Act, the importer of the excise-equivalent goods is taken to have entered them for home consumption at the time the excisable goods are manufactured.

Note: Section 13-5 of the GST Act deals with taxable importations of goods entered for home consumption.

Deferred payment of GST

(3) If the importer of the excise-equivalent goods is an approved entity at the time the excisable goods are manufactured, then for the purposes of the GST Act and the GST regulations the importer is taken to have entered the excise-equivalent goods for home consumption by computer at that time.

Note: Regulations made for the purposes of paragraph 33-15(1)(b) of the GST Act deal with deferred payment of assessed GST on taxable importations and require goods to have been entered for home consumption by computer.

Definitions

(4) In this section:

approved entity means an entity approved under regulations made for the purposes of paragraph 33-15(1)(b) of the GST Act.

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GST regulations means regulations made under the *A New Tax System (Goods and Services Tax) Act 1999*.

105E Use of excise-equivalent goods in the manufacture of excisable goods to occur at a dual-licensed place

A person must not use excise-equivalent goods subject to customs control in the manufacture of excisable goods unless that manufacture occurs at a place that is both:

(a) a warehouse covered by a warehouse licence granted under Part V of this Act; and

(b) premises covered by a manufacturer licence granted under the *Excise Act 1901*.

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Part VB—Information about persons departing Australia

Division 1—Reports on departing persons

Subdivision A—Reports on departing persons

106A Ships and aircraft to which this Subdivision applies

(1) This Subdivision applies to a ship or aircraft of a kind prescribed by regulations made for the purposes of this section, if the ship or aircraft is due to depart:

(a) from a place in Australia at the beginning of a journey to a place outside Australia (whether or not the journey will conclude outside Australia); or

(b) from a place in Australia in the course of such a journey.

(2) Regulations made for the purposes of this section may specify kinds of ships or aircraft by reference to particular matters, including any or all of the following matters:

(a) the type, size or capacity of the ship or aircraft;

(b) the kind of operation or service in which the aircraft or ship will be engaged on journeys from Australia;

(c) other circumstances relating to the ship or aircraft or its use, or relating to the operator of the ship or aircraft.

106B Report 48 hours before ship or aircraft is due to depart

(1) At least 48 hours (but no more than 72 hours) before the time the ship or aircraft is due to depart from the place, the operator of the ship or aircraft must report to the Department, in accordance with Subdivision C, on the persons:

(a) who, at the time the report is made, are expected to be on board the ship or aircraft when it departs from the place; and

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(b) who are not identified (or to be identified) in a report made (or to be made) in relation to the ship's or aircraft's earlier departure from another place in the course of the same journey.

(2) The operator of the ship or aircraft commits an offence if the operator intentionally contravenes subsection (1).

Penalty: 120 penalty units.

(3) The operator of the ship or aircraft commits an offence if the operator contravenes subsection (1).

Penalty: 60 penalty units.

(4) Strict liability applies to an offence against subsection (3).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

106C Report 4 hours before ship or aircraft is due to depart

(1) At least 4 hours (but no more than 10 hours) before the time the ship or aircraft is due to depart from the place, the operator of the ship or aircraft must report to the Department, in accordance with Subdivision C:

(a) on the persons:

(i) who, at the time the report is made, are expected to be on board the ship or aircraft when it departs from the place; and

(ii) who are not identified in a report made by the operator in relation to the ship's or aircraft's departure from the place under section 106B; and

(iii) who are not identified (or to be identified) in a report made (or to be made) in relation to the ship's or aircraft's earlier departure from another place in the course of the same journey; or

(b) if there are no persons covered by paragraph (a)—that there are no persons to report.

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(2) The operator of the ship or aircraft commits an offence if the operator intentionally contravenes subsection (1).

Penalty: 120 penalty units.

(3) The operator of the ship or aircraft commits an offence if the operator contravenes subsection (1).

Penalty: 60 penalty units.

(4) Strict liability applies to an offence against subsection (3).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

106D Report just before ship or aircraft departs

(1) Before the ship or aircraft departs from the place, the operator must report to the Department, in accordance with Subdivision C:

(a) on the persons:

(i) who will be on board the ship or aircraft when it departs from the place; and

(ii) who are not identified in a report made by the operator in relation to the ship's or aircraft's departure from the place under section 106B or 106C; and

(iii) who are not identified in a report made in relation to the ship's or aircraft's earlier departure from another place in the course of the same journey; or

(b) if there are no persons covered by paragraph (a)—that there are no persons to report.

(2) The operator of the ship or aircraft commits an offence if the operator intentionally contravenes subsection (1).

Penalty: 120 penalty units.

(3) The operator of the ship or aircraft commits an offence if the operator contravenes subsection (1).

Penalty: 60 penalty units.

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(4) Strict liability applies to an offence against subsection (3).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Subdivision B—Reports on matters in approved statement

106E Ships and aircraft to which this Subdivision applies

(1) This Subdivision applies to a ship or aircraft of a kind prescribed by regulations made for the purposes of this section, if the ship or aircraft is due to depart:

(a) from a place in Australia at the beginning of a journey to a place outside Australia (whether or not the journey will conclude outside Australia); or

(b) from a place in Australia in the course of such a journey.

(2) Regulations made for the purposes of this section may specify kinds of ships or aircraft by reference to particular matters, including any or all of the following matters:

(a) the type, size or capacity of the ship or aircraft;

(b) the kind of operation or service in which the aircraft or ship will be engaged on journeys from Australia;

(c) other circumstances relating to the ship or aircraft or its use, or relating to the operator of the ship or aircraft.

106F Reports on matters in approved statement

The operator of the ship or aircraft must report to the Department, in accordance with Subdivision C:

(a) not later than the prescribed period or periods before the ship's or aircraft's departure from a place; or

(b) at the time of a prescribed event or events; or

(c) at the prescribed time or times.

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Subdivision C—How reports under this Division are to be made

106G Reports to be made electronically

(1) A report under this Division must:
  (a) be made:
    (i) electronically, using a system (if any) approved by the Comptroller-General of Customs by legislative instrument for the purposes of this subparagraph; or
    (ii) using a format or method approved by the Comptroller-General of Customs by legislative instrument for the purposes of this subparagraph; and
  (b) contain the information set out in an approved statement.

(2) An operator who reports electronically under subparagraph (1)(a)(i) is taken to have reported to the Department when a Collector sends an acknowledgment of the report to the person identified in the report as having made it.

(3) An operator who reports using a format or method approved under subparagraph (1)(a)(ii) is taken to have reported to the Department when the report is given to an officer doing duty in relation to ships and aircraft due to depart.

(4) The Comptroller-General of Customs may approve different systems, formats or methods under subparagraphs (1)(a)(i) and (ii) to be used for different kinds of operators or in different circumstances.

106H Reports to be made by document if approved electronic system or other approved format or method unavailable

(1) Despite section 106G, if, when an operator is required to report under this Division:
  (a) a system approved under subparagraph 106G(1)(a)(i) is not working; and
  (b) the operator is not able to use a format or method approved under subparagraph 106G(1)(a)(ii);

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the report must:

(c) be made by document in writing; and

(d) be in an approved form; and

(e) contain the information required by the approved form; and

(f) be signed in the manner specified by the approved form; and

(g) be communicated to the Department by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft due to depart.

(2) A documentary report is taken to have been made when it is sent or given to the Department in the prescribed manner.

106I Comptroller-General of Customs may approve different statements or forms

(1) The Comptroller-General of Customs may approve, under section 4A, different statements for the purposes of this Division, for reports:

(a) made by different kinds of operators; or

(b) relating to different kinds of ships or aircraft; or

(c) made in different circumstances; or

(d) made in relation to different classes of persons who are expected to be, or who will be, on board a ship or aircraft.

(2) The Comptroller-General of Customs may approve, under section 4A, different forms for the purposes of this Division, for reports:

(a) made by different kinds of operators; or

(b) relating to different kinds of ships or aircraft; or

(c) made in different circumstances; or

(d) made in relation to different classes of persons who are expected to be, or who will be, on board a ship or aircraft.

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Division 2—Questions about departing persons

106J Officers may question operators about departing persons

If a ship or aircraft is due to depart or is departing Australia, or has already departed Australia, an officer may require the operator of the ship or aircraft:

(a) to answer questions about the persons who are expected to be on board, or who are or were on board, the ship or aircraft; or

(b) to produce documents relating to those persons.

Note: Failing to answer a question or produce a document when required to do so by an officer may be an offence (see sections 243SA and 243SB).

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Part VI—The exportation of goods

Division 1AAA—Preliminary

107 Obligations under this Part may be satisfied in accordance with a trusted trader agreement

(1) An entity is released from an obligation that the entity would otherwise be required to satisfy under a provision of this Part (other than Division 1) if the obligation:

(a) is of a kind prescribed by rules for the purposes of Part XA; and

(b) is specified in those rules as an obligation from which an entity may be released; and

(c) is specified in a trusted trader agreement between the Comptroller-General of Customs and the entity.

(2) If:

(a) an obligation must be satisfied under a provision of this Part (other than Division 1); and

(b) the obligation:

(i) is of a kind prescribed by rules for the purposes of Part XA; and

(ii) is specified in those rules as an obligation that may be satisfied in a way other than required by this Part; and

(iii) is specified in a trusted trader agreement between the Comptroller-General of Customs and an entity;

then, despite the relevant provision, the entity may satisfy the obligation in the way specified in the trusted trader agreement.

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Division 1—Prohibited exports

112 Prohibited exports

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

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

(a) by prohibiting the exportation of goods absolutely;

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

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

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

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

(aa) may identify the goods to which the regulations relate by reference to their inclusion:

(i) in a list or other document formulated by a Minister and published in the *Gazette* or otherwise; or

(ii) in that list or other document as amended by the Minister and in force from time to time; and

(a) may provide that the exportation of the goods is prohibited unless a licence, permission, consent or approval to export the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations made under this Act or the *Therapeutic Goods Act 1989*; and

(b) in relation to licences or permissions granted as prescribed by regulations made under this Act—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; and

(ii) the granting of a licence or permission to export goods subject to compliance with conditions or requirements,

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

(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; and

(v) the revocation of a licence or permission to export goods if the Defence Minister is satisfied that the exportation of the goods would prejudice the security, defence or international relations of Australia.

(2AA) Where a Minister makes an amendment to a list or other document:

(a) that is formulated and published by the Minister; and

(b) to which reference is made in regulations made for the purposes of paragraph (2)(c);

the amendment is a legislative instrument.

(2AB) Regulations made for the purposes of this section may confer on the Minister the power to make provision in relation to a matter by legislative instrument.

(2B) A person commits an offence if:

(a) a licence or permission has been granted, on or after 10 November 1977, under the regulations; and

(b) the licence or permission relates to goods that are not narcotic goods; and

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(c) the licence or permission is subject to a condition or requirement to be complied with by the person; and
(d) the person engages in conduct; and
(e) the person's conduct contravenes the condition or requirement.

Penalty: 100 penalty units.

(2BA) Subsection (2B) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2BB) Absolute liability applies to paragraph (2B)(a), despite subsection (2BA).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(2BC) A person commits an offence if:
(a) a licence or permission has been granted, on or after 10 November 1977, under the regulations; and
(b) the licence or permission relates to goods that are narcotic goods; and
(c) the licence or permission is subject to a condition or requirement to be complied with by the person; and
(d) the person engages in conduct; and
(e) the person's conduct contravenes the condition or requirement.

Penalty: Imprisonment for 2 years or 20 penalty units, or both.

(2BE) Absolute liability applies to paragraph (2BC)(a).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

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

(4) In this section:

engage in conduct means:
(a) do an act; or

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(b) omit to perform an act.

112A Certain controlled substances taken to be prohibited exports

(1) Subsection (2) applies if a substance or plant is a border controlled drug or a border controlled plant because of a determination made under section 301.13 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drugs).

Note: ***Border controlled drug*** and ***border controlled plant*** have the same meaning as in Part 9.1 of the *Criminal Code* (see subsection 4(1) of this Act). In that Part, those terms include substances or plants that are, under section 301.13 of the *Criminal Code*, taken, for the purposes of the Part, to be border controlled drugs or border controlled plants only in relation to particular offences against the Part, or particular elements of those offences.

(2) For the period during which the determination has effect, Part 1 of Schedule 8 to the *Customs (Prohibited Exports) Regulations 1958* has effect as if the substance or plant were described as a drug in that Part.

(3) Subsection (4) applies if a substance is a border controlled precursor because of a determination made under section 301.14 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drug precursors).

Note: ***Border controlled precursor*** has the same meaning as in Part 9.1 of the *Criminal Code* (see subsection 4(1) of this Act). In that Part, that term includes substances that are, under section 301.14 of the *Criminal Code*, taken, for the purposes of the Part, to be border controlled precursors only in relation to particular offences against the Part, or particular elements of those offences.

(4) For the period during which the determination has effect, Part 1 of Schedule 9 to the *Customs (Prohibited Exports) Regulations 1958* has effect as if the substance were described as a precursor substance in that Part.

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112B Invalidation of licence, permission etc. for false or misleading information

A licence, permission, consent or approval granted in respect of the exportation of UN-sanctioned goods is taken never to have been granted if:

(a) an application for the licence, permission, consent or approval was made in an approved form; and

(b) information contained in, or information or a document accompanying, the form:

(i) was false or misleading in a material particular; or

(ii) omitted any matter or thing without which the information or document is misleading in a material particular.

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Division 1AA—Export of goods for a military end-use

112BA Notice prohibiting export

(1) If:

(a) the Defence Minister suspects that, if a person (the ***first person***) were to export particular goods to a particular place or to a particular person, the goods would or may be for a military end-use that would prejudice the security, defence or international relations of Australia; and

(b) the goods are not prohibited exports under section 112;

the Defence Minister may give the first person a notice prohibiting the first person from exporting the goods to the particular place or particular person.

Note: Section 112BB deals with giving notices under this section.

Reasons for notice

(2) A notice given to a person under subsection (1) must set out the Defence Minister's reasons for giving the notice.

(3) The notice must not disclose any reasons whose disclosure the Defence Minister believes would prejudice the security, defence or international relations of Australia.

(4) If reasons are not disclosed in a notice under subsection (1) because of subsection (3), that fact must be stated in the notice.

Period notice in force

(5) A notice given to a person under subsection (1) comes into force at the time the person receives the notice. This subsection is subject to subsection (7).

(6) A notice given to a person under subsection (1) remains in force for the period specified in, or worked out in accordance with, the notice (which must not be more than 12 months), unless revoked earlier.

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Later notices

(7) A notice may be given to a person under subsection (1) while an earlier notice given to the person under subsection (1) is in force. The later notice may be expressed to come into force at the time the earlier notice ceases to be in force.

(8) Subsection (7) does not prevent a notice being given to a person under subsection (1) after an earlier notice given to the person under subsection (1) ceases to be in force.

Notice not a legislative instrument

(9) A notice under subsection (1) is not a legislative instrument.

Revoking a notice

(10) The Defence Minister may, by writing, revoke a notice given to a person under subsection (1).

(11) The Defence Minister must give the person notice of the revocation. The revocation takes effect at the time the person receives the notice.

Note: Section 112BB deals with giving notices under this section.

Offence

(12) A person commits an offence if:

(a) the person exports goods to a particular place or particular person; and

(b) the export contravenes a notice that is in force under subsection (1); and

(c) the person knows of the contravention.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

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Definition

(13) In this section:

military end-use: goods are or may be for a ***military end-use*** if the goods are or may be for use in operations, exercises or other activities conducted by an armed force or an armed group, whether or not the armed force or armed group forms part of the armed forces of the government of a foreign country.

112BB How notices are to be given

(1) A notice given to a person under section 112BA must be given by one of the methods prescribed by the regulations.

(2) If a notice is given to a person under section 112BA by one of those methods, then, for the purposes of this Act, the person is taken to have received the notice at the time prescribed by, or worked out in accordance with, the regulations.

(3) This section has effect despite any provision in the *Electronic Transactions Act 1999*.

112BC Statement to Parliament

As soon as practicable after the end of each financial year, the Defence Minister must cause a statement to be tabled in each House of the Parliament about the exercise of the Defence Minister's powers under this Division during that year (whether or not the statement is part of an annual report).

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Division 1A—Directions in relation to goods for export etc. that are subject to customs control

112C Collector may give directions in relation to goods for export etc. that are subject to customs control

(1) A Collector may give a written direction to move or not move, or about the storage of, goods that are subject to customs control under paragraph 30(1)(b), (c), (d) or (e) if the direction is:

(a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations.

(2) The direction may be given to:

(a) the person who made an export declaration in relation to the goods; or

(b) the owner of the goods; or

(c) if the goods are in a place prescribed for the purposes of paragraph 30(1)(d) or (e)—the person apparently in charge of the place, or part of such a place; or

(d) a person who takes delivery of the goods at a wharf or airport; or

(e) a person engaged to load the goods on a ship or aircraft.

(3) This section does not limit the directions that a Collector may give under section 77Y or 87C.

112D Compliance with a direction given under section 112C

(1) A person commits an offence if:

(a) the person is given a direction under section 112C; and

(b) the person intentionally refuses or fails to comply with the direction.

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Penalty: 120 penalty units.

(2) A person commits an offence if:
(a) the person is given a direction under section 112C; and
(b) the person refuses or fails to comply with the direction.

Penalty: 60 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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Division 2—Entry and clearance of goods for export

Subdivision A—Preliminary

113 Entry of goods for export

(1) The owner of goods intended for export:

(a) must ensure that the goods are entered for export; and

(b) must not allow the goods:

(i) if the goods are a ship or aircraft that is to be exported otherwise than in a ship or aircraft—to leave the place of exportation; or

(ii) if the goods are other goods—to be loaded on the ship or aircraft in which they are to be exported;

unless:

(iii) an authority to deal with them is in force; or

(iv) the goods are, or are included in a class of goods that are, excluded by the regulations from the application of this paragraph.

Penalty: 60 penalty units.

(1A) An offence against subsection (1) is an offence of strict liability.

(2) Subsection (1) does not apply to:

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

(b) goods (other than prescribed goods) constituting, or included in, a consignment that:

(i) is consigned by post, by ship or by aircraft from one person to another; and

(ii) has an FOB value not exceeding $2,000 or such other amount as is prescribed.

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(d) containers that are the property of a person carrying on business in Australia and that are exported on a temporary basis to be re-imported, whether empty or loaded; and

(e) containers that are intended for use principally in the international carriage of goods, other than containers that, when exported from Australia, cease, or are intended to cease, to be the property of a natural person resident, or a body corporate incorporated, in Australia; and

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

(2A) However, subsection (2) does not exempt from subsection (1) goods for the export of which a permission (however described) is required by an Act or an instrument made under an Act, other than goods or classes of goods prescribed by the regulations for the purposes of this subsection.

(3) For the purposes of paragraph (2)(a), goods:

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

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

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

113AA How an entry of goods for export is made

An entry of goods for export is made by making in respect of the goods an export declaration other than a declaration that a Collector refuses under subsection 114(8) to accept.

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Subdivision B—Export declarations

114 Making an export declaration

(1) An export declaration is a communication to the Department in accordance with this section of information about goods that are intended for export.

(2) An export declaration can be communicated by document or electronically.

(3) A documentary export declaration:
  (a) can be made only by the owner of the goods concerned; and
  (b) must be communicated to the Department by giving or sending it to an officer doing duty in relation to export declarations; and
  (c) must be in an approved form; and
  (d) must contain such information as is required by the form; and
  (e) must be signed by the person making it.

(4) An electronic export declaration must communicate such information as is set out in an approved statement.

(5) If the information communicated to the Department in an export declaration relating to goods adequately identifies any permission (however it is described) that has been given for the exportation of those goods, the identification of the permission in that information is taken, for the purposes of any law of the Commonwealth (including this Act), to be the production of the permission to an officer.

(6) However, subsection (5) does not affect any power of an officer, under this Act, to require the production of a permission referred to in that subsection.

(7) When, in accordance with section 119D, an export declaration is taken to have been communicated to the Department, the goods to which the declaration relates are taken to have been entered for export.

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(8) A Collector may refuse to accept or deal with an export declaration in circumstances prescribed by the regulations.

(9) A Collector must communicate a refusal to accept or deal with an export declaration by notice given by document or electronically to the person who made the declaration.

114A An officer may seek additional information

(1) Without limiting the information that may be required to be included in an export declaration, if an export declaration has been made in respect of goods, authority to deal with the goods in accordance with the declaration may be refused until an officer doing duty in relation to export declarations has verified particulars of the goods shown in the declaration:

(a) by reference to information contained in commercial documents relating to the goods that have been given to the Department by the owner of the goods on, or at any time after, the communication of the declaration to the Department; or

(b) by reference to information, in writing, in respect of the goods that has been so given to the Department.

(2) If an officer doing duty in relation to export declarations believes, on reasonable grounds, that the owner of goods to which an export declaration relates has custody or control of commercial documents, or has, or can obtain, information, relating to the goods that will assist the officer to determine whether this Act has been or is being complied with in respect of the goods, the officer may require the owner:

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

(b) to deliver to the officer such information, in writing, relating to the goods (being information of a kind specified in the

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notice) as is within the knowledge of the owner or as the owner is reasonably able to obtain.

(3) A documentary requirement for the delivery of documents or information in respect of an export declaration must:

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

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

(4) An electronic requirement for the delivery of documents or information in respect of an export declaration must:

(a) be sent electronically to the person who made the declaration; and

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

(5) An officer doing duty in relation to export declarations may ask:

(a) the owner of goods in respect of which an export declaration has been made; and

(b) if another person made the declaration on behalf of the owner—the other person;

any questions relating to the goods.

(6) An officer doing duty in relation to export declarations may require the owner of goods in respect of an export declaration that has been made to verify the particulars shown in the export declaration by making a declaration or producing documents.

(7) If:

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

(b) the owner of, or person who made an export declaration in respect of, goods has been asked a question in respect of the goods under subsection (5); or

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

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

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

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

(f) the requirement referred to in paragraph (c) has been complied with or withdrawn;

as the case requires.

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

114B Confirming exporters

(1) A person who:

(a) proposes to make an export declaration relating to particular goods or is likely to make, from time to time, export declarations in relation to goods of a particular kind; and

(b) will be unable to include in the export declaration or export declarations particular information in relation to the goods because the information cannot be ascertained until after the exportation of the goods;

may apply to the Comptroller-General of Customs for confirming exporter status in respect of the information and the goods.

(2) An application under subsection (1) must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such particulars as are required by the form including the reasons the information referred to in subsection (1) cannot be ascertained before exportation.

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(3) Where a person applies for confirming exporter status in respect of particular information and particular goods or goods of a particular kind, the Comptroller-General of Customs must:

(a) if the Comptroller-General of Customs is satisfied that the information cannot be ascertained before exportation—grant the applicant that status by signing a notice stating:

(i) that the applicant is granted that status in respect of that information and those goods; and

(ii) that the grant is on such conditions as are specified in the notice; or

(b) if the Comptroller-General of Customs is not so satisfied—refuse to grant the applicant that status by signing a notice stating that the Comptroller-General of Customs has refused to grant the applicant that status and setting out the reasons for the refusal.

(4) A grant of confirming exporter status has effect from the day on which the relevant notice is signed.

(5) Without limiting the generality of the conditions to which a grant of confirming exporter status may be subject, those conditions must be expressed to include:

(a) a requirement that the appropriate confirming exporter status will be specified in any export declaration relating to the goods in respect of which the status was granted where the confirming exporter proposes to rely on that status; and

(b) a requirement that full details of the information in respect of which the status was granted will be provided as soon as practicable after exportation and not later than the time the Comptroller-General of Customs indicates in the notice granting the status; and

(c) a requirement that, if information in respect of which the status was granted becomes, to the knowledge of the confirming exporter, able to be ascertained before the exportation of goods in respect of which the status was granted, the confirming exporter will notify the Comptroller-General of Customs forthwith.

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(6) Where the Comptroller-General of Customs is satisfied that information in respect of which confirming exporter status was granted is now able to be ascertained before exportation, he or she must sign a notice in writing:

(a) cancelling the confirming exporter status forthwith; or

(b) modifying the confirming exporter status so that it no longer relates to that information.

(7) Where a person granted a confirming exporter status in respect of information and goods fails to comply with a condition to which the grant is subject, the person commits an offence.

Penalty: 30 penalty units.

(7A) Subsection (7) does not apply if the person has a reasonable excuse.

(7B) Subsection (7) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(8) Where:

(a) a person who is a confirming exporter in respect of information and goods of a particular kind is convicted of an offence against subsection (7); or

(b) the Comptroller-General of Customs becomes satisfied that a person who is such a confirming exporter has failed to comply with a condition of a grant of confirming exporter status although no proceedings for an offence against subsection (7) have been brought against the person;

the Comptroller-General of Customs may:

(c) cancel that person's status in respect of that information and those goods; or

(d) modify that person's status so that it no longer relates to specified information or goods or so that the conditions to which it is subject are altered in a specified respect;

by signing a notice stating that that status has been so cancelled or modified and setting out the reasons for that cancellation or modification.

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(9) A cancellation or modification of the confirming exporter status of a person has effect on the day the relevant notice was signed.

(10) The Comptroller-General of Customs must, as soon as practicable after signing a notice under subsection (3), (6) or (8), serve a copy of the notice on the person concerned but a failure to do so does not alter the effect of the notice.

Subdivision D—General

114C Authority to deal with goods entered for export

(1) If goods have been entered for export by the making of an export declaration in respect of the goods, a Collector must give an export entry advice, satisfying the requirements prescribed by the regulations, that constitutes either:

(a) an authority to deal with the goods to which the entry relates in accordance with the entry; or

(b) a refusal to provide such an authority.

(2) Without limiting the generality of subsection (1), the regulations must require an export entry advice to contain an export entry advice number by which the advice can be identified.

(3) An authority under subsection (1) to deal with goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however it is described) be obtained under another law of the Commonwealth.

(3A) An authority under subsection (1) to deal with goods may be expressed to be subject to a condition that any security required under section 16 of the *Excise Act 1901* be given.

(4) If an authority under subsection (1) to deal with goods is expressed to be subject to a condition that a specified permission be obtained, the authority is taken not to have been given until the permission has been obtained.

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(4A) If an authority under subsection (1) to deal with goods is expressed to be subject to a condition that any security required under section 16 of the *Excise Act 1901* be given, the authority is taken not to have been given until the security has been given.

(5) An officer may, at any time before goods authorised to be dealt with in accordance with an export entry are so dealt with, cancel the authority:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the authority is cancelled and setting out the reasons for the cancellation; and

(ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is cancelled and setting out the reasons for the cancellation.

(6) If, at any time before goods authorised to be dealt with in accordance with an export entry are so dealt with, an officer has reasonable grounds to suspect that the goods have been dealt with in contravention of a Customs-related law, the officer may suspend the authority for a specified period:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the authority is so suspended and setting out the reasons for the suspension; and

(ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who

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made the declaration, a message stating that the authority is so suspended and setting out the reasons for the suspension.

(7) If, during the suspension under subsection (6) of an authority, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods have been dealt with in contravention of a Customs-related law, the officer must revoke the suspension:

(a) if the authority was given in respect of a documentary declaration, by:

(i) signing a notice stating that the suspension is revoked; and

(ii) serving a copy of the notice on the person to whom the notice of the suspension was given; or

(b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person to whom the message notifying the suspension was sent, a message stating that the suspension is revoked.

(8) A cancellation or suspension of an authority, or a revocation of a suspension of an authority, has effect from the time when the relevant notice is served or the relevant message is sent, as the case may be.

114CA Suspension of an authority to deal with goods entered for export in order to verify particulars of the goods

(1) An officer may, at any time before goods authorised to be dealt with in accordance with an export entry advice are so dealt with, suspend the authority to deal for a specified period in order to verify particulars of the goods shown in the export declaration made in respect of the goods:

(a) by reference to information contained in commercial documents relating to the goods that have been given to the Department by the owner of the goods on, or at any time after, the communication of the declaration to the Department; or

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(b) by reference to information, in writing, in respect of the goods that has been so given to the Department.

(2) If an officer suspends under subsection (1) an authority to deal that was given in respect of a documentary declaration:

(a) the officer must:

(i) sign a notice that states that the authority is so suspended and sets out the reasons for the suspension; and

(ii) serve a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; and

(b) the suspension has effect from the time when the notice is served.

(3) If an officer suspends under subsection (1) an authority to deal that was given in respect of an electronic declaration:

(a) the officer must send electronically, to the person who made the declaration, a message that states that the authority is so suspended and sets out the reasons for the suspension; and

(b) the suspension has effect from the time when the message is sent.

114CB Revocation of the suspension of an authority to deal

(1) If an authority to deal has been suspended under subsection 114CA(1), an officer must revoke the suspension if, during the period of suspension, the officer verifies the particulars of the goods shown in the export declaration made in respect of the goods.

(2) If the revocation relates to an authority to deal that was given in respect of a documentary declaration:

(a) the officer must:

(i) sign a notice that states that the suspension is revoked; and

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(ii) serve a copy of the notice on the person to whom the notice of the suspension was given; and

(b) the revocation has effect from the time when the notice is served.

(3) If the revocation relates to an authority to deal that was given in respect of an electronic declaration:

(a) the officer must send electronically, to the person to whom the message notifying the suspension was sent, a message that states that the suspension is revoked; and

(b) the revocation has effect from the time when the message is sent.

114CC An officer may seek additional information if an authority to deal has been suspended

Scope

(1) This section applies if an authority to deal with goods is suspended under subsection 114CA(1) in order to verify particulars of the goods shown in the export declaration made in respect of the goods.

Owner may be required to deliver commercial documents or information

(2) If an officer believes, on reasonable grounds, that the owner of the goods has custody or control of commercial documents relating to the goods, or has or can obtain information relating to the goods, that will assist the officer to verify those particulars, the officer may require the owner:

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

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(b) to deliver to the officer such specified information, in writing, relating to the goods as is within the knowledge of the owner or as the owner is reasonably able to obtain.

(3) A documentary requirement for the delivery of documents or information relating to the goods must:
(a) be communicated to the person by whom, or on whose behalf, the export declaration was communicated; and
(b) be in an approved form and contain such particulars as the form requires.

(4) An electronic requirement for the delivery of documents or information relating to the goods must:
(a) be sent electronically to the person who made the export declaration; and
(b) communicate such particulars as are set out in an approved statement.

Officer may ask any questions relating to the goods

(5) An officer may ask:
(a) the owner of the goods; and
(b) if another person made the export declaration on behalf of the owner—the other person;
any questions relating to the goods.

Owner may be required to verify the particulars

(6) An officer may require the owner of the goods to verify the particulars shown in the export declaration by making a declaration or producing documents.

Commercial documents must be returned

(7) Subject to section 215, if a person delivers a commercial document to an officer under this section, the officer must deal with the document and then return it to that person.

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114D Goods to be dealt with in accordance with export entry

(1) The owner of goods in respect of which an export entry has been communicated to the Department:

(a) must, as soon as practicable after an authority to deal with the goods is granted, deal with the goods in accordance with the entry; and

(b) must not remove any of the goods from the possession of the person to whom they are delivered or of any person to whom they are subsequently passed in accordance with the entry unless:

(i) the entry has been withdrawn, or withdrawn in so far as it applies to those goods; or

(ii) a permission to move, alter or interfere with the goods has been given under section 119AA or 119AC.

Penalty: 10 penalty units.

(2) If:

(a) excisable goods on which excise duty has not been paid have been delivered to a place prescribed for the purposes of paragraph 30(1)(d); and

(b) the export entry that applies to those goods is withdrawn, or withdrawn insofar as it applies to those goods;

then, despite any implication to the contrary in subsection (1), the goods become, on communication to the Department of the withdrawal, goods under the Commissioner of Taxation's control under section 61 of the *Excise Act 1901*.

(3) If goods are goods on which Customs duty is payable but has not been paid and the export entry that applies to those goods is withdrawn, or withdrawn in so far as it applies to those goods, then:

(a) despite any implication to the contrary in subsection (1), the goods remain under customs control; and

(b) the withdrawal constitutes a permission, under section 71E, to move the goods back to the place from which they were first moved in accordance with the entry.

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114E Sending goods to a wharf or airport for export

(1) A person (the ***deliverer***) commits an offence if the deliverer delivers goods to a person (the ***deliveree***) at a wharf or airport for export and:

(a) if the goods have been entered for export—neither of the following applies:

(i) an authority to deal with the goods is in force and the deliverer of the goods has, at or before the time of the delivery, given the prescribed particulars to the deliveree in the prescribed manner;

(ii) the goods are, or are included in a class of goods that are, excluded by the regulations from the application of this section and the deliverer has, at or before the time of the delivery, given the prescribed particulars to the deliveree in the prescribed manner; or

(b) if the goods are not required to be entered for export—the deliverer has not, at or before the time of the delivery, given the prescribed particulars to the deliveree in the prescribed manner; or

(c) if the goods have not been entered for export—the deliveree fails to enter the goods for export within the prescribed period after the time of the delivery.

(2) For the purposes of subparagraphs (1)(a)(i) and (ii) and paragraph (1)(b), the regulations may prescribe different particulars according to the kind of deliverer.

(3) The penalty for an offence against subsection (1) is a penalty not exceeding 60 penalty units.

(4) An offence against subsection (1) is an offence of strict liability.

(5) The regulations may prescribe goods, or classes of goods, that are exempt from this section.

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114F Notices to Department by person who receives goods at a wharf or airport for export

(1) This section applies to a person who takes delivery of goods for export at a wharf or airport other than a wharf or airport that is, or is included in a class of wharves or airports that is, excluded by the regulations from the application of this section.

(1A) The person must give notice to the Department electronically, within the period prescribed by the regulations, stating that the person has received the goods and giving such particulars as are required by an approved statement.

(1B) Before the goods are removed from the wharf or airport for a purpose other than loading them onto a ship or aircraft for export, the person must give notice (the ***removal notice***) to the Department electronically:

(a) stating that the goods are to be removed; and

(b) giving such particulars as are required by an approved statement.

If the regulations require the person to give the removal notice at least a specified time before the removal, the person must comply with the requirement.

(2) A person who contravenes subsection (1A) or (1B) commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) The regulations may prescribe goods, or classes of goods, that are exempt from this section.

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115 Goods not to be taken on board without authority to deal

(1) The owner of a ship or aircraft must not permit goods required to be entered for export to be taken on board the ship or aircraft for the purpose of export unless:

(a) an authority to deal with the goods is in force under section 114C; or

(b) the goods are, or are included in a class of goods that are, excluded by the regulations from the application of this section.

Penalty: 60 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

116 What happens when goods entered for export by an export declaration are not dealt with in accordance with the export entry

(1) If:

(a) goods are entered for export by the making of an export declaration in respect of the goods; and

(b) none of the goods or some only of the goods have been exported in accordance with the entry at the end of a period of 30 days after the intended day of exportation notified in the entry;

the authority to deal with the goods in accordance with the entry, so far as it relates to goods not exported before the end of the period, is, at the end of the period, taken to have been revoked.

(2) If an authority to deal with goods entered for export is taken, under subsection (1), to have been totally or partially revoked, the owner of the goods must, within 7 days after the end of the period referred to in that subsection:

(a) if the authority to deal was taken to be totally revoked—withdraw the entry relating to the goods; and

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(b) if the authority to deal was taken to be partially revoked—amend the entry so that it relates only to the goods exported before the end of the period.

Penalty: 60 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) If the owner of goods entered for export amends the original entry in accordance with paragraph (2)(b), the owner is, in accordance with subsection 119C(1), taken to have withdrawn the original entry but this Act has effect as if:

(a) the amended entry had been communicated to the Department; and

(b) an authority to deal with the goods to which the amended entry relates in accordance with the amended entry had been granted under section 114C;

on the day, or the respective days, on which the original entry was communicated and the original authority to deal was granted.

117 Security

The Collector may require the owner of any goods entered for export and subject to customs control 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.

117AA Consolidation of certain goods for export can only occur at a prescribed place

(1) A person must not consolidate, or take part in the consolidation of, prescribed goods for export unless the consolidation is to be carried out at a place prescribed by the regulations for the purposes of this section.

Penalty: 60 penalty units.

(2) If prescribed goods are received at a place referred to in subsection (1) for the purpose of being consolidated for export, the

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person in charge of the place must give notice electronically to the Department, within the prescribed period after the goods were received at the place, stating that the goods were received and setting out such particulars of the goods as are required by an approved statement.

Penalty: 60 penalty units.

(3) The person in charge of a place referred to in subsection (1) must not permit prescribed goods to be released from the place unless:

(a) the person has ascertained, from information made available by a Collector, that:

(i) the goods have been entered for export; and

(ii) an authority to deal with the goods is in force; or

(b) a permission to move, alter or interfere with the goods has been given under section 119AA or 119AC.

Penalty: 60 penalty units.

(4) If prescribed goods have been released from a place referred to in subsection (1), the person in charge of the place must give notice electronically to the Department, within the prescribed period after the goods were released, stating that the goods were released and giving particulars of the entry and authority referred to in subsection (3) that relates to the goods.

Penalty: 60 penalty units.

(5) An offence for a contravention of this section is an offence of strict liability.

117A Submanifests to be communicated to Department

(1) The person in charge of the place at which the consolidation of goods for exportation by a ship or aircraft is to be carried out must, so as to enable the exportation, prepare and communicate electronically to the Department a submanifest in respect of the goods.

Penalty: 60 penalty units.

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(1A) An offence against subsection (1) is an offence of strict liability.

(2) A submanifest must communicate such information as is set out in an approved statement.

(3) When a submanifest is sent to the Department, a Collector must send to the compiler of the submanifest a notice acknowledging its receipt and giving the compiler a submanifest number for inclusion in any outward manifest purportedly relating to the goods concerned.

118 Certificate of Clearance

(1) The master of a ship or the pilot of an aircraft must not depart with the ship or aircraft from any port, airport or other place in Australia without receiving from the Collector a Certificate of Clearance in respect of the ship or aircraft.

Penalty: 60 penalty units.

(1A) An offence against subsection (1) is an offence of strict liability.

(1B) A Certificate of Clearance in respect of a ship or aircraft may only be granted on application under subsection (2) or (5).

(2) The master of a ship or the pilot of an aircraft may apply to the Collector for a Certificate of Clearance in respect of the ship or aircraft.

Note 1: See subsection (8) for application requirements.

Note 2: Section 118A sets out the requirements for granting a Certificate of Clearance in respect of certain ships or aircraft.

(4) The master and the owner of a ship, or the pilot and the owner of an aircraft, that is at a port, airport or other place in Australia must:

(a) severally answer questions asked by an officer relating to the ship or aircraft and its cargo, stores and voyage; and

(b) severally produce documents requested by an officer that relate to the ship or aircraft and its cargo; and

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(c) comply with such requirements (if any) as are prescribed by the regulations.

(5) If a Certificate of Clearance has not been given to the master of a ship or the pilot of an aircraft within 24 hours after an application is made by the master or pilot under subsection (2), the master or pilot may apply to the Comptroller-General of Customs for a Certificate of Clearance. The decision of the Comptroller-General of Customs on the application is final.

Note 1: See subsection (8) for application requirements.

Note 2: Section 118A sets out the requirements for granting a Certificate of Clearance in respect of certain ships or aircraft.

(6) If, after an application to the Comptroller-General of Customs for a Certificate of Clearance is made under subsection (5), the Comptroller-General of Customs does not grant, or delays granting, the Certificate of Clearance, the owner of the ship or aircraft is entitled, in a court of competent jurisdiction, to recover damages against the Commonwealth in respect of the failure to grant, or the delay in granting, the Certificate, if the court is satisfied that the failure or delay was without reasonable and probable cause.

(7) Except as provided in subsection (6), an action or other proceeding cannot be brought against the Commonwealth, or an officer of the Commonwealth, because of the failure to grant, or because of a delay in granting, a Certificate of Clearance.

(8) An application under subsection (2) or (5) must:
(a) be in writing; and
(b) be in an approved form; and
(c) contain such information as the form requires; and
(d) be signed in the manner indicated in the form.

(9) The Comptroller-General of Customs may approve different forms for applications to be made under subsection (2) or (5) in different circumstances, by different kinds of masters of ships or pilots of aircraft or in respect of different kinds of ships or aircraft.

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118A Requirements for granting a Certificate of Clearance in respect of certain ships or aircraft

(1) This section applies to a ship or aircraft of a kind specified in the regulations.

(2) Before a Certificate of Clearance in respect of the ship or aircraft is granted under section 118, the master or owner of the ship or the pilot or owner of the aircraft must communicate to the Department, in accordance with this section, an outward manifest:

(a) specifying all of the goods (other than goods prescribed for the purposes of section 120) that are on board, or are to be loaded on board, the ship or aircraft at the port, airport or other place in Australia; or

(b) if there are no goods of the kind to which paragraph (a) applies—making a statement to that effect.

(3) An outward manifest may be made by document or electronically.

(4) A documentary outward manifest must:

(a) be in writing; and

(b) be in an approved form; and

(c) be communicated to the Department by sending or giving it to an officer doing duty in respect of the clearance of ships or aircraft; and

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

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

(5) An electronic outward manifest must communicate such information as is set out in an approved statement.

119 Communication of outward manifest to Department

(1) If:

(aa) a ship or aircraft departs from a port, airport or other place in Australia; and

(ab) section 118A does not apply to the ship or aircraft;

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the master or owner of the ship, or the pilot or owner of the aircraft, must communicate electronically to the Department, not later than 3 days after the day of departure, or such time as is prescribed in relation to the departure, an outward manifest:

(a) specifying all of the goods, other than goods prescribed for the purposes of section 120, that were loaded on board the ship or aircraft at the port, airport or other place; or

(b) if there were no goods of the kind to which paragraph (a) applies that were loaded on board the ship or aircraft at the port, airport or other place—making a statement to that effect.

(2) An outward manifest must contain such information as is set out in an approved statement.

(3) If subsection (1) is contravened in respect of a ship or aircraft, the master and the owner of the ship, or the pilot and the owner of the aircraft, each commit an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

119AA Application for permission to move, alter or interfere with goods for export

(1) This section applies to goods if:

(a) the goods are subject to customs control under paragraph 30(1)(b), (c) or (d); and

(b) either:

(i) the goods have been entered for export and an authority to deal with the goods is in force; or

(ii) the goods are the subject of a permission in force under subsection 96A(2).

(2) A person may apply to the Department for permission to move, alter or interfere with the goods in a particular way.

(3) An application under subsection (2) may be made by document or electronically.

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(3A) A documentary application must:

(a) be communicated to the Department by sending or giving it to an officer doing duty in relation to export entries; and

(b) be in an approved form; and

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

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

(3B) An electronic application must communicate such information as is set out in an approved statement.

(4) The Comptroller-General of Customs may approve different forms for documentary applications, and different statements for electronic applications, made under this section in different circumstances or by different classes of persons.

(5) If an application is made under subsection (2), an officer may direct the applicant to ensure that the goods are held in the place where they are currently located until a decision is made on the application.

(6) If a direction is not given under subsection (5), or a reasonable period has elapsed since the giving of such a direction to enable the making of an informed decision on the application, an officer must give a message by document, or send a message electronically, to the applicant:

(a) giving the applicant permission to move, alter or interfere with the goods in accordance with the application either unconditionally or subject to such conditions as are specified in the message; or

(b) refusing the application and setting out the reasons for the refusal.

(7) If a person moves, alters or interferes with goods otherwise than in accordance with a relevant permission, the movement of the goods is, for the purposes of paragraph 229(1)(g), taken not to have been authorised by this Act.

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119AB Application for permission to move, alter or interfere with goods that are no longer for export

(1) If goods are subject to customs control under paragraph 30(1)(e), a person may apply to the Department for permission to move, alter or interfere with the goods in a particular way.

(2) An application under subsection (1) may be made by document or electronically.

(3) A documentary application must:
  (a) be communicated to the Department by sending or giving it to an officer doing duty in relation to export entries; and
  (b) be in an approved form; and
  (c) contain such information as is required by the form; and
  (d) be signed in a manner specified in the form.

(4) An electronic application must communicate such information as is set out in an approved statement.

(5) The Comptroller-General of Customs may approve different forms for documentary applications, and different statements for electronic applications, made under this section in different circumstances or by different classes of persons.

119AC Dealing with an application for a permission to move etc. goods that are no longer for export

(1) If an application is made under subsection 119AB(1), an officer may direct the applicant to ensure that the goods to which the application relates are held in the place where they are currently located until a decision is made on the application.

(2) If a direction is not given under subsection (1) of this section, or a reasonable period has elapsed since the giving of such a direction to enable the making of an informed decision on the application, an officer must give a message by document, or send a message electronically, to the applicant:

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(a) giving the applicant permission to move, alter or interfere with the goods in accordance with the application either unconditionally or subject to such conditions as are specified in the message; or

(b) refusing the application and setting out the reasons for the refusal.

(3) If a person moves, alters or interferes with goods otherwise than in accordance with a permission under subsection (2) of this section, the movement of the goods is, for the purposes of paragraph 229(1)(g), taken not to have been authorised by this Act.

119A Withdrawal of entries, submanifests and manifests

(1) At any time after an export entry, a submanifest or an outward manifest is communicated to the Department and before the goods to which it relates are exported, a withdrawal of the entry, submanifest or manifest may be communicated to the Department:

(a) in the case of a withdrawal of an entry that was communicated to the Department by document—by document; or

(b) in any other case—electronically.

(2) A documentary withdrawal of an entry must:

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

(b) be communicated to the Department by giving it to an officer doing duty in relation to export entries; and

(c) be in an approved form; and

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

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

(3) An electronic withdrawal of an entry, submanifest or manifest must communicate such information as is set out in an approved statement.

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(4) A withdrawal of an entry, submanifest or manifest has effect when, in accordance with section 119D, it is communicated to the Department.

119B Effect of withdrawal

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

(2) Despite the withdrawal of an entry, submanifest or manifest:

(a) a person may be prosecuted in respect of the entry, submanifest or manifest; and

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

as if it had not been withdrawn.

(2A) Despite the withdrawal of an entry, submanifest or manifest, an infringement notice may be given to a person in respect of the entry, submanifest or manifest as if it had not been withdrawn.

(3) The withdrawal of a documentary entry the original of which was sent or given to an officer does not entitle the person who communicated it to have it returned.

119C Change of electronic entries and change of submanifests and manifests treated as withdrawals

(1) If a person who has communicated an electronic export entry changes information included in that entry, the person is taken, at the time when an export entry advice is communicated in respect of the altered entry, to have withdrawn the entry as it previously stood.

(2) If a person who has communicated a submanifest or an outward manifest changes information included in the submanifest or manifest, the person is taken, at the time when an acknowledgment of the altered submanifest or altered manifest, as the case requires, is communicated, to have withdrawn the submanifest or manifest as it previously stood.

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119D Notification of export entries, submanifests, manifests, withdrawals and applications

(1) For the purposes of this Act, a documentary export entry, or a documentary withdrawal of such an entry, may be sent to an officer referred to in subsection 114(3) or 119A(2) in any manner prescribed and, when so sent, is taken to have been communicated to the Department at such time, and in such circumstances, as are prescribed.

(2) For the purposes of this Act, an electronic export entry, or an electronic withdrawal of such an entry, or a submanifest, an outward manifest, or a withdrawal of such a submanifest or manifest, that is sent to the Department is taken to have been communicated to the Department when an export entry advice or an acknowledgment of receipt of the submanifest, manifest or withdrawal is sent to the person who sent the entry, submanifest, manifest or withdrawal.

(3) For the purposes of this Act, a documentary application or an electronic application under section 119AA or 119AB is taken to have been communicated to the Department when an acknowledgment of the application is sent or given by a Collector to the person who sent or gave the application.

119E Requirements for communicating to Department electronically

A communication that is required or permitted by this Division to be made to the Department electronically must:

(a) be signed by the person who makes it (see paragraph 126DA(1)(c)); and

(b) otherwise meet the information technology requirements determined under section 126DA.

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120 Shipment of goods

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

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

(b) goods prescribed for the purpose of this section.

Penalty: 100 penalty units.

122 Time of clearance

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 cargo have been duly complied with.

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Division 3A—Examining goods for export that are not yet subject to customs control

122F Object of Division

(1) The object of this Division is to confer powers on authorised officers to enter premises and examine goods that are reasonably believed to be intended for export.

(2) The powers are exercisable before the goods become subject to customs control and are conferred for the purpose of enabling officers to assess whether the goods meet the requirements of a Customs-related law relating to exports.

(3) The powers are exercisable only with the consent of the occupier of the premises at which the goods are situated.

(4) The Comptroller-General of Customs must not authorise an officer to exercise powers under this Division unless the Comptroller-General of Customs is satisfied that the officer is suitably qualified, because of the officer's abilities and experience, to exercise those powers.

122G Occupier of premises

In this Part:

occupier of premises includes a person who is apparently in charge of the premises.

122H Consent required to enter premises and examine goods for export

(1) Subject to section 122J, an authorised officer may enter premises, and exercise the powers conferred by the other sections of this Division in or on the premises, in accordance with this section.

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(2) The authorised officer must believe on reasonable grounds that there are, or have been, in or on particular premises goods (the ***export goods***) that the authorised officer reasonably believes are intended to be exported.

(3) The premises must not be a place prescribed for the purposes of paragraph 30(1)(d) or (e), or part of such a place.

Note 1: Paragraph 30(1)(d) subjects to customs control goods that are made or prepared in, or brought to, a prescribed place for export.

Note 2: Paragraph 30(1)(e) subjects to customs control goods made or prepared in, or brought into, a prescribed place for export that are no longer for export.

(4) The occupier of the premises must have consented in writing to the entry of the authorised officer to the premises and the exercise of the powers in or on the premises.

(5) Before obtaining the consent, the authorised officer must have told the occupier that he or she could refuse consent.

(6) Before the authorised officer enters the premises or exercises any of the powers, he or she must produce his or her identity card to the occupier.

122J Officer must leave premises if consent withdrawn

(1) An authorised officer who has entered premises under section 122H must leave the premises if the occupier withdraws his or her consent.

(2) A withdrawal of a consent does not have any effect unless it is in writing.

122K Power to search premises for export goods

The authorised officer may search the premises for the export goods and documents relating to them.

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122L Power to examine export goods

(1) While the authorised officer is in or on the premises, he or she may inspect, examine, count, measure, weigh, gauge, test or analyse, and take samples of, the export goods.

(2) The authorised officer may remove from the premises any samples taken, and arrange for tests or analyses to be conducted on them elsewhere.

122M Power to examine documents relating to export goods

The authorised officer may examine and take extracts from, or make copies of, documents that are in or on the premises and relate to the export goods.

122N Power to question occupier about export goods

If the authorised officer is in or on the premises because the occupier consented to the officer's entry, the officer may request the occupier:

(a) to answer questions about the export goods; and

(b) to produce to the officer documents that are in or on the premises and relate to the export goods;

but the occupier is not obliged to comply with the request.

122P Power to bring equipment to the premises

The authorised officer may bring into or onto the premises equipment and materials for exercising a power described in section 122K, 122L or 122M.

122Q Compensation

(1) If a person's property is damaged as a result of an exercise of a power under this Division, the person is entitled to compensation of a reasonable amount payable by the Commonwealth for the damage.

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(2) The Commonwealth must pay the person such reasonable compensation as the Commonwealth and the person agree on. If they fail to agree, the person may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

(3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees or agents of the occupier, if they were available at the time, had provided any warning or guidance that was appropriate in the circumstances.

122R Powers in this Division are additional to other powers

The powers of an authorised officer under this Division do not limit powers under other provisions of this Act or under provisions of other Acts.

Example: Some other provisions and Acts giving similar powers are Parts III and XII of this Act, and the *Commerce (Trade Descriptions) Act 1905* and the *Export Control Act 2020*.

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Division 4—Exportation procedures after Certificate of Clearance issued

123 Ship to bring to and aircraft to stop at boarding stations

(1) The master of every ship departing from any port shall bring his or her 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 or her ship from any port with any officer on board such ship in the discharge of his or her duty without the consent of such officer.

Penalty: 30 penalty units.

(2) The pilot of every aircraft departing from any airport shall bring his or her 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 or her aircraft from any port or airport with any officer on board such aircraft without the consent of such officer.

Penalty: 30 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

124 Master or pilot to account for missing goods

(1) 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 or her ship or aircraft.

Penalty: 100 penalty units.

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(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

125 Goods exported to be landed at proper destination

(1) No goods shipped for export shall be unshipped or landed except in parts beyond the seas.

Penalty: 250 penalty units.

(2) Subsection (1) does not apply if the goods are unshipped or landed with the permission of the Collector.

(3) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

126 Certificate of landing

If required by the Comptroller-General of Customs a certificate in the approved 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 customs control, and the Collector may refuse to allow any other goods subject to customs control 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 her or to account for such goods to the satisfaction of the Collector.

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Division 4A—Exportation of goods to Singapore

126AAA Definitions

In this Division:

Singaporean customs official means a person representing the customs administration of Singapore.

126AB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to Singapore; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Singapore.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on a producer or exporter of goods.

126AC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AB to produce to the officer such of those records as the officer requires.

Disclosing records to Singapore

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Singapore, disclose any records so produced to a Singaporean customs official.

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126AD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to Singapore; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Singapore;

to answer questions in order to verify the origin of the goods.

Disclosing answers to Singapore

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Singapore, disclose any answers to such questions to a Singaporean customs official.

Authorised Version C2026C00378 registered 05/09/2026

Division 4B—Exportation of textile or apparel goods to the US

126AE Authorised officer may request records or ask questions

(1) If goods that are a textile or apparel good are exported to the US, an authorised officer may request a person who:

(a) is the exporter or producer of the goods; or

(b) is involved in the transportation of the goods from Australia to the US;

to produce particular records, or to answer questions put by the officer, in relation to the export, production or transportation of the goods.

(2) The person is not obliged to comply with the request.

Disclosing records or answers to US

(3) An authorised officer may disclose any records so produced, or disclose any answers to such questions, to a US customs official for the purpose of a matter covered by Article 4.3 of the Agreement.

Definitions

(4) In this section:

Agreement means the Australia-United States Free Trade Agreement done at Washington DC on 18 May 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible through the website of the Department of Foreign Affairs and Trade.

Harmonized System has the same meaning as in section 153YA.

textile or apparel good has the meaning given by Article 1.2 of Chapter 1 of the Agreement.

Authorised Version C2026C00378 registered 05/09/2026

US means the United States of America.

US customs official means a person representing the customs administration of the US.

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Division 4C—Exportation of goods to Thailand

126AF Definitions

In this Division:

producer has the same meaning as in Division 1D of Part VIII.

Thai customs official means a person representing the customs administration of Thailand.

126AG Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to Thailand; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Thailand.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on a producer or exporter of goods.

126AH Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AG to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

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Disclosing records to Thai customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Thailand, disclose any records so produced to a Thai customs official.

126AI Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to Thailand; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Thailand;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Thai customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Thailand, disclose any answers to such questions to a Thai customs official.

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Division 4D—Exportation of goods to New Zealand

126AJA Definitions

In this Division:

manufacture means the creation of an article essentially different from the matters or substances that go into that creation.

New Zealand customs official means a person representing the customs administration of New Zealand.

principal manufacturer of goods means the person in Australia who performs, or has had performed on the person's behalf, the last process of manufacture of the goods, where that last process was not a restoration or renovation process such as repairing, reconditioning, overhauling or refurbishing.

producer means a person who grows, farms, raises, breeds, mines, harvests, fishes, traps, hunts, captures, gathers, collects, extracts, manufactures, processes, assembles, restores or renovates goods.

126AJB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to New Zealand; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in New Zealand.

On whom obligations may be imposed

(2) Regulations made for the purposes of subsection (1) may impose such obligations on the exporter, the principal manufacturer or a producer of the goods.

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126AJC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AJB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to New Zealand customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in New Zealand, disclose any records so produced to a New Zealand customs official.

126AJD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is the exporter, the principal manufacturer or a producer of goods that:

(a) are exported to New Zealand; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in New Zealand;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to New Zealand customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in New Zealand, disclose any answers to such questions to a New Zealand customs official.

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Division 4EAA—Exportation of goods to Parties to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area

126AKDA Definitions

In this Division:

AANZ customs official, for a Party, means a person representing the customs authority of that Party.

Agreement means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Thailand on 27 February 2009, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2010 No. 1 ([2010] ATS 1) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

approved exporter database means the approved exporter database referred to in paragraph 3 of Rule 15 of Annex 3A to Chapter 3 of the Agreement.

customs authority has the meaning given by Article 3 of Chapter 4 of the Agreement.

Declaration of Origin means a Declaration of Origin referred to in paragraph 1 of Rule 1 of Annex 3A to Chapter 3 of the Agreement.

Party means a Party (within the meaning of the Agreement) for which the Agreement has entered into force.

producer means a person who engages in the production of goods.

production has the meaning given by Article 1 of Chapter 3 of the Agreement.

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126AKDB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that are:
  (a) exported to a Party; and
  (b) claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126AKDC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AKDB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to AANZ customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in a Party, disclose any records so produced to an AANZ customs official for that Party.

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126AKDD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that are:

(a) exported to a Party; and

(b) claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to AANZ customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in a Party, disclose any answers to such questions to an AANZ customs official for that Party.

126AKDE Approved exporters and Declarations of Origin

(1) If:

(a) goods are exported to a Party; and

(b) the goods are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party; and

(c) the Party has not implemented paragraph 1(c) of Rule 1 of Annex 3A to Chapter 3 of the Agreement;

the exporter of the goods must not complete a Declaration of Origin for the goods unless the exporter is, under the regulations, an approved exporter.

(2) The regulations may make provision for and in relation to the approval of entities as approved exporters.

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(3) Without limiting subsection (2), the regulations may make provision for and in relation to the following:

(a) the making of applications to the Comptroller-General of Customs by entities for approval as approved exporters and the withdrawal of those applications;

(b) the eligibility criteria that an entity must meet in order for the Comptroller-General to approve the entity as an approved exporter;

(c) the matters that the Comptroller-General must consider in deciding whether to approve an entity as an approved exporter;

(d) the making of decisions by the Comptroller-General in relation to the applications;

(e) the conditions that an approval of an entity as an approved exporter is subject to;

(f) the variation, suspension or termination of an approval of an entity as an approved exporter;

(g) the giving of notice of decisions made by the Comptroller-General;

(h) the review of decisions made by the Comptroller-General.

126AKDF ASEAN Register of Approved Exporters

(1) The Comptroller-General of Customs may maintain a register, to be known as the ASEAN Register of Approved Exporters, containing information (including personal information within the meaning of the *Privacy Act 1988*) that relates to the following:

(a) each entity approved as an approved exporter under regulations made for the purposes of section 126AKDE;

(b) the conditions that an approval of an entity as an approved exporter is subject to;

(c) the variation, suspension or termination of an approval of an entity as an approved exporter.

(2) The Comptroller-General must make any register publicly available.

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(3) The register is not a legislative instrument.

126AKDG Inclusion of information in approved exporter database

The Comptroller-General of Customs may:

(a) include information (including personal information within the meaning of the *Privacy Act 1988*) in the approved exporter database; or

(b) disclose information (including personal information within the meaning of the *Privacy Act 1988*) to a person for the purpose of the information being included in the approved exporter database;

if the information covered by paragraph (a) or (b) relates to the following:

(c) an entity approved as an approved exporter under regulations made for the purposes of section 126AKDE;

(d) the conditions that an approval of an entity as an approved exporter is subject to;

(e) the variation, suspension or termination of an approval of an entity as an approved exporter.

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Division 4DA—Exportation of goods to Peru

126AJE Definitions

In this Division:

Agreement means the Peru-Australia Free Trade Agreement, done at Canberra on 12 February 2018, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Peruvian customs official means a person representing the customs administration of Peru.

producer means a person who engages in the production of goods.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

territory of Peru means territory within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement.

126AJF Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to the territory of Peru; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of Peru.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

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126AJG Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AJF to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Peruvian customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of Peru, disclose any records so produced to a Peruvian customs official.

126AJH Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to the territory of Peru; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of Peru;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

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Disclosing answers to Peruvian customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of Peru, disclose any answers to such questions to a Peruvian customs official.

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Division 4E—Exportation of goods to Chile

126AKA Definitions

In this Division:

Chilean customs official means a person representing the customs administration of Chile.

producer means a person who grows, farms, raises, breeds, mines, harvests, fishes, traps, hunts, captures, gathers, collects, extracts, manufactures, processes or assembles goods.

126AKB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to Chile; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on a producer or exporter of goods.

126AKC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AKB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to

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produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Chilean customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Chile, disclose any records so produced to a Chilean customs official.

126AKD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to Chile; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Chilean customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Chile, disclose any answers to such questions to a Chilean customs official.

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Division 4EA—Exportation of goods to Parties to the Pacific Agreement on Closer Economic Relations Plus

126AKE Definitions

In this Division:

Agreement means the Pacific Agreement on Closer Economic Relations Plus, done at Nuku'alofa, Tonga on 14 June 2017, as amended and in force for Australia from time to time.

Note: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Customs Administration has the meaning given by Article 2 of Chapter 1 of the Agreement.

Pacific Islands customs official, for a Party, means a person representing the Customs Administration of that Party.

Party has the meaning given by Article 2 of Chapter 1 of the Agreement.

producer means a person who engages in the production of goods.

production has the meaning given by Article 1 of Chapter 3 of the Agreement.

126AKF Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to a Party; and

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(b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126AKG Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AKF to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Pacific Islands customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in a Party, disclose any records so produced to a Pacific Islands customs official for that Party.

126AKH Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:
(a) are exported to a Party; and
(b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party;

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to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Pacific Islands customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in a Party, disclose any answers to such questions to a Pacific Islands customs official for that Party.

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Division 4EB—Exportation of goods to Parties to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

126AKI Definitions

In this Division:

Agreement means the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile on 8 March 2018, as amended and in force for Australia from time to time.

Note 1: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Note 2: Under Article 1 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the ***Santiago Agreement***), most of the provisions of the Trans-Pacific Partnership Agreement (the ***Auckland Agreement***), done at Auckland on 4 February 2016, are incorporated, by reference, into and made part of the Santiago Agreement. This means, for example, that Chapters 1 and 3 of the Auckland Agreement are, because of that Article, Chapters 1 and 3 of the Santiago Agreement.

customs administration, of a Party, has the meaning given by Annex 1-A to Chapter 1 of the Agreement.

Party has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

producer means a person who engages in the production of goods.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

territory, for a Party, has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

Trans-Pacific Partnership customs official, for a Party, means a person representing the customs administration of that Party.

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126AKJ Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:

(a) are exported to the territory of a Party; and

(b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126AKK Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AKJ to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Trans-Pacific Partnership customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in a Party, disclose any records so produced to a Trans-Pacific Partnership customs official for that Party.

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126AKL Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to the territory of a Party; and

(b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Trans-Pacific Partnership customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in a Party, disclose any answers to such questions to a Trans-Pacific Partnership customs official for that Party.

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Division 4F—Exportation of goods to Malaysia

126ALA Definitions

In this Division:

Malaysian customs official means a person representing the customs administration of Malaysia.

producer means a person who grows, plants, mines, harvests, farms, raises, breeds, extracts, gathers, collects, captures, fishes, traps, hunts, manufactures, processes or assembles goods.

126ALB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to Malaysia; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Malaysia.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126ALC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126ALB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to

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produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Malaysian customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Malaysia, disclose any records so produced to a Malaysian customs official.

126ALD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to Malaysia; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Malaysia;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Malaysian customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Malaysia, disclose any answers to such questions to a Malaysian customs official.

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Division 4FA—Exportation of goods to Indonesia

126ALE Definitions

In this Division:

Agreement means the Indonesia-Australia Comprehensive Economic Partnership Agreement, done at Jakarta on 4 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Indonesian customs official means a person representing the customs administration of Indonesia.

territory of Indonesia means territory within the meaning, so far as it relates to Indonesia, of Article 1.4 of Chapter 1 of the Agreement.

126ALF Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to the territory of Indonesia; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of Indonesia.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter of goods.

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126ALG Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126ALF to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Indonesian customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of Indonesia, disclose any records so produced to an Indonesian customs official.

126ALH Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter of goods that:

(a) are exported to the territory of Indonesia; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of Indonesia;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

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Disclosing answers to Indonesian customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of Indonesia, disclose any answers to such questions to an Indonesian customs official.

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Division 4G—Exportation of goods to Korea

126AMA Definitions

In this Division:

Korea means the Republic of Korea.

Korean customs official means a person representing the customs administration of Korea.

producer means a person who grows, mines, harvests, fishes, breeds, raises, traps, hunts, manufactures, processes, assembles or disassembles goods.

126AMB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to Korea; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Korea.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126AMC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AMB to produce to the officer such of those records as the officer requires.

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Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Korean customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Korea, disclose any records so produced to a Korean customs official.

126AMD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to Korea; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Korea;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Korean customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Korea, disclose any answers to such questions to a Korean customs official.

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Division 4GA—Exportation of goods to India

126AME Definitions

In this Division:

Agreement means the India-Australia Economic Cooperation and Trade Agreement, done on 2 April 2022, as amended from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs administration for India means customs administration within the meaning, so far as it relates to India, of Article 4.1 of Chapter 4 of the Agreement.

Indian customs official means a person representing the customs administration for India.

producer means a person who engages in the production of goods.

production has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

territory of India means territory within the meaning, so far as it relates to India, of Article 1.3 of Chapter 1 of the Agreement.

126AMF Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to the territory of India; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of India.

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On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126AMG Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AMF to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Indian customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of India, disclose any records so produced to an Indian customs official.

126AMH Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to the territory of India; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of India;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

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Disclosing answers to Indian customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of India, disclose any answers to such questions to an Indian customs official.

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Division 4H—Exportation of goods to Japan

126ANA Definitions

In this Division:

Japanese customs official means a person representing the customs administration of Japan.

producer means a person who manufactures, assembles, processes, raises, grows, breeds, mines, extracts, harvests, fishes, traps, gathers, collects, hunts or captures goods.

126ANB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to Japan; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Japan.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126ANC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126ANB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to

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produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Japanese customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Japan, disclose any records so produced to a Japanese customs official.

126AND Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to Japan; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Japan;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Japanese customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Japan, disclose any answers to such questions to a Japanese customs official.

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Division 4J—Exportation of goods to China

126AOA Definitions

In this Division:

Agreement means the China-Australia Free Trade Agreement, done at Canberra on 17 June 2015, as amended from time to time.

Note: The Agreement could in 2015 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Chinese customs official means a person representing the customs administration of the territory of China.

producer means a person who grows, raises, mines, harvests, fishes, farms, traps, hunts, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles goods.

territory of China means territory within the meaning, so far as it relates to China, of Article 1.3 of the Agreement, and does not include the customs territory of the following members of the World Trade Organization established by the World Trade Organization Agreement:

(a) Hong Kong, China;
(b) Macao, China;
(c) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

World Trade Organization Agreement means the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The Agreement is in Australian Treaty Series 1995 No. 8 ([1995] ATS 8) and could in 2015 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

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126AOB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to the territory of China; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of China.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126AOC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AOB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Chinese customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of China, disclose any records so produced to a Chinese customs official.

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126AOD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to the territory of China; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of China;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Chinese customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of China, disclose any answers to such questions to a Chinese customs official.

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Division 4K—Exportation of goods to Hong Kong, China

126APA Definitions

In this Division:

Agreement means the Free Trade Agreement between Australia and Hong Kong, China, done at Sydney on 26 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Area of Hong Kong, China means Area within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement, as affected by the following letters related to the geographical application of the Agreement for Hong Kong, China:

(a) a letter to the Minister for Trade, Tourism, and Investment from the Secretary for Commerce and Economic Development, Hong Kong Special Administrative Region, The People's Republic of China dated 26 March 2019;

(b) a letter to that Secretary from that Minister dated 26 March 2019.

Note: The letters could in 2019 be viewed on the website of the Department of Foreign Affairs and Trade.

Hong Kong, China customs official means a person representing the customs administration of Hong Kong, China.

producer means a person who engages in the production of goods.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

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126APB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to the Area of Hong Kong, China; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the Area of Hong Kong, China.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126APC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126APB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Hong Kong, China customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the Area of Hong Kong, China, disclose any records so produced to a Hong Kong, China customs official.

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126APD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to the Area of Hong Kong, China; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the Area of Hong Kong, China;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Hong Kong, China customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the Area of Hong Kong, China, disclose any answers to such questions to a Hong Kong, China customs official.

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Division 4L—Exportation of goods to Parties to the Regional Comprehensive Economic Partnership Agreement

126AQA Definitions

In this Division:

Agreement means the Regional Comprehensive Economic Partnership Agreement, done on 15 November 2020, as amended and in force for Australia from time to time.

Note: The Agreement could in 2021 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

approved exporter database means the approved exporter database referred to in paragraph 6 of Article 3.21 of Chapter 3 of the Agreement.

customs authority has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

Declaration of Origin means a Declaration of Origin referred to in paragraph 1 of Article 3.16 of Chapter 3 of the Agreement.

Party has the meaning given by Article 1.2 of Chapter 1 of the Agreement.

producer means a person who engages in the production of goods.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

RCEP customs official, for a Party, means a person representing the customs authority of that Party.

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126AQB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to a Party; and
  (b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126AQC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AQB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to RCEP customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in a Party, disclose any records so produced to a RCEP customs official for that Party.

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126AQD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to a Party; and

(b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to RCEP customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in a Party, disclose any answers to such questions to a RCEP customs official for that Party.

126AQE Approved exporters and Declarations of Origin

(1) If:

(a) goods are exported to a Party; and

(b) the goods are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party; and

(c) the Party has not implemented paragraph 1(c) of Article 3.16 of Chapter 3 of the Agreement;

the exporter of the goods must not complete a Declaration of Origin for the goods unless the exporter is, under the regulations, an approved exporter.

(2) The regulations may make provision for and in relation to the approval of entities as approved exporters.

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(3) Without limiting subsection (2), the regulations may make provision for and in relation to the following:

(a) the making of applications to the Comptroller-General of Customs by entities for approval as approved exporters and the withdrawal of those applications;

(b) the eligibility criteria that an entity must meet in order for the Comptroller-General to approve the entity as an approved exporter;

(c) the matters that the Comptroller-General must consider in deciding whether to approve an entity as an approved exporter;

(d) the making of decisions by the Comptroller-General in relation to the applications;

(e) the conditions that an approval of an entity as an approved exporter is subject to;

(f) the variation, suspension or termination of an approval of an entity as an approved exporter;

(g) the giving of notice of decisions made by the Comptroller-General;

(h) the review of decisions made by the Comptroller-General.

126AQF RCEP Register of Approved Exporters

(1) The Comptroller-General of Customs may maintain a register, to be known as the RCEP Register of Approved Exporters, containing information (including personal information within the meaning of the *Privacy Act 1988*) that relates to the following:

(a) each entity approved as an approved exporter under regulations made for the purposes of section 126AQE;

(b) the conditions that an approval of an entity as an approved exporter is subject to;

(c) the variation, suspension or termination of an approval of an entity as an approved exporter.

(2) The Comptroller-General must make any register publicly available.

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(3) The register is not a legislative instrument.

126AQG Inclusion of information in approved exporter database

The Comptroller-General of Customs may:

(a) include information (including personal information within the meaning of the *Privacy Act 1988*) in the approved exporter database; or

(b) disclose information (including personal information within the meaning of the *Privacy Act 1988*) to a person for the purpose of the information being included in the approved exporter database;

if the information covered by paragraph (a) or (b) relates to the following:

(c) an entity approved as an approved exporter under regulations made for the purposes of section 126AQE;

(d) the conditions that an approval of an entity as an approved exporter is subject to;

(e) the variation, suspension or termination of an approval of an entity as an approved exporter.

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Division 4M—Exportation of goods to the United Kingdom

126ARA Definitions

In this Division:

Agreement means the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, as amended from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs authority for the United Kingdom means customs authority within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement.

producer means a person who engages in the production of goods.

production has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

territory of the United Kingdom means territory within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement.

United Kingdom customs official means a person representing the customs authority for the United Kingdom.

126ARB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
  (a) are exported to the territory of the United Kingdom; and
  (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of the United Kingdom.

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On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126ARC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126ARB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to United Kingdom customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of the United Kingdom, disclose any records so produced to a United Kingdom customs official.

126ARD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to the territory of the United Kingdom; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of the United Kingdom;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

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Disclosing answers to United Kingdom customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of the United Kingdom, disclose any answers to such questions to a United Kingdom customs official.

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Division 4N—Exportation of goods to the United Arab Emirates

126ASA Definitions

In this Division:

Agreement means the Comprehensive Economic Partnership Agreement between Australia and the United Arab Emirates, done at Canberra on 6 November 2024, as amended from time to time.

Note: The Agreement could in 2025 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

producer means a person who engages in the production of goods.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

territory of the United Arab Emirates means territory within the meaning, so far as it relates to the United Arab Emirates, of Article 1.2 of Chapter 1 of the Agreement.

UAE customs administration means customs administration within the meaning, so far as it relates to the United Arab Emirates, of Article 4.1 of Chapter 4 of the Agreement.

UAE customs official means a person representing the UAE customs administration.

126ASB Record keeping obligations

Regulations may prescribe record keeping obligations

(1) The regulations may prescribe record keeping obligations that apply in relation to goods that:

(a) are exported to the territory of the United Arab Emirates; and

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(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of the United Arab Emirates.

On whom obligations may be imposed

(2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126ASC Power to require records

Requirement to produce records

(1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126ASB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to UAE customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of the United Arab Emirates, disclose any records so produced to a UAE customs official.

126ASD Power to ask questions

Power to ask questions

(1) An authorised officer may require a person who is an exporter or producer of goods that:

(a) are exported to the territory of the United Arab Emirates; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of the United Arab Emirates;

to answer questions in order to verify the origin of the goods.

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Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to UAE customs official

(2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of the United Arab Emirates, disclose any answers to such questions to a UAE customs official.

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Division 5—Miscellaneous

126A Export of installations

(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; or

(c) an offshore electricity installation is taken from a place in Australia into the Commonwealth offshore 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.

126B Export of goods from installations

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

126C Size of exporting vessel

(1) Goods subject to customs control must not be exported in a ship of less than 50 tons gross registered.

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Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply if the Comptroller-General of Customs has given written permission for the export of the goods in that way.

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Customs Act 1901

No. 6, 1901

Compilation No. 192

Compilation date: 27 August 2026

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This compilation is in 5 volumes

Volume 1:	Parts I to VI sections 1 to 126C
Volume 2:	**Parts IVA to XI** **sections 126D to 183UAA**
Volume 3:	Parts XII to XVA sections 183UA to 269SK
Volume 4:	Parts XVB to XVII sections 269SM to 279 Schedule
Volume 5:	Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This compilation

This is a compilation of the *Customs Act 1901* that shows the text of the law as amended and in force on 27 August 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part VIA—Electronic communications

126D Comptroller-General of Customs to maintain information systems

The Comptroller-General of Customs must establish and maintain such information systems as are necessary to enable persons to communicate electronically with the Department.

126DA Communications standards and operation

(1) After consulting with persons likely to be affected, the Comptroller-General of Customs must determine, and cause to be published in the *Gazette*:

(a) the information technology requirements that have to be met by persons who wish to communicate with the Department electronically; and

(c) the information technology requirements that have to be met to satisfy a requirement that a person's signature be given to the Department in connection with information when the information is communicated electronically; and

(d) the information technology requirements that have to be met to satisfy a requirement that a document be produced to the Department when the document is produced electronically.

(2) The Comptroller-General of Customs may:

(a) determine alternative information technology requirements that may be used; and

(b) without limiting paragraph (a), determine different information technology requirements that may be used in different circumstances or by different classes of persons.

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126DB Authentication of certain electronic communications

An electronic communication that is made to the Department and is required or permitted by this Act is taken to be made by a particular person, even though the person did not authorise the communication, if:

(a) the communication meets the information technology requirements that the Comptroller-General of Customs has determined under section 126DA have to be met to satisfy a requirement that the person's signature be given to the Department in connection with information in the communication; and

(b) the person did not notify the Department of a breach of security relating to those information technology requirements before the communication;

unless the person provides evidence to the contrary.

126DC Records of certain electronic communications

(1) The Comptroller-General of Customs must keep a record of each electronic communication made as required or permitted by this Act. The Comptroller-General of Customs must keep the record for 5 years after the communication is made.

Note: It does not matter whether the communication is made to the Department or by the Department or a Collector.

Evidentiary value of the record

(2) The record kept is admissible in proceedings under this Act.

(3) In proceedings under this Act, the record is prima facie evidence that a particular person made the statements in the communication, if the record purports to be a record of an electronic communication that:

(a) was made to the Department; and

(b) met the information technology requirements that the Comptroller-General of Customs has determined under section 126DA have to be met to satisfy a requirement that

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the person's signature be given to the Department in connection with information in the communication.

(4) In proceedings under this Act, the record is prima facie evidence that the Department or a Collector made the statements in the communication, if the record purports to be a record of an electronic communication that was made by the Department or a Collector.

126DD Authentication, records and *Electronic Transactions Act 1999*

Sections 126DB and 126DC have effect despite section 15 of the *Electronic Transactions Act 1999*.

126E Communication to Department when information system is temporarily inoperative

(1) If:

(a) an information system becomes temporarily inoperative; or

(b) an information system that has become temporarily inoperative again becomes operative;

the Comptroller-General of Customs must cause notice of the occurrence to be given:

(c) on the Department's website; and

(d) where practicable, by email to persons who communicate with the Department electronically.

(2) If an information system is temporarily inoperative, information that a person could otherwise have communicated electronically to the Department by means of the system may be communicated to the Department in either of the following ways:

(a) if another information system by means of which the person can communicate information to the Department is operative—electronically by means of that other system;

(b) by document given or sent to an officer doing duty in relation to the matter to which the information relates.

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(3) If:

(a) because an information system is temporarily inoperative, a person communicates information to an officer by document in accordance with paragraph (2)(b); and

(b) the Comptroller-General of Customs causes notice to be given under paragraph (1)(b) stating that the information system has again become operative;

the person must communicate the information electronically to the Department within 24 hours after the notice was given.

Penalty: 50 penalty units.

126F Payment when information system is temporarily inoperative

(1) This section applies when a person who is liable to make a payment to the Commonwealth and would ordinarily make the payment electronically is unable to do so because an information system is temporarily inoperative.

(2) The person may give an undertaking to the Comptroller-General of Customs to make the payment as soon as practicable after, and in any case not later than 24 hours after, the Comptroller-General of Customs causes notice to be given under paragraph 126E(1)(b) stating that the information system has again become operative.

(3) If the person is notified by an officer of Customs that the undertaking is accepted:

(a) this Act has the effect that it would have if the payment had been made; and

(b) the person must comply with the undertaking.

Penalty: 50 penalty units.

126G Meaning of *temporarily inoperative*

An information system that has become inoperative is not taken to be ***temporarily inoperative*** for the purposes of this Part unless the Comptroller-General of Customs is satisfied that the period for which it has been, or is likely to be, inoperative is significant.

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126H Comptroller-General of Customs may arrange for use of computer programs to make decisions etc.

(1) The Comptroller-General of Customs may arrange for the use, under the control of the Comptroller-General of Customs, of computer programs for any purposes for which the Comptroller-General of Customs, a Collector or an officer may, or must, under the provisions mentioned in subsection (3):

(a) make a decision; or

(b) exercise any power, or comply with any obligation; or

(c) do anything else related to making a decision, exercising a power, or complying with an obligation.

(2) The Comptroller-General of Customs, Collector or officer (as the case requires) is taken to have:

(a) made a decision; or

(b) exercised a power, or complied with an obligation; or

(c) done something else related to the making of a decision, the exercise of a power, or the compliance with an obligation;

that was made, exercised, complied with, or done (as the case requires) by the operation of a computer program under an arrangement made under subsection (1).

(3) For the purposes of subsection (1), the provisions are:

(a) Parts IV and VI; and

(b) any provision of this Act or of the regulations that the Comptroller-General of Customs, by legislative instrument, determines for the purposes of this paragraph.

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Part VII—Ships' stores and aircraft's stores

127 Use of ships' and aircraft's stores

(1) Ships' stores and aircraft's stores, whether shipped in a place outside Australia or in Australia:

(a) shall not be unshipped or unloaded; and

(b) shall not 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: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply if the Collector has approved the unshipping, unloading or use.

(4) An approval under subsection (3) may only be given on application under subsection (5).

(5) The master or owner of a ship, or the pilot or owner of an aircraft, may apply for an approval under subsection (3) in respect of the ship or aircraft.

(5A) An application under subsection (5) may be made by document or electronically.

(6) A documentary application under subsection (5) must:

(a) be in writing; and

(b) be in an approved form; and

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

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

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(6A) An electronic application under subsection (5) must communicate such information as is set out in an approved statement.

(7) The Comptroller-General of Customs may approve different forms for documentary applications, and different statements for electronic applications, to be made under subsection (5) in different circumstances, by different kinds of masters or owners of ships or pilots or owners of aircraft or in respect of different kinds of ships or aircraft.

(8) An approval given to a person under subsection (3) is subject to any conditions specified in the approval, 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.

(9) A person commits an offence of strict liability if:

(a) the person is the holder of an approval under subsection (3); and

(b) the person does an act or omits to do an act; and

(c) the act or omission breaches a condition of the approval.

Penalty for contravention of this subsection: 60 penalty units.

128 Unshipment of ships' and aircraft's stores

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

(a) for home consumption; or

(b) for warehousing.

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

(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

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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.

Note: See subsections (4) to (5A) for application requirements.

(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 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 or she commits an offence against this Act punishable, upon conviction, by a penalty not exceeding 60 penalty units; and

(b) if he or she 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.

(3A) Subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(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.

(4A) An application under subsection (1) may be made by document or electronically.

(5) A documentary application under subsection (1) must:

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(a) be in writing; and
(b) be in an approved form; and
(c) contain such information as the form requires; and
(d) be signed in the manner indicated in the form.

(5A) An electronic application under subsection (1) must communicate such information as is set out in an approved statement.

(6) The Comptroller-General of Customs may approve different forms for documentary applications, and different statements for electronic applications, to be made under subsection (1) in different circumstances, by different kinds of masters or owners of ships or pilots or owners of aircraft or in respect of different kinds of ships or aircraft.

130 Ship's and aircraft's stores exempt from duty

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

130A Entry not required for ship's or aircraft's stores

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.

130B Payment of duty on ship's or aircraft's stores

(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

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had been entered for home consumption on the day on which the demand was made.

(2) The master or owner of a ship, if so directed by an officer, must give to a Collector a return, in accordance with the approved form, relating to the ship's stores of the ship and to goods taken on board the ship as ship's stores.

(2AA) The return referred to in subsection (2) must include details of any:

(a) drugs that are prohibited imports; and

(b) firearms; and

(c) ammunition;

that are ship's stores of the ship or have been taken on board the ship as ship's stores.

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

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

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

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

(b) immediately before the departure of the aircraft from Australia, give to a Collector a return, in accordance with the approved 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) commits an offence punishable upon conviction by a penalty not exceeding 60 penalty units.

(3A) Subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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

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130C Interpretation

In this Part:

aircraft does not include:

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

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

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

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

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

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

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

ship does not include:

(a) a ship that is not currently engaged in making international voyages; or

(b) a ship that is currently engaged in making international voyages but is about to make a voyage other than an international voyage.

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

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Part VIII—The duties

Division 1—The payment and computation of duties generally

131A Fish caught by Australian ships

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 customs control.

131AA No duty on goods for Timor Sea petroleum activities purpose

(1) Goods taken out of Australia for the Timor Sea petroleum activities purpose 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 Timor Sea petroleum activities purpose are not liable to any duty of Customs in relation to the bringing of the goods into Australia.

131B Liability of Commonwealth authorities to pay duties of Customs

(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

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(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).

132 Rate of import duty

(1) Subject to this section and to sections 105C and 132B, the rate of any import duty payable on goods is the rate of the duty in force when the goods are entered for home consumption.

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

(3) For the purposes of this section, if an entry for home consumption in respect of goods is withdrawn under section 71F and the goods are subsequently entered for warehousing, the entry for home consumption is to be disregarded.

(4) The rate of any import duty on goods about which the owner, or a person acting on behalf of the owner, is required by section 71 to provide information is the rate of the duty in force at the later of the following times (or either of them if they are the same):

(a) the time when the information is provided;

(b) the time when the goods arrive in Australia.

(5) The rate of any import duty on goods:

(a) that are goods of a kind referred to in paragraph 68(1)(e); and

(b) about which neither the owner, nor any person acting on behalf of the owner, is required to provide information;

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is the rate of duty in force at the time when the goods arrive in Australia.

132AA When import duty must be paid

General rule

(1) Import duty payable on goods described in an item of the following table must be paid by the time indicated in the item. Import duty on goods covered by both items 1 and 2 is payable by the time indicated in item 2.

When import duty must be paid

Item	Description of goods	Time by which duty on goods must be paid
1	Goods entered for home consumption	Time of entry of the goods for home consumption
2	Goods prescribed by the regulations and entered for home consumption	Time worked out under the regulations made for the purposes of this item
3	Goods about which the owner, or a person acting on behalf of the owner, is required by section 71 to provide information	When the information is provided, or when the goods arrive in Australia, whichever is later
4	Goods of a kind referred to in paragraph 68(1)(e) that are not covered by item 3	Time of delivery of the goods into home consumption

Note: The regulations may prescribe goods by reference to classes, and may provide for different times for payment for different classes of goods. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

Regulations prescribing goods

(2) For the purposes of subsection (1), goods may be prescribed by reference to a class identified by reference to characteristics or actions of the persons importing goods in the class. This does not limit the ways in which goods may be prescribed.

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Regulations setting time for payment of duty

(3) For the purposes of subsection (1), the regulations may provide for the time by which import duty must be paid to be worked out by reference to a time specified by the Comptroller-General of Customs. This does not limit the ways in which the regulations may provide for working out that time.

Exceptions to this section

(4) Subsection (1) has effect subject to the provisions listed in column 2 of the following table:

Exceptions to this section

Column 1 Item	Column 2 Provisions	Column 3 Subject
1	paragraphs 69(8)(h) and 70(7)(b)	payment of duty on certain goods delivered into home consumption without entry for home consumption
3	section 162A	temporary importation of goods without paying duty

132A Prepayment of duty

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.

132B Declared period quotas—effect on rates of import duty

(1) If at any time the Comptroller-General of Customs 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-General of

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

(4) Where, during a declared period, a person enters goods for home consumption, being goods of a kind in respect of which there is no quota order in force that is applicable to that person for the declared period, the Comptroller-General of Customs may, before authority to deal with the goods is given under section 71C and whether or not the declared period has expired, make, under subsection (3), a quota order that is applicable to that person for that declared period in respect of goods of that kind, and a quota order so made shall, unless the contrary intention appears in the order, be deemed to have come into force immediately before the time of entry of the goods.

(5) In making a quota order under subsection (3), or revoking or varying a quota order under section 132C, with respect to a person, the Comptroller-General of Customs 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

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during any other period that the Comptroller-General of Customs considers relevant, the person has entered for home consumption, and to such other matters as the Comptroller-General of Customs 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

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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 Commonwealth has the right, before authority to deal with the goods is given under section 71C, 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 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.

132C Revocation and variation of quota orders

(1) The Comptroller-General of Customs may, by writing under his or her hand, revoke or vary a quota order at any time before the expiration of the declared period to which the quota order relates.

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

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

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(4) Subject to 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-General of Customs 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.

132D Service of quota orders etc.

The Comptroller-General of Customs shall, as soon as practicable after he or she 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.

133 Export duties

(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.

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134 Weights and measures

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.

135 Proportion

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.

136 Manner of fixing duty

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.

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

(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

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(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

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(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, a Collector 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-General of Customs 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.

142 Measurement for duty

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.

145 Value of goods sold

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.

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148 Derelict goods dutiable

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.

149 Duty on goods in report of cargo that are not produced or landed

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

(2) For the purposes of sections 132 and 132AA, 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.

150 Samples

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

152 Alterations to agreements where duty altered

(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.

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(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*.

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Division 1AA—Calculation of duty on certain alcoholic beverages

153AA Meaning of *alcoholic beverage*

In this Division:

alcoholic beverage has the meaning given by the regulations.

153AB Customs duty to be paid according to labelled alcoholic strength of prescribed alcoholic beverages

(1) If:

(a) an alcoholic beverage is entered for home consumption or delivered into home consumption in accordance with a permission given under section 69; and

(b) the percentage by volume of the alcoholic content of the beverage indicated on the beverage's label exceeds the actual percentage by volume of the alcoholic content of the beverage;

customs duty is to be charged according to the percentage by volume of alcoholic content indicated on the label.

(2) If:

(a) an alcoholic beverage is entered for or delivered into home consumption in a labelled form and an unlabelled form; and

(b) subsection (1) applies to the beverage in its labelled form;

then subsection (1) applies to the beverage in its unlabelled form as if it had been labelled and the label had indicated the same percentage by volume of alcoholic content as is indicated on the beverage in its labelled form.

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153AC Rules for working out strength of prescribed alcoholic beverages

(1) The Comptroller-General of Customs may, by instrument in writing, determine, in relation to an alcoholic beverage included in a class of alcoholic beverages, rules for working out the percentage by volume of alcohol in the beverage.

(2) Without limiting the generality of subsection (1), rules determined by the Comptroller-General of Customs for working out the percentage by volume of alcohol in an alcoholic beverage:

(a) may specify sampling methods; and

(b) may, for the purposes of working out the customs duty payable, permit minor variations between the nominated or labelled volume of alcohol in the beverage and the actual volume of alcohol in the beverage so as to provide for unavoidable variations directly attributable to the manufacturing process.

(3) The Comptroller-General of Customs may make different determinations for alcoholic beverages included in different classes of alcoholic beverages.

(4) A determination applicable to an alcoholic beverage included in a class of alcoholic beverages applies only to an alcoholic beverage in that class that is entered for, or delivered into, home consumption on or after the making of the determination.

(5) The Comptroller-General of Customs makes a determination public:

(a) by publishing it; and

(b) by publishing notice of it in the *Gazette*.

(6) The notice in the *Gazette* must include a brief description of the contents of the determination.

(7) The determination is made at the later of the time when it is published and the time when notice of it is published in the *Gazette*.

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153AD Obscuration

If, in the opinion of the Collector, the strength of any spirits cannot immediately be accurately ascertained by application of the rules (if any) made for that purpose under section 153AC, the strength may be ascertained after distillation or in any prescribed manner.

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Division 1A—Rules of origin of preference claim goods

153A Purpose of Division

(1) The purpose of this Division is to set out rules for determining whether goods are the produce or manufacture:
  (a) of a particular country other than Australia; or
  (b) of a Developing Country but not of a particular Developing Country.

(2) Goods are not the produce or manufacture of a country other than Australia unless, under the rules as so set out, they are its produce or manufacture.

153B Definitions

In this Division:

allowable factory cost, in relation to preference claim goods and to the factory at which the last process of their manufacture was performed, means the sum of:
  (a) the allowable expenditure of the factory on materials in respect of the goods worked out under section 153D; and
  (b) the allowable expenditure of the factory on labour in respect of the goods worked out under section 153F; and
  (c) the allowable expenditure of the factory on overheads in respect of the goods worked out under section 153G.

Developing Country has the same meaning as in the *Customs Tariff Act 1995*.

factory, in relation to preference claim goods, means:
  (a) if the goods are claimed to be the manufacture of a particular preference country—the place in that country where the last process in the manufacture of the goods was performed; and
  (b) if the goods are claimed to be the manufacture of a preference country that is a Developing Country but not a

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particular Developing Country—the place in Papua New Guinea or in a Forum Island Country where the last process in the manufacture of the goods was performed.

Forum Island Country has the same meaning as in the *Customs Tariff Act 1995*.

inner container includes any container into which preference claim goods are packed, other than a shipping or airline container, pallet or other similar article.

Least Developed Country has the same meaning as in the *Customs Tariff Act 1995*.

manufacturer, in relation to preference claim goods, means the person undertaking the last process in their manufacture.

materials, in relation to preference claim goods, means:

(a) if the goods are unmanufactured raw products—those products; and

(b) if the goods are manufactured goods—all matter or substances used or consumed in the manufacture of the goods (other than that matter or those substances that are treated as overheads); and

(c) in either case—the inner containers in which the goods are packed.

person includes partnerships and unincorporated associations.

preference claim goods means goods that are claimed, when they are entered for home consumption, to be the produce or manufacture of a preference country.

preference country has the same meaning as in the *Customs Tariff Act 1995*.

qualifying area, in relation to particular preference claim goods, means:

(b) if the goods are claimed to be the manufacture of Canada—Canada and Australia; or

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(c) if the goods are claimed to be the manufacture of Papua New Guinea—Papua New Guinea, the Forum Island Countries, New Zealand and Australia; or

(d) if the goods are claimed to be the manufacture of a Forum Island Country—the Forum Island Countries, Papua New Guinea, New Zealand and Australia; or

(e) if the goods are claimed to be the manufacture of a particular Developing Country—the Developing Country, Papua New Guinea, the Forum Island Countries, the other Developing Countries and Australia; or

(f) if the goods are claimed to be the manufacture of a Developing Country but not a particular Developing Country—Papua New Guinea, the Forum Island Countries, the Developing Countries and Australia; or

(fa) if goods are claimed to be the manufacture of a Least Developed Country—the Developing Countries, the Forum Island Countries and Australia; or

(g) if the goods are claimed to be the manufacture of a country that is not a preference country—that country and Australia.

total factory cost, in relation to preference claim goods, means the sum of:

(a) the total expenditure of the factory on materials in respect of the goods, worked out under section 153C; and

(b) the allowable expenditure of the factory on labour in respect of the goods, worked out under section 153F; and

(c) the allowable expenditure of the factory on overheads in respect of the goods, worked out under section 153G.

153C Total expenditure of factory on materials

The total expenditure of a factory on materials in respect of preference claim goods is the cost to the manufacturer of the materials in the form they are received at the factory, worked out under section 153E.

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153D Allowable expenditure of factory on materials

General rule for determining allowable expenditure of a factory on materials

(1) Subject to the exceptions set out in this section, the allowable expenditure of a factory on materials in respect of preference claim goods is the cost to the manufacturer of those materials in the form they are received at the factory, worked out under section 153E.

Goods wholly or partly manufactured from materials imported from outside the qualifying area

(2) If:

(a) preference claim goods (other than goods wholly manufactured from unmanufactured raw products) are manufactured, in whole or in part, from particular materials; and

(b) those particular materials, in the form they are received at the factory, are imported from a country outside the qualifying area;

there is no allowable expenditure of the factory on those particular materials.

Goods claimed to be the manufacture of a Least Developed Country—special rule

(2A) If:

(a) goods claimed to be the manufacture of a Least Developed Country contain materials that, in the form they were received by the factory, were manufactured or produced in Developing Countries that are not Least Developed Countries; and

(b) the allowable expenditure of the factory on those materials in aggregate would, but for this subsection, exceed 25% of the total factory cost of the goods;

that allowable expenditure on those materials is taken to be 25% of the total factory cost of the goods.

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Inland freight rule

(3) If:

(a) preference claim goods are manufactured, in whole or in part, from particular materials; and

(b) the preference country is Papua New Guinea or a Forum Island Country; and

(ba) the goods are claimed to be the manufacture of Papua New Guinea or a Forum Island Country; and

(c) those particular materials:

(i) were imported into the preference country from a country outside the qualifying area; or

(ii) incorporate other materials (***contributing materials***) imported into the preference country from a country outside the qualifying area;

then, despite subsection (2), the allowable expenditure of the factory on those particular materials includes:

(d) the cartage of those particular materials; or

(e) the part of the cost of those particular materials that is attributable to the cartage of those contributing materials;

from the port or airport in the preference country where those particular materials or contributing materials are first landed to the factory or to the plant where they are processed or first processed.

Goods wholly or partly manufactured from materials imported from outside the qualifying area—intervening manufacture

(4) If:

(a) preference claim goods are manufactured, in whole or in part, from particular materials; and

(b) other materials (***contributing materials***) have been incorporated in those particular materials; and

(c) those contributing materials were imported into a country in the qualifying area from a country outside the qualifying area; and

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(d) after their importation and to achieve that incorporation, those contributing materials have been subjected to a process of manufacture, or a series of processes of manufacture, in the qualifying area without any intervening exportation to a country outside that area;

the allowable expenditure of the factory on those particular materials in the form they are received at the factory does not include any part of the cost of those particular materials to the manufacturer, worked out under section 153E, that is attributable to the cost of those contributing materials in the form in which the contributing materials were received by the person who subjected them to their first manufacturing process in the qualifying area after importation.

Intervening export of contributing materials

(5) If contributing materials within the meaning of subsection (4) are, after their importation into a country in the qualifying area and before their incorporation into the particular materials from which preference claim goods are manufactured, subsequently exported to a country outside that area, then, on their reimportation into a country in the qualifying area, subsection (2) or (4), as the case requires, applies as if that subsequent reimportation were the only importation of those materials.

(6A) If:

(a) goods claimed to be the manufacture of Papua New Guinea or a particular Forum Island Country are manufactured, in whole or in part, from particular materials; and

(b) if the qualifying area for that country consisted only of that country and Australia—under subsection (4), the allowable expenditure of the factory on those particular materials, after excluding any costs required to be excluded under subsection (4), would be at least 50% of the total expenditure of the factory on those particular materials worked out in accordance with section 153C;

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then, despite subsection (4), the allowable expenditure of the factory on those particular materials is taken to be that total expenditure.

Waste or scrap

(7) If:

(a) materials are imported into a country; and

(b) the subjecting of those materials to a process of manufacture gives rise to waste or scrap; and

(c) that waste or scrap is fit only for the recovery of raw materials;

any raw materials that are so recovered in that country are to be treated, for the purposes of this section, as if they were unmanufactured raw products of that country.

Transhipment

(8) If, in the course of their exportation from one country to another country, materials are transhipped, that transhipment is to be disregarded for the purpose of determining, under this section, the country from which the materials were exported.

153E Calculation of the cost of materials received at a factory

Purpose of section

(1) This section sets out, for the purposes of sections 153C and 153D, the rules for working out the cost of materials in the form they are received at a factory.

General rule

(2) Subject to this section, the cost of materials received at a factory is the amount paid or payable by the manufacturer in respect of the materials in the form they are so received.

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Customs and excise duties and certain other taxes to be disregarded

(3) Any part of the cost of materials in the form they are received at a factory that represents:

(a) a customs or excise duty; or

(b) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty;

imposed on the materials by a country in the qualifying area is to be disregarded.

Comptroller-General of Customs may require artificial elements of cost to be disregarded

(4) If the Comptroller-General of Customs is satisfied that preference claim goods consist partly of materials added or attached solely for the purpose of artificially raising the allowable factory cost of the goods, the Comptroller-General of Customs may, by written notice given to the importer of the preference claim goods, require the part of that cost that is, in the opinion of the Comptroller-General of Customs, reasonably attributable to those materials, to be disregarded.

Comptroller-General of Customs may require cost over normal market value to be disregarded

(5) If the Comptroller-General of Customs is satisfied that the cost to the manufacturer of materials in the form they are received at a factory exceeds, by an amount determined by the Comptroller-General of Customs, the normal market value of the materials, the Comptroller-General of Customs may, by written notice given to the importer of preference claim goods in which those materials are incorporated, require the excess to be disregarded.

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Comptroller-General of Customs may determine cost of certain materials received at a factory

(6) If the Comptroller-General of Customs is satisfied:

(a) that materials in the form they are received at a factory are so received:

(i) free of charge; or

(ii) at a cost that is less than the normal market value of the materials; and

(b) that the receipt of the materials free of charge or at a reduced cost has been arranged, directly or indirectly, by a person who will be the importer of preference claim goods in which those materials are incorporated;

the Comptroller-General of Customs may, by written notice given to the importer, require that an amount determined by the Comptroller-General of Customs to be the difference between the cost, if any, paid by the manufacturer and the normal market value be treated as the amount, or a part of the amount, paid by the manufacturer in respect of the materials.

Effect of determination

(7) If the Comptroller-General of Customs gives a notice to the importer of preference claim goods under subsection (4), (5) or (6) in respect of materials incorporated in those goods, the cost of the materials to the manufacturer must be determined having regard to the terms of that notice.

153F Allowable expenditure of factory on labour

Calculation of allowable expenditure of factory on labour

(1) Allowable expenditure of a factory on labour in respect of preference claim goods means the sum of the part of each cost prescribed for the purposes of this subsection:

(a) that is incurred by the manufacturer of the goods; and

(b) that relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and

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(c) that can reasonably be allocated to the manufacture of the goods.

Regulations may specify manner of working out cost

(2) Regulations prescribing a cost for the purposes of subsection (1) may also specify the manner of working out that cost.

153G Allowable expenditure of factory on overheads

Calculation of allowable expenditure of factory on overheads

(1) Allowable expenditure of a factory on overheads in respect of preference claim goods means the sum of the part of each cost prescribed for the purposes of this subsection:

(a) that is incurred by the manufacturer of the goods; and

(b) that relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and

(c) that can reasonably be allocated to the manufacture of the goods.

Regulations may specify manner of working out cost

(2) Regulations prescribing a cost for the purposes of subsection (1) may also specify the manner of working out that cost.

153H Unmanufactured goods

Goods claimed to be the produce of a country are the produce of that country if they are its unmanufactured raw products.

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153L Manufactured goods originating in Papua New Guinea or a Forum Island Country

Rule for certain goods wholly manufactured in Papua New Guinea

(1) Goods claimed to be the manufacture of Papua New Guinea are the manufacture of that country if they are wholly manufactured in Papua New Guinea from one or more of the following:
  (a) unmanufactured raw products;
  (b) materials wholly manufactured in Australia or Papua New Guinea or Australia and Papua New Guinea;
  (c) materials imported into Papua New Guinea that the Comptroller-General of Customs has determined, by *Gazette* notice, to be manufactured raw materials of Papua New Guinea.

Rule for manufactured goods last processed in PNG or a Forum Island Country

(2) Goods claimed to be the manufacture of Papua New Guinea or of a Forum Island Country are the manufacture of that country if:
  (a) the last process in their manufacture was performed in that country; and
  (b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

Specified percentage

(4) The specified percentage of the total factory cost of goods referred to in subsection (2) is:
  (a) unless paragraph (b) applies—50%; or
  (b) if the goods are of a kind for which the Comptroller-General of Customs has determined, by *Gazette* notice, that a lesser percentage is appropriate—that percentage.

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153LA Modification of section 153L in special circumstances

When 50% in subsection 153L(4) can be read as 48%

(1) If the Comptroller-General of Customs is satisfied:

(a) that the allowable factory cost of preference claim goods in a shipment of such goods that are claimed to be the manufacture of Papua New Guinea or a Forum Island Country is at least 48% but not 50% of the total factory cost of those goods; and

(b) that the allowable factory cost of those goods would be at least 50% of the total factory cost of those goods if an unforeseen circumstance had not occurred; and

(c) that the unforeseen circumstance is unlikely to continue;

the Comptroller-General of Customs may determine, in writing, that section 153L has effect:

(d) for the purpose of the shipment of goods that is affected by that unforeseen circumstance; and

(e) for the purposes of any subsequent shipment of similar goods that is so affected during a period specified in the determination;

as if the reference in subsection 153L(4) to 50% were a reference to 48%.

Effect of determination

(2) If the Comptroller-General of Customs makes a determination, then, in relation to all preference claim goods imported into Australia that are covered by the determination, section 153L has effect in accordance with the determination.

Comptroller-General of Customs may revoke determination

(3) If:

(a) the Comptroller-General of Customs makes a determination; and

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(b) the Comptroller-General of Customs becomes satisfied that the unforeseen circumstance giving rise to the determination no longer continues;

the Comptroller-General of Customs may, by written notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

*Definition of **similar goods***

(4) In this section:

similar goods, in relation to goods in a particular shipment, means goods:

(a) that are contained in another shipment that is imported by the same importer; and

(b) that undergo the same process or processes of manufacture as the goods in the first-mentioned shipment.

153M Manufactured goods originating in a particular Developing Country

Goods claimed to be the manufacture of a particular Developing Country are the manufacture of that country if:

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

(b) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

153N Manufactured goods originating in a Developing Country but not in any particular Developing Country

Goods claimed to be the manufacture of a Developing Country, but not of any particular Developing Country, are the manufacture of a Developing Country, but not a particular Developing Country, if:

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

(b) they are not the manufacture of Papua New Guinea or a Forum Island Country under section 153L; and

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(c) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

153NA Manufactured goods originating in a Least Developed Country

Goods claimed to be the manufacture of a Least Developed Country are the manufacture of that country if:

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

(b) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

153P Manufactured goods originating in Canada

General rule

(1) Despite section 153H and subsections (2) and (3), goods claimed to be the produce or manufacture of Canada are not the produce or manufacture of that country unless:

(a) they have been shipped to Australia from Canada; and

(b) either:

(i) they have not been transhipped; or

(ii) the Comptroller-General of Customs is satisfied that, when they were shipped from Canada, their intended destination was Australia.

Rule for certain manufactured goods wholly manufactured in Canada

(2) Goods claimed to be the manufacture of Canada are the manufacture of that country if they are wholly manufactured in Canada from one or more of the following:

(a) unmanufactured raw products;

(b) materials wholly manufactured in Australia or Canada or Australia and Canada;

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(c) materials imported into Canada that the Comptroller-General of Customs has determined, by *Gazette* notice, to be manufactured raw materials of Canada.

Rule for other manufactured goods last processed in Canada

(3) Goods claimed to be the manufacture of Canada are the manufacture of that country if:

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

(b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

Specified percentage

(4) The specified percentage of the total factory cost of goods referred to in subsection (3) is:

(a) if the goods are of a kind commercially manufactured in Australia—75%; or

(b) if the goods are of a kind not commercially manufactured in Australia—25%.

153Q Manufactured goods originating in a country that is not a preference country

Rule for certain goods wholly manufactured in a country that is not a preference country

(1) Goods claimed to be the manufacture of a country that is not a preference country are the manufacture of that country if they are wholly manufactured in that country from one or more of the following:

(a) unmanufactured raw products;

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

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(c) materials imported into the country that the Comptroller-General of Customs has determined, by *Gazette* notice, to be manufactured raw materials of the country.

Rule for other manufactured goods last processed in a country that is not a preference country

(2) Goods claimed to be the manufacture of a country that is not a preference country are the manufacture of that country if:

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

(b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

Specified percentage

(3) Subject to subsection (4), the specified percentage of the total factory cost of goods referred to in subsection (2) is:

(a) if the goods are of a kind commercially manufactured in Australia—75%; or

(b) if the goods are of a kind not commercially manufactured in Australia—25%.

Special rule for Christmas Island, Cocos (Keeling) Islands and Norfolk Island

(4) If the country that is not a preference country is Christmas Island, Cocos (Keeling) Islands or Norfolk Island, the specified percentage of the total factory cost of goods referred to in subsection (2) is:

(a) if the goods are of a kind commercially manufactured in Australia—50%; or

(b) if the goods are of a kind not commercially manufactured in Australia—25%.

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153R Are goods commercially manufactured in Australia?

Comptroller-General of Customs may determine that goods are, or are not, commercially manufactured in Australia

(1) For the purposes of sections 153P and 153Q, the Comptroller-General of Customs may, by *Gazette* notice, determine that goods of a specified kind are, or are not, commercially manufactured in Australia.

Effect of determination

(2) If such a determination is made, this Division has effect accordingly.

153S Rule against double counting

In determining the allowable factory cost or the total factory cost of preference claim goods, a cost incurred, whether directly or indirectly, by the manufacturer of the goods must not be taken into account more than once.

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Division 1BA—Singaporean originating goods

Subdivision A—Preliminary

153XC Simplified outline of this Division

- This Division defines Singaporean originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Singaporean originating goods if they are wholly obtained or produced entirely in Singapore or in Singapore and Australia.
- Subdivision C provides that goods are Singaporean originating goods if they are produced entirely in Singapore, or in Singapore and Australia, from originating materials only.
- Subdivision D sets out when goods are Singaporean originating goods because they are produced entirely in Singapore, or in Singapore and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Singaporean originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Singaporean originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Singaporean originating goods.

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153XD Interpretation

Definitions

(1) In this Division:

Agreement means the Singapore-Australia Free Trade Agreement done at Singapore on 17 February 2003, as amended from time to time.

Note: The Agreement is in Australian Treaty Series 2003 No. 16 ([2003] ATS 16) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 1 of Chapter 3 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of Singapore that implements the Agreement.

certification of origin means a certificate that is in force and that complies with the requirements of Article 18 of Chapter 3 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

enterprise has the meaning given by Article 1 of Chapter 3 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

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Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

(b) if the table in Annex 2 to the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) catalysts and solvents; and

(e) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(f) tools, dies and moulds; and

(g) spare parts and materials; and

(h) lubricants, greases, compounding materials and other similar goods.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

national, for Singapore, has the same meaning as it has in Chapter 3 of the Agreement.

non-originating materials means goods that are not originating materials.

non-Party has the same meaning as it has in Chapter 3 of the Agreement.

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originating materials means:

(a) Singaporean originating goods that are used in the production of other goods; or

(b) Australian originating goods that are used in the production of other goods; or

(c) recovered goods derived in the territory of Australia, or in the territory of Singapore, and used in the production of, and incorporated into, remanufactured goods; or

(d) indirect materials.

person of Singapore means:

(a) a national of Singapore; or

(b) an enterprise of Singapore.

production means growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling.

recovered goods means goods in the form of one or more individual parts that:

(a) have resulted from the disassembly of used goods; and

(b) have been cleaned, inspected, tested or processed as necessary for improvement to sound working condition.

remanufactured goods means goods that:

(a) are classified to any of Chapters 84 to 90, or to heading 94.02, of the Harmonized System; and

(b) are entirely or partially composed of recovered goods; and

(c) have a similar life expectancy to, and perform the same as or similar to, new goods:

(i) that are so classified; and

(ii) that are not composed of any recovered goods; and

(d) have a factory warranty similar to that applicable to such new goods.

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Singaporean originating goods means goods that, under this Division, are Singaporean originating goods.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 2 of Chapter 1 of the Agreement.

territory of Singapore means territory within the meaning, so far as it relates to Singapore, of Article 2 of Chapter 1 of the Agreement.

Value of goods

(3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(5) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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Subdivision B—Goods wholly obtained or produced entirely in Singapore or in Singapore and Australia

153XE Goods wholly obtained or produced entirely in Singapore or in Singapore and Australia

(1) Goods are ***Singaporean originating goods*** if:

(a) they are wholly obtained or produced entirely in Singapore or in Singapore and Australia; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

(2) Goods are ***wholly obtained or produced entirely in Singapore or in Singapore and Australia*** if, and only if, the goods are:

(a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the territory of Singapore or in the territory of Singapore and the territory of Australia; or

(b) live animals born and raised in the territory of Singapore or in the territory of Singapore and the territory of Australia; or

(c) goods obtained in the territory of Singapore from live animals referred to in paragraph (b); or

(d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of Singapore; or

(e) goods obtained from aquaculture conducted in the territory of Singapore; or

(f) minerals, or other naturally occurring substances, extracted or taken from the territory of Singapore; or

(g) fish, shellfish or other marine life taken from the high seas by vessels that are entitled to fly the flag of Singapore; or

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(h) goods produced, from goods referred to in paragraph (g), on board factory ships that are registered, listed or recorded with Singapore and are entitled to fly the flag of Singapore; or

(i) goods, other than fish, shellfish or other marine life, taken by Singapore, or a person of Singapore, from the seabed, or subsoil beneath the seabed, outside the territory of Singapore, and beyond areas over which non-Parties exercise jurisdiction, but only if Singapore, or the person of Singapore, has the right to exploit that seabed or subsoil in accordance with international law; or

(j) waste or scrap that:

(i) has been derived from production in the territory of Singapore; or

(ii) has been derived from used goods that are collected in the territory of Singapore and that are fit only for the recovery of raw materials; or

(k) goods produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

Subdivision C—Goods produced in Singapore, or in Singapore and Australia, from originating materials

153XF Goods produced in Singapore, or in Singapore and Australia, from originating materials

Goods are ***Singaporean originating goods*** if:

(a) they are produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

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(ii) Australia has waived the requirement for a certification of origin for the goods.

Subdivision D—Goods produced in Singapore, or in Singapore and Australia, from non-originating materials

153XG Goods produced in Singapore, or in Singapore and Australia, from non-originating materials

(1) Goods are ***Singaporean originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 2 to the Agreement; and

(b) they are produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 2 to the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in

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the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

Regional value content

(6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

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(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and

(d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153XD(3).

(8) For the purposes of subsection (7), disregard section 153XI in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

Goods put up in a set for retail sale

(9) If:

(a) goods are put up in a set for retail sale; and

(b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;

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the goods are Singaporean originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are Singaporean originating goods; or

(d) the total customs value of the goods (if any) in the set that are not Singaporean originating goods does not exceed 10% of the customs value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

153XH Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153XD(3).

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Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153XI Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are ***Singaporean originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and

(c) the other goods are Singaporean originating goods; and

(d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and

(e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

Subdivision F—Consignment

153XJ Consignment

(1) Goods are not Singaporean originating goods under this Division if:

(a) the goods are transported through the territory of one or more non-Parties; and

(b) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, storing, labelling or marking for the purpose of satisfying the requirements of Australia or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia).

(2) This section applies despite any other provision of this Division.

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Subdivision G—Regulations

153XK Regulations

The regulations may make provision for and in relation to determining whether goods are Singaporean originating goods under this Division.

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Division 1C—US originating goods

Subdivision A—Preliminary

153Y Simplified outline

The following is a simplified outline of this Division:

- This Division defines US originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to US originating goods that are imported into Australia.
- Subdivision B provides that goods are US originating goods if they are wholly obtained or produced entirely in the US.
- Subdivision C provides that goods are US originating goods if they are produced entirely in the US, or in the US and Australia, exclusively from originating materials.
- Subdivision D sets out when goods that are produced entirely in the US, or in the US and Australia, from non-originating materials only, or from non-originating materials and originating materials, are US originating goods.
- Subdivision F sets out when accessories, spare parts or tools (imported with other goods) are US originating goods.
- Subdivision G deals with how the packaging materials or containers in which goods are packaged affects whether the goods are US originating goods.
- Subdivision H deals with how the consignment of goods affects whether the goods are US originating goods.

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- Subdivision I allows regulations to make provision for and in relation to determining whether goods are US originating goods.

153YA Interpretation

Definitions

(1) In this Division:

Agreement means the Australia-United States Free Trade Agreement done at Washington DC on 18 May 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible through the website of the Department of Foreign Affairs and Trade.

Australian originating goods means goods that are Australian originating goods under a law of the US that implements the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2004 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

customs value, in relation to goods, has the meaning given by section 159.

fuel has its ordinary meaning.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2007; or

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(b) if the table in Annex 4-A or 5-A of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

Harmonized US Tariff Schedule means the Harmonized Tariff Schedule of the United States (as in force from time to time).

indirect materials means:

(a) goods used in the production, testing or inspection of other goods, but that are not physically incorporated in the other goods; or

(b) goods used in the operation or maintenance of buildings or equipment associated with the production of other goods;

including:

(c) fuel; and

(d) tools, dies and moulds; and

(e) lubricants, greases, compounding materials and other similar goods; and

(f) gloves, glasses, footwear, clothing, safety equipment and supplies for any of these things; and

(g) catalysts and solvents.

Interpretation Rules means the General Rules for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

originating materials means:

(a) goods that are used in the production of other goods and that are US originating goods; or

(b) goods that are used in the production of other goods and that are Australian originating goods; or

(c) indirect materials.

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Example: This example illustrates goods produced from originating materials and non-originating materials.

Pork sausages are produced in the US from US cereals, Hungarian frozen pork meat and Brazilian spices.

The US cereals are originating materials since they are goods used in the production of other goods (the sausages) and they are US originating goods under Subdivision B.

The Hungarian frozen pork meat and Brazilian spices are non-originating materials since they are produced in countries other than the US and Australia.

person of the US means a person of a Party within the meaning, in so far as it relates to the US, of Article 1.2 of the Agreement.

produce means grow, raise, mine, harvest, fish, trap, hunt, manufacture, process, assemble or disassemble. ***Producer*** and ***production*** have corresponding meanings.

recovered goods means goods in the form of individual parts that:

(a) have resulted from the complete disassembly of goods which have passed their useful life or which are no longer useable due to defects; and

(b) have been cleaned, inspected or tested (as necessary) to bring them into reliable working condition.

remanufactured goods means goods that:

(a) are produced entirely in the US; and

(b) are classified to:

(i) Chapter 84, 85 or 87 (other than heading 8418, 8516 or 8701 to 8706), or to heading 9026, 9031 or 9032 of Chapter 90, of the Harmonized System; or

(ii) any other tariff classification prescribed by the regulations; and

(c) are entirely or partially comprised of recovered goods; and

(d) have a similar useful life, and meet the same performance standards, as new goods:

(i) that are so classified; and

(ii) that are not comprised of any recovered goods; and

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(e) have a producer's warranty similar to such new goods.

textile or apparel good has the meaning given by Article 1.2 of Chapter 1 of the Agreement.

US means the United States of America.

used means used or consumed in the production of goods.

US originating goods means goods that, under this Division, are US originating goods.

wholly formed, in relation to elastomeric yarn, has the same meaning as it has in the Agreement.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the following:
(a) the Harmonized System;
(b) the Harmonized US Tariff Schedule.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Regulations

(5) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

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Subdivision B—Goods wholly obtained or produced entirely in the US

153YB Goods wholly obtained or produced entirely in the US

(1) Goods are ***US originating goods*** if they are wholly obtained or produced entirely in the US.

(2) Goods are ***wholly obtained or produced entirely in the US*** if, and only if, the goods are:

(a) minerals extracted in the US; or

(b) plants grown in the US, or in the US and Australia, or products obtained from such plants; or

(c) live animals born and raised in the US, or in the US and Australia, or products obtained from such animals; or

(d) goods obtained from hunting, trapping, fishing or aquaculture conducted in the US; or

(e) fish, shellfish or other marine life taken from the sea by ships registered or recorded in the US and flying the flag of the US; or

(f) goods produced exclusively from goods referred to in paragraph (e) on board factory ships registered or recorded in the US and flying the flag of the US; or

(g) goods taken from the seabed, or beneath the seabed, outside the territorial waters of the US by the US or a person of the US, but only if the US has the right to exploit that part of the seabed; or

(h) goods taken from outer space by the US or a person of the US; or

(i) waste and scrap that:

(i) has been derived from production operations in the US; or

(ii) has been derived from used goods that are collected in the US and that are fit only for the recovery of raw materials; or

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(j) recovered goods derived in the US and used in the US in the production of remanufactured goods; or

(k) goods produced entirely in the US exclusively from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced entirely in the US or in the US and Australia exclusively from originating materials

153YC Goods produced entirely in the US or in the US and Australia exclusively from originating materials

Goods are ***US originating goods*** if they are produced entirely in the US, or entirely in the US and Australia, exclusively from originating materials.

Subdivision D—Goods produced in the US, or in the US and Australia, from non-originating materials

153YD Goods produced in the US, or in the US and Australia, from non-originating materials

(1) Goods are ***US originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4-A or 5-A of the Agreement; and

(b) they are produced entirely in the US, or entirely in the US and Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in Annex 4-A or 5-A of the Agreement.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4-A or 5-A of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

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Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

Rules for goods that are not a textile or apparel good

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are not a textile or apparel good; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (c) does not exceed 10% of the customs value of the goods.

Note: See subsection (6) for goods that are a textile or apparel good.

(5) In applying subsection (4), disregard non-originating materials covered by paragraph 2 of Article 5.2 of Chapter 5 of the Agreement.

Rules for goods that are a textile or apparel good

(6) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are a textile or apparel good; and

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(c) if the component of the goods, that determines the tariff classification of the goods, contains elastomeric yarn—the yarn is wholly formed in the US or Australia; and

(d) the component of the goods, that determines the tariff classification of the goods, contains fibres or yarns that are non-originating materials and that do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the fibres or yarns covered by paragraph (d) does not exceed 7% of the total weight of that component.

Regional value content

(7) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(8) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with standard accessories, standard spare parts or standard tools; and

(c) the accessories, spare parts or tools are not invoiced separately from the goods; and

(d) the quantities and value of the accessories, spare parts or tools are customary for the goods;

the regulations must provide for the value of the accessories, spare parts or tools to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts or tools are originating materials or non-originating materials).

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Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153YA(2).

(9) For the purposes of subsection (8), disregard section 153YJ in working out whether the accessories, spare parts or tools are originating materials or non-originating materials.

Goods put up in a set for retail sale

(10) If:

(a) goods are put up in a set for retail sale; and

(b) the goods are classified in accordance with Rule 3 of the Interpretation Rules as a textile or apparel good;

the goods are US originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are US originating goods; or

(d) the total customs value of the goods (if any) in the set that are not US originating goods does not exceed 10% of the customs value of the set of goods.

Subdivision F—Goods that are standard accessories, spare parts or tools

153YJ Goods that are standard accessories, spare parts or tools

Goods are ***US originating goods*** if:

(a) they are standard accessories, standard spare parts or standard tools in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts or tools; and

(c) the other goods are US originating goods; and

(d) the accessories, spare parts or tools are not invoiced separately from the other goods; and

(e) the quantities and value of the accessories, spare parts or tools are customary for the other goods.

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Subdivision G—Packaging materials and containers

153YK Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Division (with 1 exception).

Regional value content

(2) The exception is that, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153YA(2).

Subdivision H—Consignment

153YL Consignment

(1) Goods are not US originating goods under this Division if:

(a) they are transported through a country or place other than the US or Australia; and

(b) they undergo any process of production, or any other operation, in that country or place (other than unloading, reloading, any operation to preserve them in good condition or any operation that is necessary for them to be transported to Australia).

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(2) This section applies despite any other provision of this Division.

Subdivision I—Regulations

153YM Regulations

The regulations may make provision for and in relation to determining whether goods are US originating goods under this Division.

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Division 1D—Thai originating goods

Subdivision A—Preliminary

153Z Simplified outline

The following is a simplified outline of this Division:

- This Division defines Thai originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Thai originating goods that are imported into Australia.
- Subdivision B sets out when goods that are wholly obtained goods of Thailand are Thai originating goods.
- Subdivision C sets out when goods that are produced entirely in Thailand, or in Thailand and Australia, are Thai originating goods.
- Subdivision D sets out when accessories, spare parts or tools (imported with other goods) are Thai originating goods.
- Subdivision E deals with how the packaging materials or containers in which goods are packaged affects whether the goods are Thai originating goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Thai originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Thai originating goods.

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153ZA Interpretation

Definitions

(1) In this Division:

Agreement means the Thailand-Australia Free Trade Agreement, done at Canberra on 5 July 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible through the website of the Department of Foreign Affairs and Trade.

Australian originating goods means goods that are Australian originating goods under a law of Thailand that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Annex 4.2 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2004 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

customs value, in relation to goods, has the meaning given by section 159.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2005; or

(b) if the table in Annex 4.1 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and

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Coding System—the later version of the Harmonized Commodity Description and Coding System.

Interpretation Rules means the General Rules for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

originating materials means:

(a) goods that are used in the production of other goods and that are Thai originating goods; or

(b) goods that are used in the production of other goods and that are Australian originating goods.

produce means grow, raise, mine, harvest, fish, trap, hunt, manufacture, process, assemble or disassemble. ***Producer*** and ***production*** have corresponding meanings.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Thai originating goods means goods that, under this Division, are Thai originating goods.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

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Regulations

(5) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

Subdivision B—Wholly obtained goods of Thailand

153ZB Wholly obtained goods of Thailand

(1) Goods are ***Thai originating goods*** if:
  (a) they are wholly obtained goods of Thailand; and
  (b) either:
    (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

(2) Goods are ***wholly obtained goods of Thailand*** if, and only if, the goods are:
  (a) minerals extracted in Thailand; or
  (b) agricultural goods harvested, picked or gathered in Thailand; or
  (c) live animals born and raised in Thailand; or
  (d) products obtained from live animals in Thailand; or
  (e) goods obtained directly from hunting, trapping, fishing, gathering or capturing carried out in Thailand; or
  (f) fish, shellfish, plant or other marine life taken:
    (i) within the territorial sea of Thailand; or
    (ii) within any other maritime zone in which Thailand has sovereign rights under the law of Thailand and in accordance with UNCLOS; or
    (iii) from the high seas by ships flying the flag of Thailand; or

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(g) goods obtained or produced exclusively from goods referred to in paragraph (f) on board factory ships flying the flag of Thailand; or

(h) goods taken from the seabed or the subsoil beneath the seabed of the territorial sea of Thailand or of the continental shelf of Thailand:

(i) by Thailand; or

(ii) by a national of Thailand; or

(iii) by a body corporate incorporated in Thailand; or

(i) waste and scrap that has been derived from production operations in Thailand and that is fit only for the recovery of raw materials; or

(j) used goods that are collected in Thailand and that are fit only for the recovery of raw materials; or

(k) goods produced entirely in Thailand exclusively from goods referred to in paragraphs (a) to (j).

Subdivision C—Goods produced entirely in Thailand or in Thailand and Australia

153ZC Goods produced entirely in Thailand or in Thailand and Australia

(1) Goods are ***Thai originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4.1 of the Agreement; and

(b) they are produced entirely in Thailand, or entirely in Thailand and Australia, from originating materials or non-originating materials, or both; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

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(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4.1 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

Regional value content

(5) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

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(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(6) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with standard accessories, standard spare parts or standard tools; and

(c) the accessories, spare parts or tools are not invoiced separately from the goods; and

(d) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the goods; and

(e) the quantities and value of the accessories, spare parts or tools are customary for the goods; and

(f) the accessories, spare parts or tools are non-originating materials;

the regulations must provide for the value of the accessories, spare parts or tools covered by paragraph (f) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZA(2).

(7) For the purposes of subsection (6), disregard section 153ZF in working out whether the accessories, spare parts or tools are non-originating materials.

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Subdivision D—Goods that are standard accessories, spare parts or tools

153ZF Goods that are standard accessories, spare parts or tools

Goods are ***Thai originating goods*** if:

(a) they are standard accessories, standard spare parts or standard tools in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts or tools; and

(c) the other goods are Thai originating goods; and

(d) the accessories, spare parts or tools are not invoiced separately from the other goods; and

(e) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the other goods; and

(f) the quantities and value of the accessories, spare parts or tools are customary for the other goods.

Subdivision E—Packaging materials and containers

153ZG Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Division (with 1 exception).

Regional value content

(2) The exception is that, if:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

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(b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZA(2).

Subdivision F—Consignment

153ZH Consignment

(1) Goods are not Thai originating goods under this Division if:

(a) they are transported through a country or place other than Thailand or Australia; and

(b) either:

(i) they undergo any process of production or other operation in that country or place (other than any operation to preserve them in good condition or any operation that is necessary for them to be transported to Australia); or

(ii) they are traded or used in that country or place.

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZI Regulations

The regulations may make provision for and in relation to determining whether goods are Thai originating goods under this Division.

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Division 1E—New Zealand originating goods

Subdivision A—Preliminary

153ZIA Simplified outline

The following is a simplified outline of this Division:

- This Division defines New Zealand originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to New Zealand originating goods that are imported into Australia.
- Subdivision B provides that goods are New Zealand originating goods if they are wholly obtained or produced in New Zealand or in New Zealand and Australia.
- Subdivision C provides that goods are New Zealand originating goods if they are produced entirely in New Zealand, or in New Zealand and Australia, from originating materials only.
- Subdivision D sets out when goods are New Zealand originating goods because they are produced entirely in New Zealand, or in New Zealand and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are New Zealand originating goods because they are accessories, spare parts or tools imported with other goods.
- Subdivision F sets out when goods are New Zealand originating goods because they are wholly manufactured in New Zealand.

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- Subdivision G provides that goods are not New Zealand originating goods under this Division merely because of certain operations.
- Subdivision H deals with how the consignment of goods affects whether the goods are New Zealand originating goods.
- Subdivision I allows regulations to make provision for and in relation to determining whether goods are New Zealand originating goods.

153ZIB Interpretation

Definitions

(1) In this Division:

Agreement means the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983, as amended from time to time.

Note: The text of the Agreement is set out in Australian Treaty Series 1983 No. 2. In 2006 the text of an Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

aquaculture has the meaning given by Article 3 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of New Zealand that implements the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2006 the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

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Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 September 2011; or

(b) if the table in Annex G of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used or consumed in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used or consumed in the operation or maintenance of buildings or equipment associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

manufacture means the creation of an article essentially different from the matters or substances that go into that creation.

New Zealand originating goods means goods that, under this Division, are New Zealand originating goods.

non-originating materials means goods that are not originating materials.

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originating materials means:

(a) New Zealand originating goods that are used or consumed in the production of other goods; or

(b) Australian originating goods that are used or consumed in the production of other goods; or

(c) indirect materials.

produce means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process, assemble, restore or renovate.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Value of goods

(3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(4) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(5) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(6) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

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Subdivision B—Goods wholly obtained or produced in New Zealand or New Zealand and Australia

153ZIC Goods wholly obtained or produced in New Zealand or New Zealand and Australia

(1) Goods are ***New Zealand originating goods*** if they are wholly obtained or produced in New Zealand or in New Zealand and Australia.

(2) Goods are ***wholly obtained or produced in New Zealand or in New Zealand and Australia*** if, and only if, the goods are:

(a) minerals extracted in New Zealand; or

(b) plants grown in New Zealand, or in New Zealand and Australia, or products obtained in New Zealand from such plants; or

(c) live animals born and raised in New Zealand, or in New Zealand and Australia; or

(d) products obtained from live animals in New Zealand; or

(e) goods obtained from hunting, trapping, fishing, capturing or aquaculture conducted in New Zealand; or

(f) fish, shellfish or other marine life taken from the sea by ships that are registered or recorded in New Zealand and are flying, or are entitled to fly, the flag of New Zealand; or

(g) goods produced or obtained exclusively from goods referred to in paragraph (f) on board factory ships that are registered or recorded in New Zealand and are flying the flag of New Zealand; or

(h) goods taken from the seabed, or the subsoil beneath the seabed, of the territorial sea of New Zealand or of the continental shelf of New Zealand:

(i) by New Zealand; or

(ii) by a New Zealand citizen; or

(iii) by a body corporate incorporated in New Zealand;

but only if New Zealand has the right to exploit that part of the seabed; or

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(i) waste and scrap that has been derived from production operations in New Zealand, or from used goods collected in New Zealand, and that is fit only for the recovery of raw materials; or

(j) goods produced entirely in New Zealand, or in New Zealand and Australia, exclusively from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced in New Zealand or New Zealand and Australia from originating materials

153ZID Goods produced in New Zealand or New Zealand and Australia from originating materials

Goods are ***New Zealand originating goods*** if they are produced entirely in New Zealand, or entirely in New Zealand and Australia, from originating materials only.

Subdivision D—Goods produced in New Zealand or New Zealand and Australia from non-originating materials

153ZIE Goods produced in New Zealand or New Zealand and Australia from non-originating materials

(1) Goods are ***New Zealand originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex G of the Agreement; and

(b) they are produced entirely in New Zealand, or entirely in New Zealand and Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex.

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(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex G of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used or consumed in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used or consumed in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used or consumed in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

Regional value content

(5) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

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(6) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with standard accessories, standard spare parts or standard tools; and

(c) the accessories, spare parts or tools are not invoiced separately from the goods; and

(d) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the goods; and

(e) the quantities and value of the accessories, spare parts or tools are customary for the goods;

the regulations must provide for the value of the accessories, spare parts or tools to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts or tools are originating materials or non-originating materials).

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZIB(3).

(7) For the purposes of subsection (6), disregard section 153ZIG in working out whether the accessories, spare parts or tools are originating materials or non-originating materials.

153ZIF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the General Rules for the Interpretation of the Harmonized System provided for by the Convention;

then the packaging material or container is to be disregarded for the purposes of this Subdivision (with 1 exception).

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Regional value content

(2) The exception is that, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZIB(3).

Subdivision E—Goods that are standard accessories, spare parts or tools

153ZIG Goods that are standard accessories, spare parts or tools

Goods are ***New Zealand originating goods*** if:

(a) they are standard accessories, standard spare parts or standard tools in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts or tools; and

(c) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the other goods; and

(d) the other goods are New Zealand originating goods; and

(e) the accessories, spare parts or tools are not invoiced separately from the other goods; and

(f) the quantities and value of the accessories, spare parts or tools are customary for the goods.

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Subdivision F—Goods wholly manufactured in New Zealand

153ZIH Goods wholly manufactured in New Zealand

(1) Goods are ***New Zealand originating goods*** if they are wholly manufactured in New Zealand from one or more of the following:
  (a) unmanufactured raw products;
  (b) materials wholly manufactured in Australia or New Zealand or Australia and New Zealand;
  (c) materials covered by subsection (2).

(2) The Comptroller-General of Customs may, by legislative instrument, determine specified materials imported into New Zealand to be manufactured raw materials of New Zealand.

Subdivision G—Non-qualifying operations

153ZIJ Non-qualifying operations

(1) Goods are not New Zealand originating goods under this Division merely because of the following operations:
  (a) operations to preserve goods in good condition for the purposes of transport or storage;
  (b) disassembly of goods;
  (c) affixing of marks, labels or other similar distinguishing signs on goods or their packaging;
  (d) packaging, changes to packaging, the breaking up or assembly of packages or presenting goods for transport or sale;
  (e) quality control inspections;
  (f) any combination of operations referred to in paragraphs (a) to (e).

(2) This section applies despite any other provision of this Division.

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Subdivision H—Consignment

153ZIK Consignment

(1) Goods are not New Zealand originating goods under this Division if:

(a) they are transported through a country or place other than New Zealand or Australia; and

(b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling or any operation that is necessary to preserve them in good condition or to transport them to Australia).

(2) This section applies despite any other provision of this Division.

Subdivision I—Regulations

153ZIKA Regulations

The regulations may make provision for and in relation to determining whether goods are New Zealand originating goods under this Division.

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Division 1EA—Peruvian originating goods

Subdivision A—Preliminary

153ZIL Simplified outline of this Division

- This Division defines Peruvian originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Peruvian originating goods if they are wholly obtained or produced entirely in Peru or in Peru and Australia.
- Subdivision C provides that goods are Peruvian originating goods if they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from originating materials only.
- Subdivision D sets out when goods are Peruvian originating goods because they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Peruvian originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Peruvian originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Peruvian originating goods.

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153ZIM Interpretation

Definitions

(1) In this Division:

Agreement means the Peru-Australia Free Trade Agreement, done at Canberra on 12 February 2018, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of Peru that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Article 3.17 of Chapter 3 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

enterprise has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or

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(b) if the table in Annex 3-B of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) catalysts and solvents; and

(e) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(f) tools, dies and moulds; and

(g) spare parts and materials; and

(h) lubricants, greases, compounding materials and other similar goods.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

non-Party has the same meaning as it has in Chapter 3 of the Agreement.

originating materials means:

(a) Peruvian originating goods that are used in the production of other goods; or

(b) Australian originating goods that are used in the production of other goods; or

(c) indirect materials.

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person of Peru means:

(a) a national within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement; or

(b) an enterprise of Peru.

Peruvian originating goods means goods that, under this Division, are Peruvian originating goods.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

territory of Peru means territory within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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Subdivision B—Goods wholly obtained or produced entirely in Peru or in Peru and Australia

153ZIN Goods wholly obtained or produced entirely in Peru or in Peru and Australia

(1) Goods are ***Peruvian originating goods*** if:

(a) they are wholly obtained or produced entirely in Peru or in Peru and Australia; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

(2) Goods are ***wholly obtained or produced entirely in Peru or in Peru and Australia*** if, and only if, the goods are:

(a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the territory of Peru or in the territory of Peru and the territory of Australia; or

(b) live animals born and raised in the territory of Peru or in the territory of Peru and the territory of Australia; or

(c) goods obtained from live animals in the territory of Peru; or

(d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of Peru; or

(e) goods obtained from aquaculture conducted in the territory of Peru; or

(f) minerals, or other naturally occurring substances, extracted or taken from the territory of Peru; or

(g) fish, shellfish, other goods of sea-fishing or other marine life taken from the sea, seabed or subsoil beneath the seabed:

(i) outside the territory of Peru and the territory of Australia; and

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(ii) in accordance with international law, outside the territorial sea of non-Parties;

by vessels that are registered or recorded with Peru and are entitled to fly the flag of Peru; or

(h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered or recorded with Peru and is entitled to fly the flag of Peru; or

(i) goods (except fish, shellfish, other goods of sea-fishing or other marine life) taken by Peru, or a person of Peru, from the seabed, or subsoil beneath the seabed, outside the territory of Peru and the territory of Australia, and beyond areas over which non-Parties exercise jurisdiction, but only if Peru, or the person of Peru, has the right to exploit that seabed or subsoil in accordance with international law; or

(j) waste or scrap that:

(i) has been derived from production in the territory of Peru and that is fit only for the recovery of raw materials; or

(ii) has been derived from used goods that are collected in the territory of Peru and that are fit only for the recovery of raw materials; or

(k) goods produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

Subdivision C—Goods produced in Peru, or in Peru and Australia, from originating materials

153ZIO Goods produced in Peru, or in Peru and Australia, from originating materials

Goods are ***Peruvian originating goods*** if:

(a) they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from originating materials only; and

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(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

Subdivision D—Goods produced in Peru, or in Peru and Australia, from non-originating materials

153ZIP Goods produced in Peru, or in Peru and Australia, from non-originating materials

(1) Goods are ***Peruvian originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-B of the Agreement; and

(b) they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

Note: Subsection (9) sets out a limitation for goods that are put up in a set for retail sale.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-B of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

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Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

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Regional value content

(6) If a requirement that applies in relation to the goods is that the goods must have a regional value content worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and

(d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZIM(2).

(8) For the purposes of subsection (7), disregard section 153ZIR in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

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Goods put up in a set for retail sale

(9) If:

(a) goods are put up in a set for retail sale; and

(b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;

the goods are Peruvian originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are Peruvian originating goods; or

(d) the total customs value of the goods (if any) in the set that are not Peruvian originating goods does not exceed 20% of the customs value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

153ZIQ Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods

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(whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZIM(2).

Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153ZIR Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are ***Peruvian originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and

(c) the other goods are Peruvian originating goods; and

(d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and

(e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

Subdivision F—Consignment

153ZIS Consignment

(1) Goods are not Peruvian originating goods under this Division if the goods are transported through the territory of one or more non-Parties and either or both of the following apply:

(a) the goods undergo subsequent production or any other operation in the territory of a non-Party (other than unloading, reloading, storing, separation from a bulk shipment, labelling or any other operation that is necessary to

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preserve the goods in good condition or to transport the goods to the territory of Australia);

(b) while the goods are in the territory of a non-Party, the goods do not remain under customs control at all times.

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZIT Regulations

The regulations may make provision for and in relation to determining whether goods are Peruvian originating goods under this Division.

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Division 1F—Chilean originating goods

Subdivision A—Preliminary

153ZJA Simplified outline

The following is a simplified outline of this Division:

- This Division defines Chilean originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Chilean originating goods that are imported into Australia.
- Subdivision B provides that goods are Chilean originating goods if they are wholly obtained goods of Chile.
- Subdivision C provides that goods are Chilean originating goods if they are produced entirely in the territory of Chile from originating materials only.
- Subdivision D sets out when goods are Chilean originating goods because they are produced entirely in the territory of Chile, or in the territory of Chile and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Chilean originating goods because they are accessories, spare parts, tools or instructional or other information resources imported with other goods.
- Subdivision F provides that goods are not Chilean originating goods under this Division merely because of certain operations.
- Subdivision G deals with how the consignment of goods affects whether the goods are Chilean originating goods.

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- Subdivision H allows regulations to make provision for and in relation to determining whether goods are Chilean originating goods.

153ZJB Interpretation

Definitions

(1) In this Division:

Agreement means the Australia-Chile Free Trade Agreement, done at Canberra on 30 July 2008, as amended from time to time.

Note: In 2008, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Australian originating goods means goods that are Australian originating goods under a law of Chile that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Article 4.16 of the Agreement.

Chilean originating goods means goods that, under this Division, are Chilean originating goods.

composite goods has the same meaning as it has in the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983 [1988] ATS 30, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

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Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 6 March 2009; or

(b) if the table in Annex 4-C of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

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originating materials means:

(a) Chilean originating goods that are used in the production of other goods; or

(b) Australian originating goods that are used in the production of other goods; or

(c) indirect materials.

person of Chile means person of a Party within the meaning, insofar as it relates to Chile, of Article 2.1 of the Agreement.

produce means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

territory of Australia means territory within the meaning, insofar as it relates to Australia, of Article 2.1 of the Agreement.

territory of Chile means territory within the meaning, insofar as it relates to Chile, of Article 2.1 of the Agreement.

Value of goods

(3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(4) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(5) Subsection 4(3A) does not apply for the purposes of this Division.

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Subdivision B—Wholly obtained goods of Chile

153ZJC Wholly obtained goods of Chile

(1) Goods are ***Chilean originating goods*** if:

(a) they are wholly obtained goods of Chile; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

(2) Goods are ***wholly obtained goods of Chile*** if, and only if, the goods are:

(a) minerals extracted in or from the territory of Chile; or

(b) goods listed in Section II of the Harmonized System that are harvested, picked or gathered in the territory of Chile; or

(c) live animals born and raised in the territory of Chile; or

(d) goods obtained from live animals in the territory of Chile; or

(e) goods obtained from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of Chile; or

(f) fish, shellfish or other marine life taken from the high seas by ships that are registered or recorded in Chile and are flying the flag of Chile; or

(g) goods obtained or produced from goods referred to in paragraph (f) on board factory ships that are registered or recorded in Chile and are flying the flag of Chile; or

(h) goods taken from the seabed, or beneath the seabed, outside the territorial sea of Chile:

(i) by Chile; or

(ii) by a person of Chile;

but only if Chile has the right to exploit that part of the seabed in accordance with international law; or

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(i) waste and scrap that have been derived from production operations in the territory of Chile, or from used goods collected in the territory of Chile, and that are fit only for the recovery of raw materials; or

(j) goods obtained or produced entirely in the territory of Chile exclusively from goods referred to in paragraphs (a) to (i).

Subdivision C—Goods produced in Chile from originating materials

153ZJD Goods produced in Chile from originating materials

Goods are ***Chilean originating goods*** if:

(a) they are produced entirely in the territory of Chile from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

Subdivision D—Goods produced in Chile, or Chile and Australia, from non-originating materials

153ZJE Goods produced in Chile, or Chile and Australia, from non-originating materials

(1) Goods are ***Chilean originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4-C of the Agreement; and

(b) they are produced entirely in the territory of Chile, or entirely in the territory of Chile and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

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(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4-C of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

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Regional value content

(5) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(6) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information resources; and

(c) the accessories, spare parts, tools or instructional or other information resources are not invoiced separately from the goods; and

(d) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the goods; and

(e) the accessories, spare parts, tools or instructional or other information resources are non-originating materials;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information resources covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information resources is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

(7) For the purposes of subsection (6), disregard section 153ZJG in working out whether the accessories, spare parts, tools or instructional or other information resources are non-originating materials.

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Goods put up in a set for retail sale

(8) If:

(a) goods are put up in a set for retail sale; and

(b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;

the goods are Chilean originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are Chilean originating goods; or

(d) the total customs value of the goods (if any) in the set that are not Chilean originating goods does not exceed 25% of the customs value of the set of goods.

Composite goods

(9) If:

(a) goods are composite goods; and

(b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;

the goods are Chilean originating goods under this section only if:

(c) all of the components of the composite goods, when considered separately, are Chilean originating goods; or

(d) the total customs value of the components (if any) of the composite goods that are not Chilean originating goods does not exceed 25% of the customs value of the goods.

153ZJF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision (with 1 exception).

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Regional value content

(2) The exception is that, if:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information resources

153ZJG Goods that are accessories, spare parts, tools or instructional or other information resources

Goods are ***Chilean originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information resources in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information resources; and

(c) the other goods are Chilean originating goods; and

(d) the accessories, spare parts, tools or instructional or other information resources are not invoiced separately from the other goods; and

(e) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the other goods.

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Subdivision F—Non-qualifying operations

153ZJH Non-qualifying operations

(1) Goods are not Chilean originating goods under this Division merely because of the following operations:

(a) operations to preserve goods in good condition for the purpose of storage of the goods during transport;

(b) changing of packaging or the breaking up or assembly of packages;

(c) disassembly of goods;

(d) placing goods in bottles, cases or boxes or other simple packaging operations;

(e) making up of sets of goods;

(f) any combination of operations referred to in paragraphs (a) to (e).

(2) This section applies despite any other provision of this Division.

Subdivision G—Consignment

153ZJI Consignment

(1) Goods are not Chilean originating goods under this Division if:

(a) they are transported through a country or place other than Chile or Australia; and

(b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling, exhibition or any operation that is necessary to preserve them in good condition or to transport them to Australia).

(2) This section applies despite any other provision of this Division.

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Subdivision H—Regulations

153ZJJ Regulations

The regulations may make provision for and in relation to determining whether goods are Chilean originating goods under this Division.

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Division 1G—ASEAN-Australia-New Zealand (AANZ) originating goods

Subdivision A—Preliminary

153ZKA Simplified outline

The following is a simplified outline of this Division:

- This Division defines AANZ originating goods (short for ASEAN-Australia-New Zealand originating goods). Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to AANZ originating goods that are imported into Australia.
- Subdivision B provides that goods are AANZ originating goods if they are wholly obtained goods of a Party.
- Subdivision C provides that goods are AANZ originating goods if they are produced entirely in a Party from originating materials only.
- Subdivision D sets out when goods are AANZ originating goods because they are produced from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are AANZ originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are AANZ originating goods.

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- Subdivision G allows regulations to make provision for and in relation to determining whether goods are AANZ originating goods.

153ZKB Interpretation

Definitions

(1) In this Division:

AANZ originating goods means goods that, under this Division, are AANZ originating goods.

Agreement means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Thailand on 27 February 2009, as amended and in force for Australia from time to time.

Note: In 2009, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

aquaculture has the meaning given by Article 1 of Chapter 3 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30 ([1988] ATS 30). In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

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(a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

(b) if either of the following events occurs:

(i) Annex 3B to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of an updated version of the Harmonized Commodity Description and Coding System;

(ii) there is a transposition (as mentioned in paragraph 4 of Article 19 of Chapter 3 of the Agreement) of Annex 3B to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the transposition is adopted as mentioned in that paragraph;

the version of the Harmonized Commodity Description and Coding System covered by whichever of those events occurred most recently.

in a Party includes:

(a) the territorial sea of a Party; and

(b) the exclusive economic zone of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law; and

(c) the continental shelf of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

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(f) lubricants, greases, compounding materials and other similar goods; and
(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

originating materials means:
(a) AANZ originating goods that are used or consumed in the production of other goods; or
(b) indirect materials.

Party means a Party (within the meaning of the Agreement) for which the Agreement has entered into force.

Note: See also subsection (7).

produce means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble.

Product-Specific Rules means the following:
(a) Annex 3B to Chapter 3 of the Agreement, unless paragraph (b) applies;
(b) if:
(i) there is a transposition (as mentioned in paragraph 4 of Article 19 of Chapter 3 of the Agreement) of Annex 3B to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the transposition is adopted as mentioned in that paragraph; and
(ii) that Annex has not been amended or replaced as a result of that transposition; and

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(iii) that Annex has not been amended or replaced as a result of a further updated version of the Harmonized Commodity Description and Coding System;

that Annex as so transposed.

Proof of Origin means a certificate, or a declaration, that is in force and complies with the requirements of Rule 1 of Annex 3A to Chapter 3 of the Agreement.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Value of goods

(3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(4) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(5) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(6) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

Notification of entry into force of Agreement for a Party etc.

(7) The Minister must announce, by notifiable instrument, the day on which the Agreement, or an amendment of the Agreement, enters into force for a Party (other than Australia).

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Subdivision B—Wholly obtained goods of a Party

153ZKC Wholly obtained goods of a Party

(1) Goods are ***AANZ originating goods*** if:
  (a) they are wholly obtained goods of a Party; and
  (b) either:
    (i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or
    (ii) Australia has waived the requirement for a Proof of Origin for the goods.

(2) Goods are ***wholly obtained goods of a Party*** if, and only if, the goods are:
  (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in a Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
  (b) live animals born and raised in a Party; or
  (c) goods obtained from live animals in a Party; or
  (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party; or
  (e) minerals or other naturally occurring substances extracted or taken in a Party; or
  (f) fish, shellfish or other marine goods taken from the high seas, in accordance with international law, by ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
  (g) goods produced from goods referred to in paragraph (f) on board factory ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
  (h) goods taken by a Party, or a person of a Party, from the seabed, or beneath the seabed, outside:
    (i) the exclusive economic zone of that Party; and
    (ii) the continental shelf of that Party; and
    (iii) an area over which a third party exercises jurisdiction;

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and taken under exploitation rights granted in accordance with international law; or

(i) waste and scrap that has been derived from production or consumption in a Party and that is fit only for the recovery of raw materials; or

(j) used goods that are collected in a Party and that are fit only for the recovery of raw materials; or

(k) goods produced or obtained entirely in a Party exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

Subdivision C—Goods produced from originating materials

153ZKD Goods produced from originating materials

Goods are ***AANZ originating goods*** if:

(a) they are produced entirely in a Party from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Proof of Origin for the goods.

Subdivision D—Goods produced from non-originating materials

153ZKE Goods produced from non-originating materials

(1) Goods are ***AANZ originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the Product-Specific Rules; and

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(b) they are produced entirely in a Party from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in the Product-Specific Rules; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Proof of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the Product-Specific Rules by using an abbreviation that is given a meaning for the purposes of the Product-Specific Rules.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

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(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

Regional value content

(6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are not imported solely for the purpose of artificially raising the regional value content of the goods; and

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(d) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and

(e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKB(3).

(8) For the purposes of subsection (7), disregard section 153ZKI in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

153ZKG Non-qualifying operations or processes

(1) This section applies for the purposes of working out if goods are AANZ originating goods under section 153ZKE where the goods are claimed to be AANZ originating goods solely on the basis that the goods have a regional value content of not less than a particular percentage worked out in a particular way.

(2) The goods are not AANZ originating goods merely because of the following:

(a) operations or processes to preserve goods in good condition for the purpose of transport or storage of the goods;

(b) operations or processes to facilitate the shipment or transportation of goods;

(c) packaging (other than encapsulation of electronics) for transportation or sale or presenting goods for transportation or sale;

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(d) simple processes of sifting, classifying, washing, cutting, slitting, bending, coiling, uncoiling or other similar simple processes;
(e) affixing of marks, labels or other distinguishing signs on goods or on their packaging;
(f) dilution with water or another substance that does not materially alter the characteristics of goods;
(g) any combination of things referred to in paragraphs (a) to (f).

153ZKH Packaging materials and containers

(1) If:
(a) goods are packaged for retail sale in packaging material or a container; and
(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
then the packaging material or container is to be disregarded for the purposes of this Subdivision (with one exception).

Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZKB(3).

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Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153ZKI Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are ***AANZ originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are not imported solely for the purpose of artificially raising the regional value content of the other goods; and

(d) the other goods are AANZ originating goods; and

(e) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and

(f) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

Subdivision F—Consignment

153ZKJ Consignment

(1) Goods are not AANZ originating goods under this Division if:

(a) the goods are transported through a country or place other than a Party; and

(b) at least one of the following applies:

(i) the goods undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing or any operation that is necessary to

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preserve the goods in good condition or to transport the goods to Australia);

(ii) the goods enter into commerce or free circulation in that country or place.

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZKJA Regulations

The regulations may make provision for and in relation to determining whether goods are AANZ originating goods under this Division.

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Division 1GA—Pacific Islands originating goods

Subdivision A—Preliminary

153ZKK Simplified outline of this Division

- This Division defines Pacific Islands originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Pacific Islands originating goods if they are wholly obtained or produced in a Party.
- Subdivision C provides that goods are Pacific Islands originating goods if they are produced entirely in one or more of the Parties, by one or more producers, from originating materials only.
- Subdivision D sets out when goods are Pacific Islands originating goods because they are produced entirely in one or more of the Parties, by one or more producers, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Pacific Islands originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Pacific Islands originating goods.

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- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Pacific Islands originating goods.

153ZKL Interpretation

Definitions

(1) In this Division:

Agreement means the Pacific Agreement on Closer Economic Relations Plus, done at Nuku'alofa, Tonga on 14 June 2017, as amended and in force for Australia from time to time.

Note: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 1 of Chapter 3 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

Declaration of Origin means a declaration that is in force and that complies with the requirements of Article 15 of Chapter 3 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

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(b) if either of the following events occurs:

(i) Annex 3-B to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of an updated version of the Harmonized Commodity Description and Coding System;

(ii) there are revisions (as mentioned in paragraph 1 of Article 29 of Chapter 3 of the Agreement) to Annex 3-B to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the revisions are endorsed and come into effect as mentioned in paragraph 3 of that Article;

the version of the Harmonized Commodity Description and Coding System covered by whichever of those events occurred most recently.

in a Party has the same meaning as it has in Chapter 3 of the Agreement.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

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non-originating materials means goods that are not originating materials.

non-party has the same meaning as it has in Chapter 3 of the Agreement.

originating materials means:

(a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods; or

(b) indirect materials.

Pacific Islands originating goods means goods that, under this Division, are Pacific Islands originating goods.

Party has the meaning given by Article 2 of Chapter 1 of the Agreement.

Note: See also subsection (6).

person of a Party has the same meaning as it has in Chapter 3 of the Agreement.

producer means a person who engages in the production of goods.

production has the meaning given by Article 1 of Chapter 3 of the Agreement.

Product-Specific Rules means the following:

(a) Annex 3-B to Chapter 3 of the Agreement, unless paragraph (b) applies;

(b) if:

(i) there are revisions (as mentioned in paragraph 1 of Article 29 of Chapter 3 of the Agreement) to Annex 3-B to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the revisions are endorsed and come into effect as mentioned in paragraph 3 of that Article; and

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(ii) that Annex has not been amended or replaced as a result of those revisions; and

(iii) that Annex has not been amended or replaced as a result of a further updated version of the Harmonized Commodity Description and Coding System;

that Annex as so revised.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Notification of entry into force of Agreement for a Party

(6) The Minister must announce, by notifiable instrument, the day on which the Agreement enters into force for a Party (other than Australia).

Subdivision B—Goods wholly obtained or produced in a Party

153ZKM Goods wholly obtained or produced in a Party

(1) Goods are ***Pacific Islands originating goods*** if:

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(a) they are wholly obtained or produced in a Party; and
(b) either:
(i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
(ii) Australia has waived the requirement for a Declaration of Origin for the goods.

(2) Goods are ***wholly obtained or produced in a Party*** if, and only if, the goods are:
(a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in a Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
(b) live animals born and raised in one or more of the Parties; or
(c) goods obtained from live animals in a Party; or
(d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party; or
(e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or beneath the seabed in a Party; or
(f) goods of sea-fishing, or other marine goods, taken from the high seas, in accordance with international law, by any vessel that is registered or recorded with a Party and is entitled to fly the flag of that Party; or
(g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered or recorded with a Party and is entitled to fly the flag of that Party; or
(h) goods taken by a Party, or a person of a Party, from the seabed, or beneath the seabed, beyond the outer limits of:
(i) the exclusive economic zone of that Party; and
(ii) the continental shelf of that Party; and
(iii) an area over which a third party exercises jurisdiction;
and taken under exploitation rights granted in accordance with international law; or
(i) either of the following:

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(i) waste and scrap that has been derived from production or consumption in a Party and that is fit only for the recovery of raw materials;

(ii) used goods that are collected in a Party and that are fit only for the recovery of raw materials; or

(j) goods produced or obtained in a Party solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced from originating materials

153ZKN Goods produced from originating materials

Goods are ***Pacific Islands originating goods*** if:

(a) they are produced entirely in one or more of the Parties, by one or more producers, from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Declaration of Origin for the goods.

Subdivision D—Goods produced from non-originating materials

153ZKO Goods produced from non-originating materials

(1) Goods are ***Pacific Islands originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the Product-Specific Rules; and

(b) they are produced entirely in the territory of one or more of the Parties, by one or more producers, from non-originating materials only or from non-originating materials and originating materials; and

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(c) the goods satisfy the requirements applicable to the goods in the Product-Specific Rules; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Declaration of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the Product-Specific Rules by using an abbreviation that is given a meaning for the purposes of the Product-Specific Rules.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods

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must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

Regional value content

(6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and

(d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and

(e) the accessories, spare parts, tools or instructional or other information materials are non-originating materials;

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the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKL(2).

(8) For the purposes of subsection (7), disregard section 153ZKQ in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

(9) If the goods are claimed to be Pacific Islands originating goods on the basis that the goods have a regional value content of not less than a particular percentage worked out in a particular way, the following are to be disregarded in determining whether the goods are Pacific Islands originating goods:

(a) operations to preserve the goods in good condition for the purpose of transport or storage of the goods;

(b) operations or processes to facilitate the shipment or transportation of the goods;

(c) packaging or presenting the goods for sale;

(d) affixing of marks, labels or other distinguishing signs on the goods or on their packaging;

(e) disassembly of the goods;

(f) any combination of things referred to in paragraphs (a) to (e).

153ZKP Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

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Regional value content

(2) However, if:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZKL(2).

Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153ZKQ Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are ***Pacific Islands originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and

(c) the other goods are Pacific Islands originating goods; and

(d) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and

(e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

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Subdivision F—Consignment

153ZKR Consignment

(1) Goods are not Pacific Islands originating goods under this Division if the goods are transported through a non-party and the goods undergo subsequent production or any other operation in the territory of a non-party other than:

(a) unloading, reloading, storing, repacking, relabelling or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia; or

(b) showing the goods in, or utilising the goods at, an exhibition.

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZKS Regulations

The regulations may make provision for and in relation to determining whether goods are Pacific Islands originating goods under this Division.

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Division 1GB—Trans-Pacific Partnership originating goods

Subdivision A—Preliminary

153ZKT Simplified outline of this Division

- This Division defines Trans-Pacific Partnership originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Trans-Pacific Partnership originating goods if they are wholly obtained or produced entirely in the territory of one or more of the Parties.
- Subdivision C provides that goods are Trans-Pacific Partnership originating goods if they are produced entirely in the territory of one or more of the Parties from originating materials only.
- Subdivision D sets out when goods are Trans-Pacific Partnership originating goods because they are produced entirely in the territory of one or more of the Parties from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Trans-Pacific Partnership originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Trans-Pacific Partnership originating goods.

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- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Trans-Pacific Partnership originating goods.

153ZKU Interpretation

Definitions

(1) In this Division:

Agreement means the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile on 8 March 2018, as amended and in force for Australia from time to time.

Note 1: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Note 2: Under Article 1 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the ***Santiago Agreement***), most of the provisions of the Trans-Pacific Partnership Agreement (the ***Auckland Agreement***), done at Auckland on 4 February 2016, are incorporated, by reference, into and made part of the Santiago Agreement. This means, for example, that Chapters 1 and 3 of the Auckland Agreement are, because of that Article, Chapters 1 and 3 of the Santiago Agreement.

aquaculture has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

certification of origin means a certification that is in force and that complies with the requirements of Article 3.20 of Chapter 3 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

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Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

(b) if the table in Annex 3-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

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non-Party has the same meaning as it has in Chapter 3 of the Agreement.

originating materials means:

(a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods; or

(b) recovered goods derived in the territory of one or more of the Parties and used in the production of, and incorporated into, remanufactured goods; or

(c) indirect materials.

Party has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

Note: See also subsection (6).

person of a Party has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

recovered goods means goods in the form of one or more individual parts that:

(a) have resulted from the disassembly of used goods; and

(b) have been cleaned, inspected, tested or processed as necessary for improvement to sound working condition.

remanufactured goods means goods that:

(a) are classified to any of Chapters 84 to 90 (other than heading 84.18, 85.09, 85.10, 85.16 or 87.03 or subheading 8414.51, 8450.11, 8450.12, 8508.11 or 8517.11), or to heading 94.02, of the Harmonized System; and

(b) are entirely or partially composed of recovered goods; and

(c) have a similar life expectancy to, and perform the same as or similar to, new goods:

(i) that are so classified; and

(ii) that are not composed of any recovered goods; and

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(d) have a factory warranty similar to that applicable to such new goods.

territory, for a Party, has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

textile or apparel good has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

Trans-Pacific Partnership originating goods means goods that, under this Division, are Trans-Pacific Partnership originating goods.

wholly formed, in relation to elastomeric yarn, has the same meaning as it has in the Agreement.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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Notification of entry into force of Agreement for a Party

(6) The Minister must announce, by notifiable instrument, the day on which the Agreement enters into force for a Party (other than Australia).

Subdivision B—Goods wholly obtained or produced entirely in the territory of one or more of the Parties

153ZKV Goods wholly obtained or produced entirely in the territory of one or more of the Parties

(1) Goods are ***Trans-Pacific Partnership originating goods*** if:
  (a) they are wholly obtained or produced entirely in the territory of one or more of the Parties; and
  (b) either:
    (i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or
    (ii) Australia has waived the requirement for a certification of origin for the goods.

(2) Goods are ***wholly obtained or produced entirely in the territory of one or more of the Parties*** if, and only if, the goods are:
  (a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the territory of one or more of the Parties; or
  (b) live animals born and raised in the territory of one or more of the Parties; or
  (c) goods obtained from live animals in the territory of one or more of the Parties; or
  (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of one or more of the Parties; or
  (e) goods obtained from aquaculture conducted in the territory of one or more of the Parties; or
  (f) minerals, or other naturally occurring substances, extracted or taken from the territory of one or more of the Parties; or

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(g) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:
  (i) outside the territories of the Parties; and
  (ii) in accordance with international law, outside the territorial sea of non-Parties;

by vessels that are registered, listed or recorded with a Party and are entitled to fly the flag of that Party; or

(h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered, listed or recorded with a Party and is entitled to fly the flag of that Party; or

(i) goods, other than fish, shellfish or other marine life, taken by a Party, or a person of a Party, from the seabed, or subsoil beneath the seabed, outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction, but only if that Party or person has the right to exploit that seabed or subsoil in accordance with international law; or

(j) waste or scrap that:
  (i) has been derived from production in the territory of one or more of the Parties; or
  (ii) has been derived from used goods that are collected in the territory of one or more of the Parties and that are fit only for the recovery of raw materials; or

(k) goods produced in the territory of one or more of the Parties, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

Subdivision C—Goods produced from originating materials

153ZKW Goods produced from originating materials

Goods are ***Trans-Pacific Partnership originating goods*** if:

(a) they are produced entirely in the territory of one or more of the Parties from originating materials only; and

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(b) either:

(i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

Subdivision D—Goods produced from non-originating materials

153ZKX Goods produced from non-originating materials

(1) Goods are ***Trans-Pacific Partnership originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement; and

(b) they are produced entirely in the territory of one or more of the Parties from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

Note: Subsection (12) sets out a limitation for goods that are put up in a set for retail sale.

(2) Without limiting paragraph (1)(c), if the goods are a textile or apparel good, paragraphs 7 and 9 of Article 4.2 of Chapter 4, and Appendix 1 to Annex 4-A to Chapter 4, of the Agreement have effect for the purposes of determining whether paragraph (1)(c) is met.

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Note: Most of the requirements applicable to goods are set out in the table in Annex 3-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

Rules for goods that are not a textile or apparel good

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are not a textile or apparel good; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (c) does not exceed 10% of the customs value of the goods.

Note: See subsections (6) and (7) for goods that are a textile or apparel good.

(5) In applying subsection (4), disregard non-originating materials covered by paragraph (a), (b), (c), (d) or (e) of Annex 3-C to Chapter 3 of the Agreement.

Rules for goods that are a textile or apparel good

(6) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods

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must have undergone a particular change in tariff classification; and

(b) the goods are a textile or apparel good; and

(c) the goods are classified other than to Chapter 61, 62 or 63 of the Harmonized System; and

(d) if the goods contain elastomeric yarn—the yarn is wholly formed in the territory of one or more of the Parties; and

(e) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (e) does not exceed 10% of the total weight of the goods.

(7) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are a textile or apparel good; and

(c) the goods are classified to Chapter 61, 62 or 63 of the Harmonized System; and

(d) if the component of the goods, that determines the tariff classification of the goods, contains elastomeric yarn—the yarn is wholly formed in the territory of one or more of the Parties; and

(e) the component of the goods, that determines the tariff classification of the goods, contains fibres or yarns that are non-originating materials and that do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the fibres or yarns covered by paragraph (e) does not exceed 10% of the total weight of that component.

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Regional value content

(8) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(9) Without limiting paragraph (8)(b), Appendix 1 to Annex 3-D to Chapter 3 of the Agreement has effect in working out if materials used in the production of goods are originating materials or non-originating materials.

(10) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and

(d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKU(2).

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(11) For the purposes of subsection (10), disregard section 153ZKZ in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

Goods put up in a set for retail sale

(12) If:

(a) goods are put up in a set for retail sale; and

(b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;

the goods are Trans-Pacific Partnership originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are Trans-Pacific Partnership originating goods; or

(d) the total customs value of the goods (if any) in the set that are not Trans-Pacific Partnership originating goods does not exceed 10% of the customs value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

153ZKY Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

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Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZKU(2).

Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153ZKZ Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are ***Trans-Pacific Partnership originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and

(c) the other goods are Trans-Pacific Partnership originating goods; and

(d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and

(e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

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Subdivision F—Consignment

153ZKZA Consignment

(1) Goods are not Trans-Pacific Partnership originating goods under this Division if the goods are transported through the territory of one or more non-Parties and either or both of the following apply:

(a) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, storing, labelling or marking for the purpose of satisfying the requirements of Australia or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);

(b) while the goods are in the territory of a non-Party, the goods do not remain under the control of the customs administration of the non-Party at all times.

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZKZB Regulations

The regulations may make provision for and in relation to determining whether goods are Trans-Pacific Partnership originating goods under this Division.

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Division 1H—Malaysian originating goods

Subdivision A—Preliminary

153ZLA Simplified outline

The following is a simplified outline of this Division:

- This Division defines Malaysian originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Malaysian originating goods that are imported into Australia.
- Subdivision B provides that goods are Malaysian originating goods if they are wholly obtained or produced in Malaysia or in Malaysia and Australia.
- Subdivision C provides that goods are Malaysian originating goods if they are produced entirely in Malaysia, or in Malaysia and Australia, from originating materials only.
- Subdivision D sets out when goods are Malaysian originating goods because they are produced entirely in Malaysia, or in Malaysia and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Malaysian originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Malaysian originating goods.

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- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Malaysian originating goods.

153ZLB Interpretation

Definitions

(1) In this Division:

Agreement means the Malaysia-Australia Free Trade Agreement, done at Kuala Lumpur on 22 May 2012, as amended from time to time.

Note: In 2012, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

aquaculture has the meaning given by Article 3.1 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of Malaysia that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Articles 3.15 and 3.16, and Rule 7 of the Annex to Chapter 3, of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30 ([1988] ATS 30). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

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Declaration of Origin means a declaration that is in force and that complies with the requirements of Article 3.15, and Rule 7 of the Annex to Chapter 3, of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2013; or

(b) if either of the following events occurs:

(i) Annex 2 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of an updated version of the Harmonized Commodity Description and Coding System;

(ii) there is a revision (as mentioned in paragraph 2 of Article 3.24 of Chapter 3 of the Agreement) to Annex 2 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the revision is endorsed and comes into effect as mentioned in that paragraph;

the version of the Harmonized Commodity Description and Coding System covered by whichever of those events occurred most recently.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

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(f) lubricants, greases, compounding materials and other similar goods; and
(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

juridical person has the meaning given by Article 1.2 of the Agreement.

Malaysian originating goods means goods that, under this Division, are Malaysian originating goods.

non-originating materials means goods that are not originating materials.

originating materials means:
(a) Malaysian originating goods that are used in the production of other goods; or
(b) Australian originating goods that are used in the production of other goods; or
(c) indirect materials.

person of Malaysia means:
(a) a natural person of a Party within the meaning, so far as it relates to Malaysia, of Article 1.2 of the Agreement; or
(b) a juridical person of Malaysia.

planted has the meaning given by Article 3.1 of the Agreement.

produce means grow, plant, mine, harvest, farm, raise, breed, extract, gather, collect, capture, fish, trap, hunt, manufacture, process or assemble.

Product-Specific Rules means the following:
(a) Annex 2 of the Agreement, unless paragraph (b) applies;

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(b) if:

(i) there is a revision (as mentioned in paragraph 2 of Article 3.24 of Chapter 3 of the Agreement) to Annex 2 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the revision is endorsed and comes into effect as mentioned in that paragraph; and

(ii) that Annex has not been amended or replaced as a result of that revision; and

(iii) that Annex has not been amended or replaced as a result of a further updated version of the Harmonized Commodity Description and Coding System;

that Annex as so revised.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 1.2 of the Agreement.

territory of Malaysia means territory within the meaning, so far as it relates to Malaysia, of Article 1.2 of the Agreement.

Value of goods

(3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(5) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or

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without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Subdivision B—Goods wholly obtained or produced in Malaysia or in Malaysia and Australia

153ZLC Goods wholly obtained or produced in Malaysia or in Malaysia and Australia

(1) Goods are ***Malaysian originating goods*** if:

(a) they are wholly obtained or produced in Malaysia or in Malaysia and Australia; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin or a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Declaration of Origin or a Certificate of Origin for the goods.

(2) Goods are ***wholly obtained or produced in Malaysia or in Malaysia and Australia*** if, and only if, the goods are:

(a) minerals, or other naturally occurring substances, extracted or taken in the territory of Malaysia; or

(b) plants formed, naturally grown or planted in the territory of Malaysia or in the territory of Malaysia and the territory of Australia, or products obtained in the territory of Malaysia from such plants; or

(c) live animals born and raised in the territory of Malaysia, or in the territory of Malaysia and the territory of Australia; or

(d) goods obtained from live animals in the territory of Malaysia; or

(e) goods obtained directly from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of Malaysia; or

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(f) fish, shellfish or plant or other marine life taken from the high seas by ships that are registered in Malaysia and are flying the flag of Malaysia; or

(g) goods obtained or produced from goods referred to in paragraph (f) on board factory ships that are registered in Malaysia and are flying the flag of Malaysia; or

(h) goods taken by Malaysia, or a person of Malaysia, from the seabed, or beneath the seabed, outside:

(i) the exclusive economic zone of Malaysia; and

(ii) the continental shelf of Malaysia; and

(iii) an area over which a third party exercises jurisdiction;

and taken under exploitation rights granted in accordance with international law; or

(i) waste and scrap that has been derived from production or consumption in the territory of Malaysia and that is fit only for the recovery of raw materials; or

(j) used goods that are collected in the territory of Malaysia and that are fit only for the recovery of raw materials; or

(k) goods produced or obtained entirely in the territory of Malaysia, or in the territory of Malaysia and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

Subdivision C—Goods produced in Malaysia, or in Malaysia and Australia, from originating materials

153ZLD Goods produced in Malaysia, or in Malaysia and Australia, from originating materials

Goods are ***Malaysian originating goods*** if:

(a) they are produced entirely in the territory of Malaysia, or entirely in the territory of Malaysia and the territory of Australia, from originating materials only; and

(b) either:

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(i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin or a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Declaration of Origin or a Certificate of Origin for the goods.

Subdivision D—Goods produced in Malaysia, or in Malaysia and Australia, from non-originating materials

153ZLE Goods produced in Malaysia, or in Malaysia and Australia, from non-originating materials

(1) Goods are ***Malaysian originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the Product-Specific Rules; and

(b) they are produced entirely in the territory of Malaysia, or entirely in the territory of Malaysia and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in the Product-Specific Rules; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin or a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Declaration of Origin or a Certificate of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the Product-Specific Rules by using an abbreviation that is given a meaning for the purposes of the Product-Specific Rules.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must

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have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

Regional value content

(6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

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(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and

(d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZLB(3).

(8) For the purposes of subsection (7), disregard section 153ZLH in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

153ZLF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

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(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

(3) If the packaging material or container is not customary for the goods, the regulations must provide for the packaging material or container to be taken into account as a non-originating material for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZLB(3).

153ZLG Non-qualifying operations

Goods are not Malaysian originating goods under this Subdivision merely because of the following:

(a) operations to preserve goods in good condition for the purpose of transport or storage of the goods;
(b) operations to facilitate the shipment or transportation of goods;
(c) disassembly of goods;
(d) affixing of marks, labels or other distinguishing signs on goods or on their packaging;
(e) placing goods in bottles, cases or boxes or other simple packaging operations;

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(f) changing of packaging or the breaking up or assembly of packages;
(g) the reclassification of goods without any physical change in the goods;
(h) any combination of things referred to in paragraphs (a) to (g).

Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153ZLH Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are ***Malaysian originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
(c) the other goods are Malaysian originating goods; and
(d) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and
(e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

Subdivision F—Consignment

153ZLI Consignment

(1) Goods are not Malaysian originating goods under this Division if:
(a) they are transported through a country or place other than Malaysia or Australia; and
(b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling, exhibition or any operation

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that is necessary to preserve them in good condition or to transport them to Australia).

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZLJ Regulations

The regulations may make provision for and in relation to determining whether goods are Malaysian originating goods under this Division.

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Division 1HA—Indonesian originating goods

Subdivision A—Preliminary

153ZLJA Simplified outline of this Division

- This Division defines Indonesian originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Indonesian originating goods that are imported into Australia.
- Subdivision B provides that goods are Indonesian originating goods if they are wholly obtained or produced in Indonesia.
- Subdivision C provides that goods are Indonesian originating goods if they are produced entirely in the territory of Indonesia from originating materials only.
- Subdivision D sets out when goods are Indonesian originating goods because they are produced entirely in the territory of Indonesia, or entirely in the territory of Indonesia and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E deals with how the consignment or exhibition of goods affects whether the goods are Indonesian originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are Indonesian originating goods.

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153ZLK Interpretation

Definitions

(1) In this Division:

Agreement means the Indonesia-Australia Comprehensive Economic Partnership Agreement, done at Jakarta on 4 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of Indonesia that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Article 4.20 of Chapter 4 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

Declaration of Origin means a declaration that is in force and that complies with the requirements of Article 4.20 of Chapter 4 of the Agreement.

enterprise has the meaning given by Article 1.4 of Chapter 1 of the Agreement.

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Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or

(b) if the table in Annex 4-C of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

Indonesian originating goods means goods that, under this Division, are Indonesian originating goods.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

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non-party has the same meaning as it has in Chapter 4 of the Agreement.

originating materials means:

(a) Indonesian originating goods that are used in the production of other goods; or

(b) Australian originating goods that are used in the production of other goods; or

(c) indirect materials.

person of Indonesia means:

(a) a natural person of a Party within the meaning, so far as it relates to Indonesia, of Article 1.4 of Chapter 1 of the Agreement; or

(b) an enterprise of Indonesia.

production has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

sea-fishing has the same meaning as it has in Chapter 4 of the Agreement.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 1.4 of Chapter 1 of the Agreement.

territory of Indonesia means territory within the meaning, so far as it relates to Indonesia, of Article 1.4 of Chapter 1 of the Agreement.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

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(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Subdivision B—Goods wholly obtained or produced in Indonesia

153ZLL Goods wholly obtained or produced in Indonesia

(1) Goods are ***Indonesian originating goods*** if:
  (a) they are wholly obtained or produced in Indonesia; and
  (b) either:
    (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
    (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

(2) Goods are ***wholly obtained or produced in Indonesia*** if, and only if, the goods are:
  (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in the territory of Indonesia (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
  (b) live animals born and raised in the territory of Indonesia; or
  (c) goods obtained from live animals in the territory of Indonesia; or
  (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in the territory of Indonesia; or

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(e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or beneath the seabed in the territory of Indonesia; or

(f) goods of sea-fishing, or other marine goods, taken from the high seas, in accordance with international law, by any vessel that is registered or recorded with Indonesia and is entitled to fly the flag of Indonesia; or

(g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered or recorded with Indonesia and is entitled to fly the flag of Indonesia; or

(h) goods taken by Indonesia, or a person of Indonesia, from the seabed, or beneath the seabed, outside:

(i) the exclusive economic zone of Indonesia; and

(ii) the continental shelf of Indonesia; and

(iii) an area over which a non-party exercises jurisdiction;

and taken under exploitation rights granted in accordance with international law; or

(i) either of the following:

(i) waste and scrap that has been derived from production or consumption in the territory of Indonesia and that is fit only for the recovery of raw materials;

(ii) used goods that are collected in the territory of Indonesia and that are fit only for the recovery of raw materials; or

(j) goods obtained or produced in the territory of Indonesia solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced in Indonesia from originating materials

153ZLM Goods produced in Indonesia from originating materials

Goods are ***Indonesian originating goods*** if:

(a) they are produced entirely in the territory of Indonesia from originating materials only; and

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(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

Subdivision D—Goods produced in Indonesia, or in Indonesia and Australia, from non-originating materials

153ZLN Goods produced in Indonesia, or in Indonesia and Australia, from non-originating materials

(1) Goods are ***Indonesian originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4-C of the Agreement; and

(b) they are produced entirely in the territory of Indonesia, or entirely in the territory of Indonesia and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4-C of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

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Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

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Qualifying value content

(6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

(a) the qualifying value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and

(d) the accessories, spare parts, tools or instructional or other information materials are included in the price of the goods; and

(e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZLK(2).

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(8) If the goods are claimed to be Indonesian originating goods on the basis that the goods have a qualifying value content of not less than a particular percentage worked out in a particular way, the following are to be disregarded in determining whether the goods are Indonesian originating goods:

(a) operations or processes to preserve the goods in good condition for the purpose of transport or storage of the goods;

(b) operations or processes to facilitate the shipment or transportation of the goods;

(c) packaging or presenting the goods for transportation or sale;

(d) simple processes of sifting, classifying, washing or other similar simple processes;

(e) affixing of marks, labels or other distinguishing signs on the goods or on their packaging;

(f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;

(g) any combination of things referred to in paragraphs (a) to (f).

153ZLO Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

Qualifying value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods (whether the packaging

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material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZLK(2).

Subdivision E—Consignment and exhibition

153ZLP Consignment

(1) Goods are not Indonesian originating goods under this Division if the goods are transported through a non-party, the goods are not exhibited in the non-party and one or more of the following apply:

(a) the goods undergo any operation in the non-party (other than unloading, reloading, unpacking and repacking, labelling or any other operation that is necessary to preserve the goods in good condition);

(b) the goods enter the commerce of the non-party;

(c) the transport through that non-party is not justified by geographical, economic or logistical reasons.

(2) This section applies despite any other provision of this Division.

153ZLQ Exhibition

(1) Goods are not Indonesian originating goods under this Division if:

(a) the goods are imported into Australia after being exhibited in a non-party; and

(b) one or more of subparagraphs (a), (b), (c), (d) and (e) of paragraph 1 of Article 4.16 of Chapter 4 of the Agreement are not satisfied.

(2) This section applies despite any other provision of this Division.

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Subdivision F—Regulations

153ZLR Regulations

The regulations may make provision for and in relation to determining whether goods are Indonesian originating goods under this Division.

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Division 1J—Korean originating goods

Subdivision A—Preliminary

153ZMA Simplified outline of this Division

- This Division defines Korean originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Korean originating goods that are imported into Australia.
- Subdivision B provides that goods are Korean originating goods if they are wholly obtained in Korea or in Korea and Australia.
- Subdivision C provides that goods are Korean originating goods if they are produced entirely in Korea, or in Korea and Australia, from originating materials only.
- Subdivision D sets out when goods are Korean originating goods because they are produced entirely in Korea, or in Korea and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E provides that goods are not Korean originating goods under this Division merely because of certain operations.
- Subdivision F deals with other matters, such as how the consignment of goods affects whether the goods are Korean originating goods.

153ZMB Interpretation

Definitions

(1) In this Division:

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Agreement means the Korea-Australia Free Trade Agreement, done at Seoul on 8 April 2014, as amended from time to time.

Note: The Agreement could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 3.30 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of Korea that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Article 3.15 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

enterprise has the meaning given by Article 1.4 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 12 December 2014; or

(b) if the table in Annex 3-A of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

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indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

Korea means the Republic of Korea.

Korean originating goods means goods that, under this Division, are Korean originating goods.

non-originating materials means goods that are not originating materials.

originating materials means:

(a) Korean originating goods that are used in the production of other goods; or

(b) Australian originating goods that are used in the production of other goods; or

(c) indirect materials.

person of Korea means:

(a) a national within the meaning, so far as it relates to Korea, of Article 1.4 of the Agreement; or

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(b) an enterprise of Korea.

produce means grow, mine, harvest, fish, breed, raise, trap, hunt, manufacture, process, assemble or disassemble.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 1.4 of the Agreement.

territory of Korea means territory within the meaning, so far as it relates to Korea, of Article 1.4 of the Agreement.

vegetable goods has the same meaning as it has in the Agreement.

Value of goods

(3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(5) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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Subdivision B—Goods wholly obtained in Korea or in Korea and Australia

153ZMC Goods wholly obtained in Korea or in Korea and Australia

(1) Goods are ***Korean originating goods*** if:

(a) they are wholly obtained in Korea or in Korea and Australia; and

(b) either:

(i) the importer of the goods has, at the time for working out the rate of import duty on the goods, a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

(2) Goods are ***wholly obtained in Korea or in Korea and Australia*** if, and only if, the goods are:

(a) minerals, or other natural resources, taken or extracted from the territory of Korea; or

(b) vegetable goods grown, harvested, picked or gathered in the territory of Korea, or in the territory of Korea and the territory of Australia; or

(c) live animals born and raised in the territory of Korea, or in the territory of Korea and the territory of Australia; or

(d) goods obtained from live animals referred to in paragraph (c); or

(e) goods obtained from hunting, trapping, gathering, capturing, aquaculture or fishing conducted in Korea or the territorial sea of Korea; or

(f) fish, shellfish or other marine life taken from the sea, seabed, ocean floor or subsoil outside the territorial sea of Korea by ships that are registered or recorded in Korea and are entitled to fly the flag of Korea; or

(g) goods produced, from goods referred to in paragraph (f), on board factory ships that are registered or recorded in Korea and are entitled to fly the flag of Korea; or

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(h) goods, other than fish, shellfish or other marine life, taken or extracted from the seabed, ocean floor or subsoil outside the territory of Korea by Korea, or a person of Korea, but only if Korea, or the person of Korea, has the right to exploit that part of the seabed, ocean floor or subsoil; or

(i) goods taken from outer space by Korea, or a person of Korea, and that are not processed in a country other than Korea or Australia; or

(j) waste and scrap that:

(i) has been derived from production in the territory of Korea; or

(ii) has been derived from used goods that are collected in the territory of Korea and that are fit only for the recovery of raw materials; or

(k) goods that are collected in the territory of Korea, that can no longer perform their original purpose and that are fit only for the recovery of raw materials; or

(l) goods produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (k) or from their derivatives.

Subdivision C—Goods produced in Korea, or in Korea and Australia, from originating materials

153ZMD Goods produced in Korea, or in Korea and Australia, from originating materials

Goods are ***Korean originating goods*** if:

(a) they are produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time for working out the rate of import duty on the goods, a Certificate of Origin, or a copy of one, for the goods; or

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(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

Subdivision D—Goods produced in Korea, or in Korea and Australia, from non-originating materials

153ZME Goods produced in Korea, or in Korea and Australia, from non-originating materials

(1) Goods are ***Korean originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-A of the Agreement; and

(b) they are produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time for working out the rate of import duty on the goods, a Certificate of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-A of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in

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the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) Subsection (4) does not apply in relation to goods covered by paragraph 3 of Article 3.6 of Chapter 3 of the Agreement.

(6) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

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Regional value content

(7) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(8) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts or tools; and

(c) the accessories, spare parts or tools are not invoiced separately from the goods; and

(d) the quantities and value of the accessories, spare parts or tools are customary for the goods;

the regulations must provide for the value of the accessories, spare parts or tools to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts or tools are originating materials or non-originating materials).

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZMB(3).

153ZMF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

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then the packaging material or container is to be disregarded for the purposes of this Subdivision.

Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZMB(3).

Subdivision E—Non-qualifying operations

153ZMG Non-qualifying operations

(1) Goods are not Korean originating goods under this Division merely because of the following operations or processes:

(a) operations to preserve goods in good condition for the purpose of transport or storage of the goods;

(b) changing of packaging or the breaking up or assembly of packages;

(c) washing, cleaning or removal of dust, oxide, oil, paint or other coverings;

(d) sharpening or simple processes of grinding, crushing or cutting;

(e) simple placing in bottles, cans, flasks, bags, cases or boxes, fixing on cards or boards or other simple packaging operations;

(f) affixing or printing marks, labels, logos or other distinguishing signs on goods or on their packaging;

(g) disassembly of goods;

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(h) the reclassification of goods without any physical change in the goods;

(i) any combination of things referred to in paragraphs (a) to (h).

(2) This section applies despite any other provision of this Division.

Subdivision F—Other matters

153ZMH Consignment

(1) Goods are not Korean originating goods under this Division if they are transported through a country other than Korea or Australia and either or both of the following apply:

(a) they undergo subsequent production or any other operation in that country (other than unloading, reloading, storing, repacking, relabelling, splitting up of loads for transport or any operation that is necessary to preserve them in good condition or to transport them to Australia);

(b) they do not remain under customs control at all times while they are in that country.

(2) This section applies despite any other provision of this Division.

153ZMI Outward processing zones on the Korean Peninsula

Goods are not prevented from being Korean originating goods under this Division if they contain materials that:

(a) have been exported from Korea; and

(b) have undergone processing in an area designated as an outward processing zone in accordance with Annex 3-B to Chapter 3 of the Agreement; and

(c) have been re-imported to Korea after that processing.

153ZMJ Regulations

The regulations may make provision for and in relation to determining whether goods are Korean originating goods under this Division.

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Division 1JA—Indian originating goods

Subdivision A—Preliminary

153ZMK Simplified outline of this Division

- This Division defines Indian originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Indian originating goods that are imported into Australia.
- Subdivision B provides that goods are Indian originating goods if they are wholly obtained or produced in India or in India and Australia.
- Subdivision C sets out when goods are Indian originating goods because they are produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision D deals with how the packaging materials or containers in which goods are packaged affects whether the goods are Indian originating goods.
- Subdivision E deals with how the consignment of goods affects whether the goods are Indian originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are Indian originating goods.

153ZML Interpretation

Definitions

(1) In this Division:

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Agreement means the India-Australia Economic Cooperation and Trade Agreement, done on 2 April 2022, as amended from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of India that implements the Agreement.

certificate of origin means a certificate that is in force and that complies with the requirements of Article 4.15 of Chapter 4 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or

(b) if the table in Annex 4B to Chapter 4 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

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Indian originating goods means goods that, under this Division, are Indian originating goods.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning), catalysts and solvents; and

(d) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(e) tools, dies and moulds; and

(f) spare parts and materials; and

(g) lubricants, greases, compounding materials and other similar goods.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

non-party has the same meaning as it has in Chapter 4 of the Agreement.

originating materials means:

(a) Indian originating goods that are used in the production of other goods; or

(b) Australian originating goods that are used in the production of other goods; or

(c) indirect materials.

production has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

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territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

territory of India means territory within the meaning, so far as it relates to India, of Article 1.3 of Chapter 1 of the Agreement.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Subdivision B—Goods wholly obtained or produced in India or in India and Australia

153ZMM Goods wholly obtained or produced in India or in India and Australia

(1) Goods are ***Indian originating goods*** if:

(a) they are wholly obtained or produced in India or in India and Australia; and

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(b) either:

(i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certificate of origin for the goods.

(2) Goods are ***wholly obtained or produced in India or in India and Australia*** if, and only if, the goods are:

(a) plants, or goods obtained from plants, that are grown and harvested, picked or gathered in the territory of India or in the territory of India and the territory of Australia (including fruit, flowers, vegetables, trees, seaweed, fungi, algae and live plants); or

(b) live animals born and raised in the territory of India or in the territory of India and the territory of Australia; or

(c) goods obtained from live animals referred to in paragraph (b); or

(d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the territory of India; or

(e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or subsoil beneath the seabed in the territory of India; or

(f) fish, shellfish or other marine life extracted or taken from the sea, seabed or subsoil beneath the seabed:

(i) beyond the outer limits of the territory of India and the territory of Australia; and

(ii) in accordance with international law, outside the territorial sea of non-parties;

by vessels that are registered, listed or recorded with India and are entitled to fly the flag of India; or

(g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered, listed or recorded with India and is entitled to fly the flag of India; or

(h) goods, other than fish, shellfish or other marine life, extracted or taken from the seabed or subsoil beneath the seabed

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outside the territorial sea of India, by India, but only if India has the right to exploit that seabed or subsoil in accordance with international law; or

(i) waste and scrap that has been derived from production or consumption in the territory of India and that is fit only for the recovery of raw materials or for recycling purposes; or

(j) goods produced in the territory of India, or in the territory of India and the territory of Australia, exclusively from the following:

(i) goods referred to in paragraphs (a) to (i) or their derivatives;

(ii) Australian originating goods of a kind covered by subparagraph (a) of Article 4.2 of Chapter 4 of the Agreement or their derivatives.

Subdivision C—Goods produced in India, or in India and Australia, from non-originating materials

153ZMN Goods produced in India, or in India and Australia, from non-originating materials

(1) Goods are ***Indian originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4B to Chapter 4 of the Agreement; and

(b) they are produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) either:

(i) the goods satisfy the requirements applicable to the goods in that Annex; or

(ii) the goods satisfy the requirements under subsection (3); and

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(d) either:
(i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or
(ii) Australia has waived the requirement for a certificate of origin for the goods.

(2) Without limiting subparagraph (1)(c)(i), a requirement may be specified in the table in Annex 4B to Chapter 4 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

(3) Goods satisfy the requirements under this subsection if:
(a) all non-originating materials used in the production of the goods have undergone a change in tariff classification at the tariff subheading level; and
(b) the goods satisfy the qualifying value content requirements prescribed by regulations made for the purposes of this paragraph; and
(c) the final production process of the manufacture of the goods is performed in the territory of India.

Change in tariff classification

(4) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(5) If:
(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

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(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if:

(c) in the case of goods classified to any of Chapters 50 to 63 of the Harmonized System—the total weight of the non-originating materials covered by paragraph (b) does not exceed 10% of the total weight of the goods; or

(d) otherwise—the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

Qualifying value content

(6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

(a) the qualifying value content of the goods is to be worked out in accordance with the Agreement, unless paragraph (b) applies; or

(b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and

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(d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the following:

(e) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods;

(f) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZML(2).

153ZMO Non-qualifying operations

(1) Goods are not Indian originating goods under this Subdivision merely because of the following operations:

(a) preserving operations to ensure that the goods remain in good condition for the purpose of transport or storage of the goods;

(b) packaging or presenting the goods for transportation or sale;

(c) simple processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling or uncoiling;

(d) for goods that are textiles—attaching accessory articles (including straps, beads, cords, rings and eyelets) to the goods or ironing or pressing the goods;

(e) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;

(f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;

(g) disassembly of products into parts;

(h) slaughtering (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of animals;

(i) simple painting or polishing operations;

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(j) simple peeling, stoning or shelling;
(k) simple mixing (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of goods, whether or not of different kinds;
(l) any combination of things referred to in paragraphs (a) to (k).

(2) For the purposes of this section, ***simple*** has the same meaning as it has in Article 4.7 of Chapter 4 of the Agreement.

Subdivision D—Packaging materials and containers

153ZMP Packaging materials and containers

(1) If:
(a) goods are packaged for retail sale in packaging material or a container; and
(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
then the packaging material or container is to be disregarded for the purposes of this Division.

Qualifying value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:
(a) the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods;
(b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZML(2).

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Subdivision E—Consignment

153ZMQ Consignment

(1) Goods are not Indian originating goods under this Division if the goods are transported through a non-party and either or both of the following apply:

(a) the goods undergo further production or any other operation in the non-party (other than unloading, reloading, storing, repacking, relabelling for the purpose of satisfying the requirements of Australia, splitting up or consolidating loads or any other operation necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);

(b) while the goods are in the non-party, the goods do not remain under customs control at all times.

(2) This section applies despite any other provision of this Division.

Subdivision F—Regulations

153ZMR Regulations

The regulations may make provision for and in relation to determining whether goods are Indian originating goods under this Division.

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Division 1K—Japanese originating goods

Subdivision A—Preliminary

153ZNA Simplified outline of this Division

- This Division defines Japanese originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Japanese originating goods that are imported into Australia.
- Subdivision B provides that goods are Japanese originating goods if they are wholly obtained in Japan.
- Subdivision C provides that goods are Japanese originating goods if they are produced entirely in Japan from originating materials only.
- Subdivision D sets out when goods are Japanese originating goods because they are produced entirely in Japan, or in Japan and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E deals with how the consignment of goods affects whether the goods are Japanese originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are Japanese originating goods.

153ZNB Interpretation

Definitions

(1) In this Division:

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Agreement means the Japan-Australia Economic Partnership Agreement, done at Canberra on 8 July 2014, as amended from time to time.

Note 1: The Agreement is in Australian Treaty Series 2015 No. 2 ([2015] ATS 2) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Note 2: There is also a separate agreement (known as the Implementing Agreement) that sets out the details and procedures for the implementation of the Japan-Australia Economic Partnership Agreement. The Implementing Agreement is in that same Australian Treaty Series.

Area of Japan means Area within the meaning, so far as it relates to Japan, of Article 1.2 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of Japan that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Article 3.15 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

enterprise has the meaning given by Article 1.2 of the Agreement.

factory ships of Japan means factory ships of the Party within the meaning, so far as it relates to Japan, of Article 3.1 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

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Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

(b) if the table in Annex 2 to the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

Japanese originating goods means goods that, under this Division, are Japanese originating goods.

non-originating materials means goods that are not originating materials.

originating materials means:

(a) Japanese originating goods that are used in the production of other goods; or

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(b) Australian originating goods that are used in the production of other goods; or
(c) indirect materials.

origin certification document means a document that is in force and that complies with the requirements of Article 3.16 of the Agreement.

person of Japan means:
(a) a natural person of a Party within the meaning, so far as it relates to Japan, of Article 1.2 of the Agreement; or
(b) an enterprise of Japan.

produce means manufacture, assemble, process, raise, grow, breed, mine, extract, harvest, fish, trap, gather, collect, hunt or capture.

sea-fishing has the same meaning as it has in the Agreement.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

vessels of Japan means vessels of the Party within the meaning, so far as it relates to Japan, of Article 3.1 of the Agreement.

Value of goods

(3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(5) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in

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relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Subdivision B—Goods wholly obtained in Japan

153ZNC Goods wholly obtained in Japan

(1) Goods are ***Japanese originating goods*** if:
  (a) they are wholly obtained in Japan; and
  (b) either:
    (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or an origin certification document, or a copy of one, for the goods; or
    (ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document for the goods.

(2) Goods are ***wholly obtained in Japan*** if, and only if, the goods are:
  (a) live animals born and raised in the Area of Japan, other than the sea outside the territorial sea of Japan; or
  (b) animals obtained from hunting, trapping, fishing, gathering or capturing in the Area of Japan, other than the sea outside the territorial sea of Japan; or
  (c) goods obtained from live animals in the Area of Japan; or
  (d) plants, fungi or algae harvested, picked or gathered in the Area of Japan; or
  (e) minerals, or other naturally occurring substances, extracted or taken from the Area of Japan, other than the seabed, or subsoil beneath the seabed, outside the territorial sea of Japan; or
  (f) goods of sea-fishing, or other goods, taken by vessels of Japan from the sea outside the territorial sea of Japan and the territorial sea of Australia; or
  (g) goods produced on board factory ships of Japan from goods referred to in paragraph (f); or

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(h) goods taken by Japan, or a person of Japan, from the seabed, or subsoil beneath the seabed, outside the territorial sea of Japan, but only if Japan has rights to exploit that part of the seabed or subsoil in accordance with international law; or

(i) goods that are collected in Japan, that can no longer perform their original purpose, that are not capable of being restored or repaired and that are fit only for disposal or for the recovery of raw materials; or

(j) waste and scrap that has been derived from production or consumption in Japan and that is fit only for disposal or for the recovery of raw materials; or

(k) raw materials recovered in Japan from goods that can no longer perform their original purpose and that are not capable of being restored or repaired; or

(l) goods produced in the Area of Japan exclusively from goods referred to in paragraphs (a) to (k).

Subdivision C—Goods produced in Japan from originating materials

153ZND Goods produced in Japan from originating materials

Goods are ***Japanese originating goods*** if:

(a) they are produced entirely in Japan from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or an origin certification document, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document for the goods.

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Subdivision D—Goods produced in Japan, or in Japan and Australia, from non-originating materials

153ZNE Goods produced in Japan, or in Japan and Australia, from non-originating materials

(1) Goods are ***Japanese originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 2 to the Agreement; and

(b) they are produced entirely in Japan, or entirely in Japan and Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or an origin certification document, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 2 to the Agreement by using an abbreviation or other code that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

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(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

Qualifying value content

(6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

(a) the qualifying value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.

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(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts or tools; and

(c) the accessories, spare parts or tools are not invoiced separately from the goods; and

(d) the quantities and value of the accessories, spare parts or tools are customary for the goods; and

(e) the accessories, spare parts or tools are non-originating materials;

the regulations must provide for the value of the accessories, spare parts or tools covered by paragraph (e) to be taken into account for the purposes of working out the qualifying value content of the goods.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZNB(3).

153ZNF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

Qualifying value content

(2) However, if:

(a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and

(b) the packaging material or container is a non-originating material;

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the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZNB(3).

153ZNG Non-qualifying operations

Goods are not Japanese originating goods under this Subdivision merely because of the following operations or processes:

(a) operations to preserve goods in good condition for the purpose of transport or storage of the goods (such as drying, freezing and keeping goods in brine);
(b) changing of packaging or the breaking up or assembly of packages;
(c) disassembly of goods;
(d) placing in bottles, cases or boxes or other simple packaging operations;
(e) collecting of parts or components for unassembled goods (where the unassembled goods would be classified to a heading of the Harmonized System in accordance with Rule 2(a) of the Interpretation Rules);
(f) making-up of sets of goods;
(g) the reclassification of goods without any physical change in the goods;
(h) any combination of things referred to in paragraphs (a) to (g).

Subdivision E—Consignment

153ZNH Consignment

(1) Goods are not Japanese originating goods under this Division if the goods are transported through a country other than Japan or Australia and either or both of the following apply:

(a) the goods undergo subsequent production or any other operation in that country (other than repacking, relabelling, splitting up of the goods, unloading, reloading, storing or any

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operation that is necessary to preserve the goods in good condition or to transport the goods to Australia);

(b) the goods do not remain under customs control at all times while the goods are in that country.

(2) This section applies despite any other provision of this Division.

Subdivision F—Regulations

153ZNI Regulations

The regulations may make provision for and in relation to determining whether goods are Japanese originating goods under this Division.

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Division 1L—Chinese originating goods

Subdivision A—Preliminary

153ZOA Simplified outline of this Division

- This Division defines Chinese originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Chinese originating goods that are imported into Australia.
- Subdivision B provides that goods are Chinese originating goods if they are wholly obtained or produced in the territory of China.
- Subdivision C provides that goods are Chinese originating goods if they are produced entirely in the territory of China, or entirely in the territory of China and the territory of Australia, from originating materials only.
- Subdivision D sets out when goods are Chinese originating goods because they are produced entirely in the territory of China, or entirely in the territory of China and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Chinese originating goods because they are accessories, spare parts or tools imported with other goods.
- Subdivision F provides that goods are not Chinese originating goods under this Division merely because of certain operations.
- Subdivision G deals with how the consignment of goods affects whether the goods are Chinese originating goods.

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- Subdivision H allows regulations to make provision for and in relation to determining whether goods are Chinese originating goods.

153ZOB Interpretation

Definitions

(1) In this Division:

Agreement means the China-Australia Free Trade Agreement, done at Canberra on 17 June 2015, as amended from time to time.

Note: The Agreement could in 2015 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Australian originating goods means goods that are Australian originating goods under a law of China that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Article 3.14 of the Agreement.

Chinese originating goods means goods that, under this Division, are Chinese originating goods.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2015 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

Declaration of Origin means a declaration that is in force and that complies with the requirements of Article 3.15 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

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Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

(b) if the table in Annex II to the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

originating materials means:

(a) Chinese originating goods that are used in the production of other goods; or

(b) Australian originating goods that are used in the production of other goods; or

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(c) indirect materials.

plant has the same meaning as it has in the Agreement.

produce means grow, raise, mine, harvest, fish, farm, trap, hunt, capture, gather, collect, breed, extract, manufacture, process or assemble.

territory of a non-party has the same meaning as it has in the Agreement, and includes the customs territory of the following members of the World Trade Organization established by the World Trade Organization Agreement:

(a) Hong Kong, China;
(b) Macao, China;
(c) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 1.3 of the Agreement.

territory of China means territory within the meaning, so far as it relates to China, of Article 1.3 of the Agreement, and does not include the customs territory of the following members of the World Trade Organization established by the World Trade Organization Agreement:

(a) Hong Kong, China;
(b) Macao, China;
(c) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

World Trade Organization Agreement means the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The Agreement is in Australian Treaty Series 1995 No. 8 ([1995] ATS 8) and could in 2015 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

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Value of goods

(3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(5) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Subdivision B—Goods wholly obtained or produced in the territory of China

153ZOC Goods wholly obtained or produced in the territory of China

(1) Goods are ***Chinese originating goods*** if:

(a) they are wholly obtained or produced in the territory of China; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

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(2) Goods are ***wholly obtained or produced in the territory of China*** if, and only if, the goods are:

(a) live animals born and raised in the territory of China; or

(b) goods obtained in the territory of China from live animals referred to in paragraph (a); or

(c) goods obtained directly from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the territory of China; or

(d) plants, or plant products, harvested, picked or gathered in the territory of China; or

(e) minerals, or other naturally occurring substances, extracted or taken in the territory of China; or

(f) goods, other than fish, shellfish, plant or other marine life, extracted or taken from the waters, seabed or subsoil beneath the seabed outside the territory of China, but only if China has the right to exploit such waters, seabed or subsoil in accordance with international law and the law of China; or

(g) fish, shellfish, plant or other marine life taken from the high seas by a vessel registered with China and flying the flag of China; or

(h) goods obtained or produced from goods referred to in paragraph (g) on board factory ships that are registered with China and flying the flag of China; or

(i) waste and scrap that:

(i) has been derived from production in the territory of China; or

(ii) has been derived from used goods that are collected in the territory of China and that are fit only for the recovery of raw materials; or

(j) goods produced entirely in the territory of China exclusively from goods referred to in paragraphs (a) to (i).

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Subdivision C—Goods produced in China, or in China and Australia, from originating materials

153ZOD Goods produced in China, or in China and Australia, from originating materials

Goods are ***Chinese originating goods*** if:

(a) they are produced entirely in the territory of China, or entirely in the territory of China and the territory of Australia, from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

Subdivision D—Goods produced in China, or in China and Australia, from non-originating materials

153ZOE Goods produced in China, or in China and Australia, from non-originating materials

(1) Goods are ***Chinese originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex II to the Agreement; and

(b) they are produced entirely in the territory of China, or entirely in the territory of China and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

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(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex II to the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

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Regional value content

(5) If a requirement that applies in relation to the goods is that the goods must have a minimum requirement of regional value content worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(6) If:

(a) a requirement that applies in relation to the goods is that the goods must have a minimum requirement of regional value content worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts or tools; and

(c) the accessories, spare parts or tools are classified and invoiced with the goods and are included in the price of the goods; and

(d) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the goods; and

(e) the quantities and value of the accessories, spare parts or tools are customary for the goods; and

(f) the accessories, spare parts or tools are non-originating materials;

the regulations must provide for the value of the accessories, spare parts or tools covered by paragraph (f) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZOB(3).

(7) For the purposes of subsection (6), disregard section 153ZOG in working out whether the accessories, spare parts or tools are non-originating materials.

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153ZOF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

Regional value content

(2) However, if:

(a) a requirement that applies in relation to the goods is that the goods must have a minimum requirement of regional value content worked out in a particular way; and

(b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZOB(3).

Subdivision E—Goods that are accessories, spare parts or tools

153ZOG Goods that are accessories, spare parts or tools

Goods are ***Chinese originating goods*** if:

(a) they are accessories, spare parts or tools in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts or tools; and

(c) the other goods are Chinese originating goods; and

(d) the accessories, spare parts or tools are classified and invoiced with the other goods and are included in the price of the other goods; and

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(e) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the other goods; and

(f) the quantities and value of the accessories, spare parts or tools are customary for the other goods.

Subdivision F—Non-qualifying operations

153ZOH Non-qualifying operations

(1) Goods are not Chinese originating goods under this Division merely because of the following operations or processes:

(a) operations or processes to preserve goods in good condition for the purpose of transport or storage of the goods;

(b) packaging or repackaging;

(c) sifting, screening, sorting, classifying, grading or matching (including the making up of sets of goods);

(d) placing in bottles, cans, flasks, bags, cases or boxes, fixing on cards or boards or other simple packaging operations;

(e) affixing or printing marks, labels, logos or other like distinguishing signs on goods or on their packaging;

(f) disassembly of goods.

(2) This section applies despite any other provision of this Division.

Subdivision G—Consignment

153ZOI Consignment

(1) Goods are not Chinese originating goods under this Division if the goods are transported through the territory of a non-party and one or more of the following apply:

(a) the goods undergo any operation in the territory of the non-party (other than unloading, reloading, repacking, relabelling for the purpose of satisfying the requirements of Australia, splitting up of the goods for further transport,

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temporary storage or any operation that is necessary to preserve the goods in good condition);

(b) if the goods undergo temporary storage in the territory of the non-party—the goods remain in the territory of the non-party for a period exceeding 12 months;

(c) the goods do not remain under customs control at all times while the goods are in the territory of the non-party.

(2) Without limiting paragraph (1)(c), the regulations may make provision for the circumstances in which goods are under customs control while the goods are in the territory of a non-party.

(3) This section applies despite any other provision of this Division.

Subdivision H—Regulations

153ZOJ Regulations

The regulations may make provision for and in relation to determining whether goods are Chinese originating goods under this Division.

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Division 1M—Hong Kong originating goods

Subdivision A—Preliminary

153ZPA Simplified outline of this Division

- This Division defines Hong Kong originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Hong Kong originating goods that are imported into Australia.
- Subdivision B provides that goods are Hong Kong originating goods if they are wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia.
- Subdivision C provides that goods are Hong Kong originating goods if they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from originating materials only.
- Subdivision D sets out when goods are Hong Kong originating goods because they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Hong Kong originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Hong Kong originating goods.

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- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Hong Kong originating goods.

153ZPB Interpretation

Definitions

(1) In this Division:

Agreement means the Free Trade Agreement between Australia and Hong Kong, China, done at Sydney on 26 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

Area of Australia means Area within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

Area of Hong Kong, China means Area within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement, as affected by the following letters related to the geographical application of the Agreement for Hong Kong, China:

(a) a letter to the Minister for Trade, Tourism, and Investment from the Secretary for Commerce and Economic Development, Hong Kong Special Administrative Region, The People's Republic of China dated 26 March 2019;

(b) a letter to that Secretary from that Minister dated 26 March 2019.

Note: The letters could in 2019 be viewed on the website of the Department of Foreign Affairs and Trade.

Australian originating goods means goods that are Australian originating goods under a law of Hong Kong, China that implements the Agreement.

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Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

Declaration of Origin means a declaration that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of the Agreement.

enterprise has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or

(b) if the table in Annex 3-B of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

Hong Kong originating goods means goods that, under this Division, are Hong Kong originating goods.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

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(c) fuel (within its ordinary meaning); and
(d) catalysts and solvents; and
(e) gloves, glasses, footwear, clothing, safety equipment and supplies; and
(f) tools, dies and moulds; and
(g) spare parts and materials; and
(h) lubricants, greases, compounding materials and other similar goods.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

non-Party has the same meaning as it has in Chapter 3 of the Agreement.

originating materials means:
(a) Hong Kong originating goods that are used in the production of other goods; or
(b) Australian originating goods that are used in the production of other goods; or
(c) indirect materials.

person of Hong Kong, China means:
(a) a natural person of a Party within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement; or
(b) an enterprise of Hong Kong, China.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

sea-fishing has the same meaning as it has in Chapter 3 of the Agreement.

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Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Subdivision B—Goods wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia

153ZPC Goods wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia

(1) Goods are ***Hong Kong originating goods*** if:

(a) they are wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Declaration of Origin for the goods.

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(2) Goods are ***wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia*** if, and only if, the goods are:

(a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the Area of Hong Kong, China or in the Area of Hong Kong, China and the Area of Australia; or

(b) live animals born and raised in the Area of Hong Kong, China or in the Area of Hong Kong, China and the Area of Australia; or

(c) goods obtained from live animals in the Area of Hong Kong, China; or

(d) animals obtained by hunting, trapping, fishing, gathering or capturing in the Area of Hong Kong, China; or

(e) goods obtained from aquaculture conducted in the Area of Hong Kong, China; or

(f) minerals, or other naturally occurring substances, extracted or taken from the Area of Hong Kong, China; or

(g) goods of sea-fishing, or other marine goods, taken from the high seas, by any vessel that is entitled to fly the flag of Hong Kong, China; or

(h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered, listed or recorded with Hong Kong, China and is entitled to fly the flag of Hong Kong, China; or

(i) goods, other than fish, shellfish or other marine life, taken by Hong Kong, China, or a person of Hong Kong, China, from the seabed, or subsoil beneath the seabed, outside the Area of Hong Kong, China and the Area of Australia, and beyond territories over which non-Parties exercise jurisdiction, but only if Hong Kong, China, or the person of Hong Kong, China, has the right to exploit that seabed or subsoil in accordance with international law; or

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(j) waste or scrap that:
  (i) has been derived from production or consumption in the Area of Hong Kong, China and that is fit only for the recovery of raw materials; or
  (ii) has been derived from used goods that are collected in the Area of Hong Kong, China and that are fit only for the recovery of raw materials; or

(k) goods produced in the Area of Hong Kong, China, or in the Area of Hong Kong, China and the Area of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

Subdivision C—Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials

153ZPD Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials

Goods are ***Hong Kong originating goods*** if:

(a) they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from originating materials only; and

(b) either:
  (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
  (ii) Australia has waived the requirement for a Declaration of Origin for the goods.

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Subdivision D—Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from non-originating materials

153ZPE Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from non-originating materials

(1) Goods are ***Hong Kong originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-B of the Agreement; and

(b) they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Declaration of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-B of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

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(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

Regional value content

(6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

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(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and

(d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and

(e) the accessories, spare parts, tools or instructional or other information materials are non-originating materials;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZPB(2).

(8) For the purposes of subsection (7), disregard section 153ZPG in working out whether the accessories, spare parts, tools or instructional or other information materials are non-originating materials.

153ZPF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

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Regional value content

(2) However, if:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZPB(2).

Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153ZPG Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are ***Hong Kong originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and

(c) the other goods are Hong Kong originating goods; and

(d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and

(e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

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Subdivision F—Consignment

153ZPH Consignment

(1) Goods are not Hong Kong originating goods under this Division if:

(a) the goods are transported through the territory of one or more non-Parties; and

(b) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, repacking, storing, labelling or marking for the purpose of satisfying the requirements of Australia or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the Area of Australia).

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZPI Regulations

The regulations may make provision for and in relation to determining whether goods are Hong Kong originating goods under this Division.

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Division 1N—Regional Comprehensive Economic Partnership (RCEP) originating goods

Subdivision A—Preliminary

153ZQA Simplified outline of this Division

- This Division defines RCEP originating goods (short for Regional Comprehensive Economic Partnership originating goods). Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are RCEP originating goods if they are wholly obtained or produced in a Party.
- Subdivision C provides that goods are RCEP originating goods if they are produced entirely in a Party from originating materials only.
- Subdivision D sets out when goods are RCEP originating goods because they are produced entirely in a Party from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E deals with how the consignment of goods affects whether the goods are RCEP originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are RCEP originating goods.

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153ZQB Interpretation

Definitions

(1) In this Division:

Agreement means the Regional Comprehensive Economic Partnership Agreement, done on 15 November 2020, as amended and in force for Australia from time to time.

Note: The Agreement could in 2021 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs authority has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

customs value of goods has the meaning given by section 159.

factory ship of a Party has the same meaning as it has in Chapter 3 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

(b) if either of the following events occurs:

(i) Annex 3A to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings

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of an updated version of the Harmonized Commodity Description and Coding System;

(ii) there is a transposition (as mentioned in paragraph 3 of Article 3.34 of Chapter 3 of the Agreement) of Annex 3A to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the transposition is adopted as mentioned in that paragraph;

the version of the Harmonized Commodity Description and Coding System covered by whichever of those events occurred most recently.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

non-Party has the same meaning as it has in Chapter 3 of the Agreement.

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originating materials means:

(a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods; or

(b) indirect materials.

Party has the meaning given by Article 1.2 of Chapter 1 of the Agreement.

Note: See also subsection (6).

person of a Party has the same meaning as it has in Chapter 3 of the Agreement.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

Product-Specific Rules means the following:

(a) Annex 3A to Chapter 3 of the Agreement, unless paragraph (b) applies;

(b) if:

(i) there is a transposition (as mentioned in paragraph 3 of Article 3.34 of Chapter 3 of the Agreement) of Annex 3A to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the transposition is adopted as mentioned in that paragraph; and

(ii) that Annex has not been amended or replaced as a result of that transposition; and

(iii) that Annex has not been amended or replaced as a result of a further updated version of the Harmonized Commodity Description and Coding System;

that Annex as so transposed.

Proof of Origin means a document that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of the Agreement.

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RCEP originating goods means goods that, under this Division, are RCEP originating goods.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

vessels of a Party has the same meaning as it has in Chapter 3 of the Agreement.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Notification of entry into force of Agreement for a Party

(6) The Minister must announce, by notifiable instrument, the day on which the Agreement enters into force for a Party (other than Australia).

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Subdivision B—Goods wholly obtained or produced in a Party

153ZQC Goods wholly obtained or produced in a Party

(1) Goods are ***RCEP originating goods*** if:
  (a) they are wholly obtained or produced in a Party; and
  (b) either:
    (i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or
    (ii) Australia has waived the requirement for a Proof of Origin for the goods.

(2) Goods are ***wholly obtained or produced*** in a Party if, and only if, the goods are:
  (a) plants, or goods obtained from plants, that are grown and harvested, picked or gathered in that Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
  (b) live animals born and raised in that Party; or
  (c) goods obtained from live animals raised in that Party; or
  (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in that Party; or
  (e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or subsoil beneath the seabed in that Party; or
  (f) goods of sea-fishing or other marine life taken by vessels of that Party, or other goods taken by that Party or a person of that Party, from the waters, seabed or subsoil beneath the seabed outside the territorial sea of the Parties and non-Parties provided that:
    (i) for goods of sea-fishing or other marine life taken by vessels of that Party (the ***relevant Party***) from the exclusive economic zone of any Party or non-Party—the relevant Party has the rights to exploit that exclusive economic zone in accordance with international law; or

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(ii) for other goods taken by that Party or a person of that Party—that Party or person has the rights to exploit the waters, seabed or subsoil beneath the seabed in accordance with international law; or

(g) goods of sea-fishing or other marine life taken by vessels of that Party from the high seas in accordance with international law; or

(h) goods processed or made on board a factory ship of that Party, exclusively from goods covered by paragraph (f) or (g); or

(i) either of the following:

(i) waste and scrap that has been derived from production or consumption in that Party and that is fit only for disposal, for the recovery of raw materials or for recycling purposes;

(ii) used goods that are collected in that Party and that are fit only for disposal, for the recovery of raw materials or for recycling purposes; or

(j) goods obtained or produced in that Party solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced from originating materials

153ZQD Goods produced from originating materials

Goods are ***RCEP originating goods*** if:

(a) they are produced entirely in a Party from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Proof of Origin for the goods.

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Subdivision D—Goods produced from non-originating materials

153ZQE Goods produced from non-originating materials

(1) Goods are ***RCEP originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the Product-Specific Rules; and

(b) they are produced entirely in a Party from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in the Product-Specific Rules; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a Proof of Origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the Product-Specific Rules by using an abbreviation that is given a meaning for the purposes of the Product-Specific Rules.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods

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must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 1 to 97 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (c) does not exceed 10% of the customs value of the goods.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

(c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

Regional value content

(6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

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153ZQF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:

(a) the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods;

(b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZQB(2).

153ZQG Accessories, spare parts, tools or instructional or other information materials

(1) If:

(a) goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(b) the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and

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(c) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the accessories, spare parts, tools or instructional or other information materials are to be disregarded for the purposes of this Subdivision.

Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:

(a) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods;

(b) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZQB(2).

153ZQH Non-qualifying operations or processes

(1) Goods are not RCEP originating goods under this Subdivision merely because of the following operations or processes:

(a) preserving operations to ensure that the goods remain in good condition for the purpose of transport or storage of the goods;

(b) packaging or presenting the goods for transportation or sale;

(c) simple processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling or uncoiling;

(d) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;

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(e) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
(f) disassembly of products into parts;
(g) slaughtering (within the meaning of Article 3.6 of Chapter 3 of the Agreement) of animals;
(h) simple painting or polishing operations;
(i) simple peeling, stoning or shelling;
(j) simple mixing of goods, whether or not of different kinds;
(k) any combination of things referred to in paragraphs (a) to (j).

(2) For the purposes of this section, ***simple*** has the same meaning as it has in Article 3.6 of Chapter 3 of the Agreement.

Subdivision E—Consignment

153ZQI Consignment

(1) Goods are not RCEP originating goods under this Division if the goods are transported through one or more Parties (other than the Party from which the goods are exported or Australia) or non-Parties and either or both of the following apply:
(a) the goods undergo further processing in those Parties or non-Parties (other than logistics activities such as unloading, reloading, storing or any other operation that is necessary to preserve the goods in good condition or to transport the goods to Australia);
(b) while the goods are in those Parties or non-Parties, the goods do not remain under the control of the customs authorities of those Parties or non-Parties at all times.

(2) This section applies despite any other provision of this Division.

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Subdivision F—Regulations

153ZQJ Regulations

The regulations may make provision for and in relation to determining whether goods are RCEP originating goods under this Division.

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Division 1P—UK originating goods

Subdivision A—Preliminary

153ZRA Simplified outline of this Division

- This Division defines UK originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to UK originating goods that are imported into Australia.
- Subdivision B provides that goods are UK originating goods if they are wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia.
- Subdivision C provides that goods are UK originating goods if they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from originating materials only.
- Subdivision D sets out when goods are UK originating goods because they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are UK originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are UK originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are UK originating goods.

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153ZRB Interpretation

Definitions

(1) In this Division:

Agreement means the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, as amended from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of the United Kingdom that implements the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

declaration of origin means a declaration that is in force and that complies with the requirements of Article 4.18 of Chapter 4 of the Agreement.

enterprise has the meaning given by Article 1.4 of Chapter 1 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

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Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or

(b) if the table in Annex 4B to Chapter 4 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning), catalysts and solvents; and

(d) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(e) tools, dies and moulds; and

(f) spare parts and materials; and

(g) lubricants, greases, compounding materials and other similar goods.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

non-party has the same meaning as it has in Chapter 4 of the Agreement.

originating materials means:

(a) UK originating goods that are used in the production of other goods; or

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(b) Australian originating goods that are used in the production of other goods; or

(c) recovered materials derived in the territory of Australia, or in the territory of the United Kingdom, and used in the production of, and incorporated into, remanufactured goods; or

(d) indirect materials.

person of the United Kingdom means:

(a) a national within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement; or

(b) an enterprise of the United Kingdom.

production has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

production value of goods has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

recovered materials means materials comprising one or more individual parts that:

(a) have resulted from the disassembly of used goods; and

(b) have been cleaned, tested or processed as necessary for improvement to sound working condition.

remanufactured goods means goods that:

(a) are classified to any of Chapters 84 to 90 (other than heading 87.02, 87.03, 87.04 or 87.05, 87.11 or 87.16 or subheading 8701.20), or to heading 94.02, of the Harmonized System; and

(b) are entirely or partially comprised of recovered materials; and

(c) have a similar life expectancy, working condition and performance to new goods:

(i) that are so classified; and

(ii) that are not composed of any recovered materials; and

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(d) have been given a warranty that in substance is the same as that applicable to such new goods.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 1.4 of Chapter 1 of the Agreement.

territory of the United Kingdom means territory within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement.

UK originating goods means goods that, under this Division, are UK originating goods.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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Subdivision B—Goods wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia

153ZRC Goods wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia

(1) Goods are ***UK originating goods*** if:

(a) they are wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia; and

(b) one or more of the following applies:

(i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;

(ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;

(iii) Australia has waived the requirement for a declaration of origin for the goods.

(2) Goods are ***wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia*** if, and only if, the goods are:

(a) plants, plant goods or fungus grown, cultivated, harvested, picked or gathered in the territory of the United Kingdom or in the territory of the United Kingdom and the territory of Australia; or

(b) live animals born and raised in the territory of the United Kingdom or in the territory of the United Kingdom and the territory of Australia; or

(c) goods obtained from live animals in the territory of the United Kingdom; or

(d) animals obtained by hunting, trapping, fishing, gathering, or capturing in the territory of the United Kingdom, but not beyond the outer limits of the territorial sea of the United Kingdom; or

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(e) goods obtained from aquaculture conducted in the territory of the United Kingdom, but not beyond the outer limits of the territorial sea of the United Kingdom; or

(f) minerals, or other naturally occurring substances, extracted or taken from the territory of the United Kingdom; or

(g) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:

(i) beyond the outer limits of the territorial sea of the United Kingdom; and

(ii) within the territory of the United Kingdom;

by vessels that are registered in the United Kingdom and are entitled to fly the flag of the United Kingdom; or

(h) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:

(i) beyond the outer limits of the territory of the United Kingdom and the territory of Australia; and

(ii) in accordance with international law, outside the territorial sea of non-parties;

by vessels that are registered in the United Kingdom and are entitled to fly the flag of the United Kingdom; or

(i) goods produced, from goods referred to in paragraph (g) or (h), on board a factory ship that is registered in the United Kingdom and is entitled to fly the flag of the United Kingdom; or

(j) goods, other than fish, shellfish or other marine life, taken or extracted by the United Kingdom, or a person of the United Kingdom, from the seabed or subsoil beneath the seabed:

(i) outside the territory of the United Kingdom and the territory of Australia; and

(ii) beyond areas over which non-parties exercise jurisdiction;

but only if the United Kingdom, or the person of the United Kingdom, has the right to exploit that seabed or subsoil in accordance with international law; or

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(k) waste or scrap that:
  (i) has been derived from production in the territory of the United Kingdom; or
  (ii) has been derived from used goods that are collected in the territory of the United Kingdom and that are fit only for the recovery of raw materials; or
(l) goods produced in the territory of the United Kingdom, or in the territory of the United Kingdom and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (k) or from their derivatives.

Subdivision C—Goods produced in the United Kingdom, or in the United Kingdom and Australia, from originating materials

153ZRD Goods produced in the United Kingdom, or in the United Kingdom and Australia, from originating materials

Goods are ***UK originating goods*** if:

(a) they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from originating materials only; and
(b) one or more of the following applies:
  (i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;
  (ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;
  (iii) Australia has waived the requirement for a declaration of origin for the goods.

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Subdivision D—Goods produced in the United Kingdom, or in the United Kingdom and Australia, from non-originating materials

153ZRE Goods produced in the United Kingdom, or in the United Kingdom and Australia, from non-originating materials

(1) Goods are ***UK originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4B to Chapter 4 of the Agreement; and

(b) they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) one or more of the following applies:

(i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;

(ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;

(iii) Australia has waived the requirement for a declaration of origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4B to Chapter 4 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must

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have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if:

(c) in the case of goods classified to any of Chapters 1 to 24 or 50 to 63 of the Harmonized System:

(i) the total weight of the non-originating materials covered by paragraph (b) does not exceed 10% of the total weight of the goods; or

(ii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods; or

(iii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the production value of the goods; or

(d) in the case of goods classified to any of Chapters 25 to 49 or 64 to 97 of the Harmonized System:

(i) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods; or

(ii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the production value of the goods.

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Regional value content

(5) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:

(a) the regional value content of the goods is to be worked out in accordance with the Agreement, unless paragraph (b) applies; or

(b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(6) If:

(a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are classified and delivered with, and not invoiced separately from, the goods; and

(d) the quantities, value and type of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the following:

(e) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods;

(f) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZRB(2).

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(7) For the purposes of subsection (6), disregard section 153ZRG in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

Goods put up in a set for retail sale

(8) If:

(a) goods are put up in a set for retail sale; and

(b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;

the goods are UK originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are UK originating goods; or

(d) the total customs value of the goods (if any) in the set that are not UK originating goods does not exceed 20% of the customs value of the set of goods; or

(e) the total production value of the goods (if any) in the set that are not UK originating goods does not exceed 20% of the production value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

153ZRF Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

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Regional value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:

(a) the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods;

(b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZRB(2).

Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153ZRG Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are ***UK originating goods*** if:

(a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and

(b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and

(c) the other goods are UK originating goods; and

(d) the accessories, spare parts, tools or instructional or other information materials are classified and delivered with, and not invoiced separately from, the other goods; and

(e) the quantities, value and type of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

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Subdivision F—Consignment

153ZRH Consignment

(1) Goods are not UK originating goods under this Division if the goods are transported through the territory of one or more non-parties and either or both of the following apply:

(a) the goods undergo further production or any other operation in the territory of a non-party (other than unloading, reloading, separation from a bulk shipment or splitting of a consignment, storing, repacking, labelling or marking required by Australia or any other operation necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);

(b) the goods are released to free circulation in the territory of a non-party.

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZRI Regulations

The regulations may make provision for and in relation to determining whether goods are UK originating goods under this Division.

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Division 1Q—UAE originating goods

Subdivision A—Preliminary

153ZSA Simplified outline of this Division

- This Division defines UAE originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to UAE originating goods that are imported into Australia.
- Subdivision B provides that goods are UAE originating goods if they are wholly obtained or produced in the United Arab Emirates.
- Subdivision C provides that goods are UAE originating goods if they are produced entirely in the territory of the United Arab Emirates, or entirely in the territory of the United Arab Emirates and the territory of Australia, from originating materials only.
- Subdivision D sets out when goods are UAE originating goods because they are produced entirely in the territory of the United Arab Emirates, or entirely in the territory of the United Arab Emirates and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E deals with how the packaging materials or containers in which goods are packaged affects whether the goods are UAE originating goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are UAE originating goods.

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- Subdivision G allows regulations to make provision for and in relation to determining whether goods are UAE originating goods.

153ZSB Interpretation

Definitions

(1) In this Division:

Agreement means the Comprehensive Economic Partnership Agreement between Australia and the United Arab Emirates, done at Canberra on 6 November 2024, as amended from time to time.

Note: The Agreement could in 2025 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

aquaculture has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

Australian originating goods means goods that are Australian originating goods under a law of the United Arab Emirates that implements the Agreement.

certificate of origin means a certificate that is in force and that complies with the requirements of Article 3.22 of Chapter 3 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2025 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

ex-works price of goods:

(a) unless paragraph (b) applies—has the same meaning as in Article 3.4 of Chapter 3 of the Agreement; or

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(b) if regulations are in force for the purposes of this paragraph—has the meaning prescribed by the regulations.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2022; or

(b) if the table in Annex 3A to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

(a) goods used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning), catalysts and solvents; and

(d) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(e) tools, dies and moulds; and

(f) spare parts and materials; and

(g) lubricants, greases, compounding materials and other similar goods.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

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non-party has the same meaning as it has in Chapter 3 of the Agreement.

originating materials means:

(a) UAE originating goods that are used in the production of other goods and physically incorporated into those goods; or

(b) Australian originating goods that are used in the production of other goods and physically incorporated into those goods; or

(c) indirect materials.

person of the UAE means a person of a Party within the meaning, so far as it relates to the United Arab Emirates, of Article 3.1 of Chapter 3 of the Agreement.

production has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 1.2 of Chapter 1 of the Agreement.

territory of the United Arab Emirates means territory within the meaning, so far as it relates to the United Arab Emirates, of Article 1.2 of Chapter 1 of the Agreement.

UAE originating goods means goods that, under this Division, are UAE originating goods.

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

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Tariff classifications

(3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

(5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Subdivision B—Goods wholly obtained or produced in the United Arab Emirates

153ZSC Goods wholly obtained or produced in the United Arab Emirates

(1) Goods are ***UAE originating goods*** if:
  (a) they are wholly obtained or produced in the United Arab Emirates; and
  (b) either:
    (i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or
    (ii) Australia has waived the requirement for a certificate of origin for the goods.

(2) Goods are ***wholly obtained or produced in the United Arab Emirates*** if, and only if, the goods are:
  (a) plants, plant products or fungus grown, collected, harvested, cultivated, picked or gathered in the territory of the United Arab Emirates; or
  (b) live animals born and raised in the territory of the United Arab Emirates; or

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(c) goods obtained from live animals born and raised in the territory of the United Arab Emirates; or

(d) goods obtained from hunting, trapping, fishing, aquaculture, collecting or capturing conducted in the territory of the United Arab Emirates, but not beyond the outer limits of the territorial sea of the United Arab Emirates; or

(e) minerals, or other natural resources, extracted or taken from the soil, waters, seabed or subsoil beneath the seabed in the territory of the United Arab Emirates; or

(f) goods of sea-fishing, or other marine goods, taken in accordance with international law from outside the territorial waters of the United Arab Emirates by any vessel that is registered, listed, recorded or licensed with the United Arab Emirates and flying the flag of the United Arab Emirates; or

(g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered, listed, recorded or licensed with the United Arab Emirates and flying the flag of the United Arab Emirates; or

(h) goods, other than goods of sea-fishing or other marine goods, extracted or taken from the seabed, ocean floor or subsoil beneath the seabed of:

(i) the exclusive economic zone of the United Arab Emirates; or

(ii) the continental shelf of the United Arab Emirates;

by the United Arab Emirates, or a person of the UAE, but only if the United Arab Emirates, or the person of the UAE, has the right to exploit that seabed, ocean floor or subsoil in accordance with international law; or

(i) waste or scrap that:

(i) has been derived from production in the territory of the United Arab Emirates; or

(ii) has been derived from used goods that are collected in the territory of the United Arab Emirates and that are fit only for the recovery of raw materials; or

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(j) goods produced or obtained in the territory of the United Arab Emirates exclusively from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced in the United Arab Emirates, or in the United Arab Emirates and Australia, from originating materials

153ZSD Goods produced in the United Arab Emirates, or in the United Arab Emirates and Australia, from originating materials

Goods are ***UAE originating goods*** if:

(a) they are produced entirely in the territory of the United Arab Emirates, or entirely in the territory of the United Arab Emirates and the territory of Australia, from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certificate of origin for the goods.

Subdivision D—Goods produced in the United Arab Emirates, or in the United Arab Emirates and Australia, from non-originating materials

153ZSE Goods produced in the United Arab Emirates, or in the United Arab Emirates and Australia, from non-originating materials

(1) Goods are ***UAE originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3A to Chapter 3 of the Agreement; and

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(b) they are produced entirely in the territory of the United Arab Emirates, or entirely in the territory of the United Arab Emirates and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) the goods satisfy the requirements applicable to the goods in that Annex; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certificate of origin for the goods.

(2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3A to Chapter 3 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

Change in tariff classification

(3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if:

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(c) in the case of goods classified to any of Chapters 50 to 63 of the Harmonized System:

(i) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods; or

(ii) the total value of the non-originating materials covered by paragraph (b) does not exceed 15% of the ex-works price of the goods; or

(iii) the total weight of the non-originating materials covered by paragraph (b) does not exceed 10% of the total weight of the goods; or

(d) in the case of goods classified to any of Chapters 1 to 49 or 64 to 97 of the Harmonized System:

(i) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods; or

(ii) the total value of the non-originating materials covered by paragraph (b) does not exceed 15% of the ex-works price of the goods.

Qualifying value content

(5) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

(a) the qualifying value content of the goods is to be worked out in accordance with the Agreement, unless paragraph (b) applies; or

(b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.

Goods put up in a set for retail sale

(6) If:

(a) goods are put up in a set for retail sale; and

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(b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;

the goods are UAE originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are UAE originating goods; or

(d) the total customs value of the goods (if any) in the set that are not UAE originating goods does not exceed 20% of the customs value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

153ZSF Accessories, spare parts, tools or instructional or other information materials

(1) If:

(a) goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(b) the accessories, spare parts, tools or instructional or other information materials are classified and delivered with, and not invoiced separately from, the goods; and

(c) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the accessories, spare parts, tools or instructional or other information materials are to be disregarded for the purposes of this Subdivision.

Qualifying value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than

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a particular percentage worked out in a particular way, the regulations must provide for the following:

(a) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods;

(b) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZSB(2).

153ZSG Non-qualifying operations

(1) Goods are not UAE originating goods under this Subdivision merely because of the following operations:

(a) preserving operations to ensure that the goods remain in good condition for the purpose of transport or storage of the goods (such as drying, freezing, ventilating and chilling);

(b) sifting, washing, cutting, slitting, bending, coiling, uncoiling, sharpening, simple grinding or slicing;

(c) cleaning, including the removal of oxide, oil, paint or other coverings;

(d) simple painting or polishing operations;

(e) testing or calibration;

(f) placing in bottles, cans, flasks, bags, cases or boxes, fixing on cards or boards or other packaging operations;

(g) simple mixing (within the meaning of Article 3.7 of Chapter 3 of the Agreement) of goods, whether or not of different kinds;

(h) simple assembly of parts of products to create a complete product or the disassembly of products into parts;

(i) changes to packing, unpacking or repacking operations or the breaking up or assembly of consignments;

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(j) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;

(k) husking, partial or total bleaching, polishing or glazing of cereals or rice;

(l) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

(2) For the purposes of this section, ***simple*** has the same meaning as it has in Article 3.7 of Chapter 3 of the Agreement.

Subdivision E—Packaging materials and containers

153ZSH Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Division.

Qualifying value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:

(a) the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods;

(b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZSB(2).

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Subdivision F—Consignment

153ZSI Consignment

(1) Goods are not UAE originating goods under this Division if the goods are transported through a non-party and either or both of the following apply:

(a) the goods undergo further production or any other operation in the territory of the non-party (other than unloading, reloading, separation from a bulk shipment or splitting of a consignment, storing, repacking, labelling or marking required by Australia or any other operation necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);

(b) the goods are released to free circulation (within the meaning of Article 3.18 of Chapter 3 of the Agreement) in the territory of the non-party.

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZSJ Regulations

The regulations may make provision for and in relation to determining whether goods are UAE originating goods under this Division.

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Division 2—Valuation of imported goods

154 Interpretation

(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

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(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

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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 broker, 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

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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.

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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

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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,

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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

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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;

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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.

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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 rebates 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

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(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);

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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

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(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.

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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 value of the materials at the time of acquisition by the purchaser;

(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 value of the materials at the time of acquisition by the purchaser; 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

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not related to the purchaser at the time of acquisition—the value of the subsidiary goods at the time of acquisition by the purchaser;

(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 value of the subsidiary goods at the time of acquisition by the purchaser; 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 value of the subsidiary services at the time 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);

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(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 value of the tooling at the time of acquisition by the purchaser;
  (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 value of the tooling at the time of acquisition by the purchaser; 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

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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 value of the work goods at the time of acquisition by the purchaser;

(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 value of the work goods at the time of acquisition by the purchaser; 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 value of the work services at the time 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.

rebate, in relation to goods the subject of a contract for sale, means any rebate of, or other decrease in, the amount that would constitute the price of the goods other than such a rebate or decrease the benefit of which has been received when that amount is being determined.

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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.

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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.

vendor, in relation to imported goods, means the vendor under the import sales transaction for the goods.

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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 members of the same family; 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

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(e) they are members of the same partnership.

Note: In relation to the reference to member of a family in subparagraph (3)(a)(i), see also section 4AAA.

(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.

155 Interpretation—Buying commission

(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);

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(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.

156 Interpretation—Identical goods and similar goods

(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

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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

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(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.

157 Interpretation—Royalties

(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

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(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 2003*, 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

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carried out the scheme or a part of the scheme did so for that purpose or for purposes including that purpose.

158 Interpretation—Transportation costs

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;

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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.

159 Value of imported goods

(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.

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(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.

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(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.

160 Inability to determine a value of imported goods by reason of insufficient or unreliable information

(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

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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.

161 Transaction value

(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;

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(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.

161A Identical goods value

(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:

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(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.

161B Similar goods value

(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

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(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.

161C Deductive (contemporary sales) value

(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;

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(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

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(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.

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There were 3 contemporary sales of 2 units of comparable goods at a unit price of $60.

This means that:

10 units of comparable goods were sold in contemporary sales at $100.

22 units of comparable goods were sold in contemporary sales at $40.

13 units of comparable goods were sold in contemporary sales at $60.

Result:

More units of comparable goods were sold in contemporary sales at $40 than were sold in such sales at any other unit price.

Therefore, the reference sales are the sales at the unit price of $40.

(4) The following example illustrates the operation of paragraph (e) of the definition of ***reference sale*** in subsection (2):

Facts:

There was one contemporary sale of 10 units of comparable goods at a unit price of $60.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of $20.

There was one contemporary sale of 6 units of comparable goods at a unit price of $20.

There were 8 contemporary sales of 1 unit of comparable goods at a unit price of $80.

There was one contemporary sale of 5 units of comparable goods at a unit price of $70.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of $70.

There were 2 contemporary sales of 1 unit of comparable goods at a unit price of $50.

There were 2 contemporary sales of 4 units of comparable goods at a unit price of $50.

Result:

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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.

161D Deductive (later sales) value

(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

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(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.

161E Deductive (derived goods sales) value

(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;

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(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

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(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.

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161F Computed value

(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 arrange material costs***, ***Australian arranged subsidiary costs***, ***Australian arranged tooling costs*** and

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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.

161G Fall-back value

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 the purposes of this Act 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 the purposes of this Act;

(g) arbitrary or fictitious values.

161H When transaction value unable to be determined

(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;

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(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).

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(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

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(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.

161J Value of goods to be in Australian currency

(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,

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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-General of Customs 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-General of Customs determines to be the ruling rate of exchange, in

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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-General of Customs 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.

161K Owner to be advised of value of goods

(1) Where the Comptroller-General of Customs or a Collector has determined the customs value of goods in accordance with this Division, the Comptroller-General of Customs 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,

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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*.

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161L Review of determinations and other decisions

(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-General of Customs 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-General of Customs, 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 the Comptroller-General of Customs for the payment of the amount of duty that is unpaid or the amount of refund that was overpaid.

(3) In this section, ***officer*** means a Collector or a delegate of the Comptroller-General of Customs.

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Division 3—Payment and recovery of deposits, refunds, unpaid duty etc.

162 Delivery of goods upon giving of security or undertaking for payment of duty, GST and luxury car tax

(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:

(a) the duty, if any, on those goods; and

(b) the assessed GST payable on the taxable importation, if any, that is associated with the import of those goods; and

(c) if a taxable importation of a luxury car is associated with the import of those goods—the assessed luxury car tax payable on that taxable importation.

(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 (if any) is not payable if:

(a) the provisions of the regulations are complied with; and

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(b) either:

(i) 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-General of Customs, on the application of the person who imported the goods, allows; or

(ii) one or more of the circumstances or conditions specified in the regulations apply in relation to the goods;

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.

Note: In these circumstances, GST and luxury car tax are not payable. See section 171-5 of the GST Act and section 13-25 of the Luxury Car Tax Act.

(4) If the circumstances described in paragraphs (3)(a) and (b) do not exist in relation to the goods:

(a) the security may be enforced according to its tenor; or

(b) if an undertaking to pay the amount of the duty (if any), the GST (if any) and the luxury car tax (if any) has been given, that amount may be recovered at any time in a court of competent jurisdiction by proceedings in the name of the Collector.

162A Delivery of goods on the giving of a general security or undertaking for payment of duty, GST and luxury car tax

(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, GST or luxury car tax.

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(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-General of Customs may accept a security given by a person for the payment of, or an undertaking by a person to pay, all of the following in relation to specified goods that are described in regulations made for the purposes of subsection (1) and that may be imported after a particular date or during a particular period:

(a) the duty, if any, that may become payable on the goods;

(b) the assessed GST that may become payable on the taxable importation, if any, that is associated with the import of the goods;

(c) if a taxable importation of a luxury car is associated with the import of the goods—the assessed luxury car tax that may become payable on that taxable importation.

If the Comptroller-General of Customs accepts the security or undertaking, a Collector may grant to a person who imports some or all of the specified goods permission to take delivery of the goods without payment of duty, GST or luxury car tax.

(2A) However, the Collector may grant permission to take delivery of goods that:

(a) are covered by a security or undertaking described in subsection (2); and

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(b) are not accompanied by, and described in, temporary admission papers issued in accordance with an agreement between Australia and one or more other countries that provides for the temporary importation of goods without payment of duty;

only if the person importing the goods applies to the Collector for the permission in accordance with section 162AA.

(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-General of Customs.

(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:

(i) 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 or she grants permission to take delivery of the goods; or

(ii) within such further period as the Comptroller-General of Customs, 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;

and none of the circumstances or conditions specified in the regulations apply in relation to the goods.

Note: GST and luxury car tax are not payable if duty is not payable because of subsection (5) (or would not be payable because of that subsection if it were otherwise payable). See section 171-5 of the GST Act and section 13-25 of the Luxury Car Tax Act.

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(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.

(6A) However, the Collector may give permission to take aboard a ship or aircraft for export goods that were delivered under this section as a result of an application described in subsection (2A) only if the person proposing to export the goods applies to the Collector for the permission in accordance with section 162AA.

(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:

(a) no duty is, or may become, payable on goods to which the security relates that have been imported; and

(b) no GST is, or may become, payable on the taxable importation (as defined in the GST Act), if any, that is associated with the import of the goods; and

(c) no luxury car tax is, or may become, payable on the taxable importation of a luxury car (as defined the Luxury Car Tax Act), if any, that is associated with the import of the goods.

(8) If the circumstances described in paragraph (5)(a) or (b) exist in relation to the goods:

(a) a security relating to the goods may be enforced; and

(b) if an undertaking has been given to pay the amount of the duty (if any), GST (if any) and luxury car tax (if any) associated with the import of the goods—the amount may be recovered at any time in a court of competent jurisdiction by proceedings in the name of the Comptroller-General of Customs.

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162AA Applications to deal with goods imported temporarily without duty

(1) This section describes how to make an application that is:
  (a) required by subsection 162A(2A) for a permission under subsection 162A(2) to take delivery of goods; or
  (b) required by subsection 162A(6A) for a permission under subsection 162A(6) to take goods aboard a ship or aircraft for export.

(2) An application may be communicated to the Collector by document or computer.

(3) An application communicated by document must:
  (a) be in an approved form; and
  (b) include the information required by the approved form; and
  (c) be signed in the way indicated by the approved form.

(4) An application communicated by computer must:
  (a) be communicated by computer in the manner indicated in an approved statement relating to the application; and
  (b) include the information indicated in the approved statement; and
  (c) identify the applicant in the way indicated in the approved statement.

162B Pallets used in international transport

(1) Where pallets are delivered under section 162A 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.

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(3) This section is in addition to, and not in derogation of, subsections 162A(5) and (6).

(4) In this section:

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

Note: The text of the Convention is set out in Australian Treaty Series 1969 No. 26.

163 Refunds etc. of duty

(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).

(1AA) Subject to subsection (1AD), the regulations may prescribe:

(a) the manner of making application, either by document or by computer, for such refunds, rebates or remissions; and

(b) the procedure to be followed in dealing with such applications, including procedures for requesting further information in relation to issues raised in such applications.

(1AB) Regulations made for the purposes of subsection (1AA) that provide for the making of an application for a refund, rebate or remission of duty by computer must indicate when that application is to be taken, for the purposes of this Act, to have been communicated to the Department.

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(1AC) Regulations made for the purposes of subsection (1AA) that provide for the making of applications for refund, rebate or remission of duty by computer may include contingency arrangements to deal with circumstances where the computer system employed in relation to such applications is down.

(1AD) The regulations may identify circumstances where a person is entitled to a refund, rebate or remission of duty:

(a) without making an application at all; or

(b) on making an application in respect of which a refund application fee is not payable.

(1AE) For the avoidance of doubt, if, before or after the commencement of this subsection, a person has:

(a) altered an electronic copy of an import entry or a self-assessed clearance declaration as a step in making an application for a refund or rebate of duty in respect of goods covered by the entry or declaration; or

(b) altered an electronic copy of an import entry or a self-assessed clearance declaration as such a step and paid the application fee (if any) associated with the making of such an application;

but the person did not or does not, within the time prescribed for making that application, communicate the altered import entry or altered self-assessed clearance declaration to the Department, either manually or, after the commencement of this subsection, by computer, the person's actions in modifying that import entry or self-assessed clearance declaration and paying any such application fee are of no effect.

(2) For the purposes of this section and of any regulations made for the purposes of this section, duty, in relation to goods that have been, or are proposed to be, imported into Australia under Schedule 3 to the Tariff includes an amount paid to a collector on account of the duty that will become payable on those goods.

(3) For the purposes of this section and of any regulations made for the purposes of this section, the amount of duty in respect of which a

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person may seek a refund, rebate or remission of duty on goods that are imported into Australia under item 41E of Schedule 4 to the Tariff is to be taken to be the sum of:

(a) the amount of money (if any) paid as customs duty on the importation of those goods; and

(b) to the extent that duty credit issued under the former *ACIS Administration Act 1999* has been offset against customs duty that would otherwise have been payable in respect of those goods—the amount of customs duty offset by the use of the credit.

164B Refunds of export duty

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

165 Recovery of unpaid duty etc.

(1) An amount of duty that is due and payable in respect of goods:

(a) is a debt due to the Commonwealth; and

(b) is payable by the owner of the goods.

(2) An amount of drawback, refund or rebate of duty that is overpaid to a person:

(a) is a debt due to the Commonwealth; and

(b) is payable by the person.

Demand for payment

(3) The Comptroller-General of Customs may make, in writing, a demand for payment of an amount that is a debt due to the Commonwealth under subsection (1) or (2) or subsection 278(2).

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(4) A demand, under subsection (3), for payment of an amount must specify the amount and include an explanation of how it has been calculated.

(5) A demand, under subsection (3), for payment of an amount must be made within 4 years from:

(a) if the amount is a debt due to the Commonwealth under subsection (1)—the time the amount was to be paid by under this Act; or

(b) if the amount is a debt due to the Commonwealth under subsection (2) or subsection 278(2)—the time the amount was paid;

unless the Comptroller-General of Customs is satisfied that the debt arose as the result of fraud or evasion.

Recovery in court

(6) An amount that is a debt due to the Commonwealth under subsection (1) or (2) or subsection 278(2) may be sued for and recovered in a court of competent jurisdiction by proceedings in the name of the Collector if:

(a) the Comptroller-General of Customs has made a demand for payment of the amount in accordance with this section; or

(b) the Comptroller-General of Customs is satisfied that the debt arose as the result of fraud or evasion.

165A Refunds etc. may be applied against unpaid duty

(1) If:

(a) an amount of duty is payable by a person in respect of goods that have been delivered into home consumption; and

(b) the person would be entitled to an amount of drawback, refund or rebate of duty in respect of the goods if the amount of duty payable were paid;

then:

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(c) the Comptroller-General of Customs may apply the amount of the drawback, refund or rebate against the amount of duty payable; and

(d) the person is taken to have paid, in respect of the goods, an amount of duty equal to the amount of drawback, refund or rebate applied; and

(e) the amount of drawback, refund or rebate applied is taken to have been paid to the person.

(2) If the Comptroller-General of Customs applies an amount of drawback, refund or rebate against an amount of duty payable, the Comptroller-General of Customs must give the person who would have been entitled to receive the amount of drawback, refund or rebate written notice of:

(a) the amount of drawback, refund or rebate applied; and

(b) if the amount of drawback, refund or rebate applied is less than the amount of duty payable—the amount of duty that is still payable by the person.

166 No refund if duty altered

If any practice of the Comptroller-General of 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.

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Division 4—Disputes as to duty

167 Payments under protest

(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) For the purposes of this section, a payment is taken to be made under protest if, and only if:

(a) the owner of the goods or the agent of the owner gives the Collector notice in accordance with subsection (3A), by document or electronically, that the payment is made under protest; and

(b) the Collector receives the notice no later than 7 days after the day the payment is made.

(3A) A notice given by an owner or agent under subsection (3) must:

(a) contain the words ***paid under protest***; and

(b) identify the import declaration that covers the goods to which the protest relates; and

(c) if the protest does not relate to all the goods covered by the import declaration—describe the goods to which the protest relates; and

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(d) include a statement of the grounds on which the protest is made; and

(e) be signed by the owner or the agent of the owner.

(4) No action shall lie for the recovery of any sum paid to the Commonwealth 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.

(6) In this section:

import declaration includes an import entry, within the meaning of the unamended Customs Act, that was made under that Act.

unamended Customs Act has the meaning given by section 4 of the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004*.

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Part IX—Drawbacks

168 Drawbacks of import duty

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

(2) For the purposes of this section and of any regulations made for the purposes of this section, the amount of duty paid on goods that are imported into Australia under item 41E of Schedule 4 to the Tariff is to be taken to be the sum of:

(a) the amount of money (if any) paid as customs duty on the importation of those goods; and

(b) to the extent that duty credit issued under the former *ACIS Administration Act 1999* has been offset against customs duty that would otherwise have been payable in respect of those goods—the amount of customs duty offset by the use of the credit.

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Part X—The coasting trade

175 Goods not to be transferred between certain vessels

(1) In this section:

Australian aircraft has the same meaning as in the *Civil Aviation Act 1988*.

coastal aircraft means an aircraft that is not currently engaged in making:

(a) an international flight; or

(b) a prescribed flight.

coastal ship means a ship that is not currently engaged in making:

(a) an international voyage; or

(b) a prescribed voyage.

international flight and ***international voyage*** have the same respective meanings as they have in Part VII.

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 voyage, in relation to a ship, means a voyage in the course of which the ship:

(a) travels between places outside Australia; or

(b) travels from a place outside Australia and returns to that place;

and does not call at a place in Australia.

(2) The owner or master of a coastal ship must not allow any goods to be transferred between the coastal ship and:

(a) a ship that is engaged in making an international voyage or a prescribed voyage; or

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(b) an aircraft that is engaged in making an international flight or a prescribed flight.

Penalty: 250 penalty units.

(2A) Subsection (2) applies to a coastal ship that is an Australian ship if the ship is anywhere outside the territorial sea of a foreign country.

(3) The owner or pilot of a coastal aircraft must not allow any goods to be transferred between the coastal 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: 250 penalty units.

(3AA) Subsection (3) applies to a ship that is an Australian ship if the ship is anywhere outside the territorial sea of a foreign country.

(3A) A person who is:

(a) the owner or master of an Australian ship that is currently engaged in making an international voyage or a prescribed voyage; or

(b) the owner or pilot of an Australian aircraft that is currently engaged in making an international flight or prescribed flight;

must not allow any goods to be transferred between that ship or aircraft and:

(c) a coastal ship; or

(d) a coastal aircraft.

Penalty: 250 penalty units.

(3AAA) Subsection (3A) applies to an Australian ship described in paragraph (3A)(a) if the ship is anywhere outside the territorial sea of a foreign country.

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(3B) A person who is:

(a) the owner or master of a ship (other than an Australian ship) that is currently engaged in making an international voyage or a prescribed voyage; or

(b) the owner or pilot of an aircraft (other than an Australian aircraft) that is currently engaged in making an international flight or a prescribed flight;

must not allow any goods to be transferred between that ship or aircraft and a coastal ship or coastal aircraft if the transfer takes place in, or in the airspace above (as the case may be), the waters of the sea within:

(c) the outer limits of the territorial sea of Australia, including such waters within the limits of a State or an internal Territory; or

(d) 500 metres of:

(i) an Australian resources installation; or

(ii) an Australian sea installation; or

(iii) an Australian offshore electricity installation.

Penalty: 250 penalty units.

(3BA) For the purposes of subsections (2), (3), (3A) and (3B), strict liability applies to such of the following physical elements of circumstance as are relevant to the offence:

(a) that an aircraft is engaged in making an international flight or a prescribed flight; or

(b) that a ship is engaged in making an international voyage or a prescribed voyage.

(3C) Subsection (2), (3), (3A) or (3B) does not apply if a Collector has given permission (for the transfer of the goods) to:

(a) in the case of subsection (2)—the owner or master of the coastal ship referred to in that subsection; and

(b) in the case of subsection (3)—the owner or pilot of the coastal aircraft referred to in that subsection; and

(c) in the case of subsection (3A) or (3B)—the owner or master of the coastal ship referred to in that subsection or the owner

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or pilot of the coastal aircraft referred to in that subsection (as the case requires).

(3D) A permission under subsection (3C) may only be given on application under subsection (3E).

(3E) The owner or master of a coastal ship, or the owner or pilot of a coastal aircraft, may apply for a permission under subsection (3C).

(3F) An application under subsection (3E) must:

(a) be in writing; and

(b) be in an approved form; and

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

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

(3G) The Comptroller-General of Customs may approve different forms for applications to be made under subsection (3E) in different circumstances, by different kinds of owners or masters of coastal ships or owners or pilots of coastal aircraft or in respect of different kinds of coastal ships or coastal aircraft.

(4) A Collector may, when giving permission under subsection (3C) 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 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.

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(7) If, in relation to the transfer of any goods, a person required to comply with a condition imposed in respect of a permission fails to comply with the condition, he or she commits an offence against this Act punishable upon conviction by a penalty not exceeding 100 penalty units.

(8) Subsection (7) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(9) Subsection (2), (3), (3A) or (3B) does not apply to allowing a transfer of goods for the purpose of securing the safety of a ship or an aircraft or saving life.

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Part XA—Australian Trusted Trader Programme

Division 1—Preliminary

176 Establishment of the Australian Trusted Trader Programme

(1) The Comptroller-General of Customs may, in accordance with this Part, establish a programme to provide trade facilitation benefits to entities.

(2) The programme is to be known as the Australian Trusted Trader Programme.

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Division 2—Trusted trader agreement

Subdivision A—Entry into trusted trader agreement

176A Trusted trader agreement may be entered into

(1) The Comptroller-General of Customs may enter into an agreement (a ***trusted trader agreement***) with an entity if:

(a) the entity nominates itself to participate in the Australian Trusted Trader Programme; and

(b) the Comptroller-General of Customs is satisfied that the entity satisfies the qualification criteria set out in the rules.

(2) In deciding whether to enter into a trusted trader agreement, the Comptroller-General of Customs must consider:

(a) any matter set out in the rules; and

(b) any other matter that he or she considers relevant.

(3) If the Comptroller-General of Customs enters into a trusted trader agreement with an entity, the Comptroller-General of Customs may do either or both of the following:

(a) specify in the agreement one or more of the obligations covered by subparagraph 179(1)(d)(i);

(b) specify in the agreement:

(i) one or more of the obligations covered by subparagraph 179(1)(d)(ii); and

(ii) for each such obligation—the way in which the entity may satisfy the obligation.

Note 1: The effect of specifying an obligation under paragraph (3)(a) is that the entity will be released from the obligation under Part IV or VI: see sections 49C and 107.

Note 2: The effect of specifying an obligation under paragraph (3)(b) is that the entity will be able to satisfy the obligation under Part IV or VI in the way specified in the agreement: see sections 49C and 107.

Note 3: Parts IV and VI are about the importation and exportation of goods.

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(4) The entity may receive benefits of a kind that are covered by paragraph 179(1)(e) and are specified in the agreement.

176B Nomination process

(1) A nomination to participate in the Australian Trusted Trader Programme may be made by an entity by document or electronically.

(2) A documentary nomination must:
  (a) be communicated to the Comptroller-General of Customs; and
  (b) be in an approved form; and
  (c) contain the information required by the approved form; and
  (d) be signed in a manner indicated by the approved form.

(3) An electronic nomination must communicate such information as is set out in an approved statement.

Subdivision C—General provisions relating to trusted trader agreements

178 Terms and conditions of trusted trader agreements

A trusted trader agreement may be subject to:
  (a) conditions prescribed by the rules; and
  (b) terms and conditions specified in the agreement.

178A Variation, suspension or termination of trusted trader agreements

(1) The Comptroller-General of Customs may vary, suspend or terminate a trusted trader agreement if the Comptroller-General of Customs reasonably believes that the entity to which the agreement relates has not complied, or is not complying, with:
  (a) any condition prescribed by the rules; or
  (b) any term or condition specified in the agreement.

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(2) In deciding whether to vary, suspend or terminate a trusted trader agreement, the Comptroller-General of Customs must consider:
  (a) any matter set out in the rules; and
  (b) any other matter that he or she considers relevant.

(3) If subsection (1) applies, the trusted trader agreement must be varied, suspended or terminated in accordance with the procedure prescribed by the rules.

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Division 3—Register of Trusted Trader Agreements

178B Register of Trusted Trader Agreements

(1) The Comptroller-General of Customs may maintain a register, to be known as the Register of Trusted Trader Agreements, containing information of a kind prescribed by the rules in relation to each trusted trader agreement entered into under this Part.

(2) The Register of Trusted Trader Agreements is to be made publicly available.

(3) The Register of Trusted Trader Agreements is not a legislative instrument.

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Division 4—Rules

179 Rules

(1) The Comptroller-General of Customs may, by legislative instrument, prescribe rules for and in relation to the following:

(a) the qualification criteria that an entity must satisfy in order for a trusted trader agreement to be entered into with the entity under section 176A;

(b) the matters that the Comptroller-General of Customs must consider when deciding whether to enter into a trusted trader agreement under section 176A;

(c) the conditions on which an entity participates in the Australian Trusted Trader Programme;

(d) the kind of obligation:

(i) that an entity may be released from under Part IV (other than Division 1) or Part VI (other than Division 1); or

(ii) that an entity may be required to satisfy under Part IV (other than Division 1) or Part VI (other than Division 1) in a way other than required by the relevant Part;

(e) the kind of benefits that an entity may receive under a trusted trader agreement;

(f) any criteria to be satisfied for an entity to receive benefits of a kind mentioned in paragraph (e);

(g) any other conditions to which a trusted trader agreement may be subject;

(h) the procedures that the Comptroller-General of Customs must follow when varying, suspending or terminating a trusted trader agreement under section 178A;

(i) the matters that the Comptroller-General of Customs must consider when deciding whether to vary, suspend or terminate a trusted trader agreement under section 178A;

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(j) the kinds of information that may be published on the Register of Trusted Trader Agreements, including:
(i) that an entity has entered into a trusted trader agreement; and
(iii) the kinds of benefits that the entity is receiving, or will receive, under the agreement; and
(iv) whether the agreement is in force; and
(v) whether the agreement is or has been suspended; and
(vi) whether the agreement has been terminated.

(2) For the purpose of paragraph (1)(d):
(a) a rule prescribed for the purposes of subparagraph (1)(d)(i) must specify that the obligation is one from which an entity may be released; and
(b) a rule prescribed for the purposes of subparagraph (1)(d)(ii) must specify that the obligation is one that may be satisfied by an entity in a way other than required by Part IV (other than Division 1) or Part VI (other than Division 1).

(3) The Comptroller-General of Customs may, by legislative instrument, also make rules prescribing matters:
(a) required or permitted by this Part to be prescribed by the rules; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(4) To avoid doubt, rules made under this section may not do the following:
(a) create an offence or civil penalty;
(b) provide powers of:
(i) arrest or detention; or
(ii) entry, search or seizure;
(c) impose a tax;
(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
(e) directly amend the text of this Act.

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Part XB—Controlled trials

Division 1—Preliminary

179A Simplified outline of this Part

The Comptroller-General of Customs may establish controlled trials. A controlled trial is for a period of up to 12 months, with a possible one-off extension of up to 6 months.

Entities may apply or be invited to participate in a controlled trial.

Entities participating in a controlled trial:

(a) may be released from certain obligations under this Act; or

(b) may be required to satisfy certain obligations under this Act in a different way to that required by this Act; or

(c) may be required to comply with additional obligations; or

(d) may receive benefits of a certain kind.

179B Application of this Part

This Part applies in relation to the following entities:

(a) individuals;

(b) bodies corporate;

(c) partnerships.

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Division 2—Obligations and benefits under controlled trials

179C Obligations under controlled trials

Entities released from obligations

(1) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity is released from an obligation that the entity would otherwise be required to satisfy under a controlled trial provision if the obligation is specified in the rules as an obligation in relation to that trial that entities are released from.

Note 1: Section 179L provides for the making of rules to establish a controlled trial. Division 3 deals with approving an entity's participation in a controlled trial.

Note 2: For ***controlled trial provision***, see subsection 4(1).

Entities must satisfy obligations in a different way

(2) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity cannot satisfy an obligation under a controlled trial provision in the way required by this Act if the obligation is specified in the rules as an obligation in relation to that trial that entities cannot satisfy in the way required by this Act.

(3) Instead, the entity must satisfy the obligation in the way specified in the rules in relation to that trial.

Note: A failure to satisfy the obligation in this way is a ground for varying, suspending or revoking the entity's approval: see section 179J.

Entities must comply with additional obligations

(4) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity must comply with each obligation specified in the rules as an obligation in relation to that trial that entities must comply with.

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Note 1: The obligation must be in relation to a controlled trial provision: see paragraph 179L(3)(h).

Note 2: A failure to comply with the obligation is a ground for varying, suspending or revoking the entity's approval: see section 179J.

179D Benefits under controlled trials

If an entity holds an approval, that is in force, to participate in a controlled trial, the entity may receive benefits of a kind that are specified in the rules in relation to the trial.

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Division 3—Participation in controlled trials

179E Approval of participation in controlled trials

(1) The Comptroller-General of Customs may, in writing, approve an entity's participation in a controlled trial if:

(a) either:

(i) the entity makes an application to participate in that trial in accordance with section 179F; or

(ii) the Comptroller-General of Customs invites, in writing, the entity to participate in that trial and the entity makes an election to participate in that trial in accordance with section 179G; and

(b) the Comptroller-General of Customs is satisfied that the entity meets the qualification criteria (if any) determined in an instrument under section 179K; and

(c) the Comptroller-General of Customs is satisfied that the entity meets the eligibility criteria (if any) specified in the rules in relation to that trial.

Note: Section 179F deals with making applications and section 179G deals with making elections.

(2) In deciding whether to approve an entity's participation in a controlled trial, the Comptroller-General of Customs must consider:

(a) any matter specified in the rules under paragraph 179L(3)(b) in relation to that trial; and

(b) any other matter that the Comptroller-General of Customs considers relevant.

Period for which approval is in force

(3) An approval under subsection (1) must specify the period for which it is in force.

Note: See section 179J for variation, suspension or revocation of an approval.

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Copy of approval to be given to entity

(4) The Comptroller-General of Customs must give a copy of an approval under subsection (1) to the entity.

Notification of refusal to approve entity's participation in controlled trial

(5) If an entity makes an application or election to participate in a controlled trial and the Comptroller-General of Customs refuses to approve the entity's participation in the trial, the Comptroller-General of Customs must notify the entity of the refusal and of the reasons for the refusal.

Approval not a legislative instrument

(6) An approval under subsection (1) is not a legislative instrument.

179F Application to participate in controlled trial

(1) An application to participate in a controlled trial may be made by document or electronically.

Documentary application

(2) A documentary application must:
  (a) be communicated to the Comptroller-General of Customs; and
  (b) be in an approved form; and
  (c) contain the information required by the approved form; and
  (d) be signed in a manner indicated by the approved form.

Electronic application

(3) An electronic application must:
  (a) be communicated to the Comptroller-General of Customs; and
  (b) communicate such information as is set out in an approved statement.

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179G Election to participate in controlled trial

(1) An election to participate in a controlled trial may be made by document or electronically.

Documentary election

(2) A documentary election must:
  (a) be communicated to the Comptroller-General of Customs; and
  (b) be in an approved form; and
  (c) contain the information required by the approved form; and
  (d) be signed in a manner indicated by the approved form.

Electronic election

(3) An electronic election must:
  (a) be communicated to the Comptroller-General of Customs; and
  (b) communicate such information as is set out in an approved statement.

179H Conditions of approvals

An entity's approval under section 179E in relation to a controlled trial is subject to the conditions specified in the rules in relation to that trial.

179J Variation, suspension or revocation of approvals

(1) The Comptroller-General of Customs may, in writing, vary, suspend or revoke an entity's approval under section 179E in relation to a controlled trial if the Comptroller-General of Customs is satisfied that:
  (a) the entity no longer meets the qualification criteria (if any) determined in an instrument under section 179K; or
  (b) the entity no longer meets the eligibility criteria (if any) specified in the rules in relation to that trial; or

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(c) the entity has not complied, or is not complying, with any condition specified in the rules in relation to that trial; or

(d) in relation to that trial, the entity has not satisfied an obligation covered by subsection 179C(2) in the way covered by subsection 179C(3); or

(e) in relation to that trial, the entity has not complied with an obligation covered by subsection 179C(4).

(2) In deciding whether to vary, suspend or revoke an approval, the Comptroller-General of Customs must consider:

(a) any matter specified in the rules under paragraph 179L(3)(d) in relation to that trial; and

(b) any other matter that the Comptroller-General of Customs considers relevant.

(3) A variation, suspension or revocation of an approval must be in accordance with the procedures specified in the rules in relation to that trial.

(4) The Comptroller-General of Customs must give notice of a variation, suspension or revocation to the entity.

(5) The notice must specify the day the variation, suspension or revocation takes effect (which must be at least 7 days after the day the notice is given).

Consequences of suspension

(6) An approval has no effect while suspended, but the period for which it remains in force continues to run despite the suspension.

(7) The Comptroller-General of Customs may, in writing, revoke a suspension under subsection (1).

(8) The Comptroller-General of Customs must give notice of the revocation of the suspension to the entity. The notice must specify the day the revocation takes effect.

(9) The Comptroller-General of Customs may, under subsection (1), vary or revoke an approval while it is suspended.

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Division 4—Instruments

179K General qualification criteria for any controlled trial

The Comptroller-General of Customs may, by legislative instrument, determine qualification criteria that entities must meet in order to participate in any controlled trial.

179L Rules specific to a controlled trial

(1) The Comptroller-General of Customs may, by legislative instrument, make rules that make provision for and in relation to the following:
  (a) establishing a controlled trial;
  (b) the period of operation of a controlled trial;
  (c) extending the period of operation of a controlled trial;
  (d) revoking a controlled trial.

(2) For the purposes of subsection (1):
  (a) rules that establish a controlled trial must specify the purpose of the controlled trial; and
  (b) the period of operation of a controlled trial must not be more than 12 months; and
  (c) the period of operation of a controlled trial may begin after the day on which the controlled trial is established; and
  (d) an extension of the period of operation of a controlled trial must not be more than 6 months; and
  (e) the period of operation of a controlled trial must not be extended more than once.

(3) The Comptroller-General of Customs may, by legislative instrument, make rules that make provision for and in relation to the following for a controlled trial:
  (a) the eligibility criteria that an entity must meet in order for the Comptroller-General of Customs to approve an entity's participation in that trial;

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(b) the matters that the Comptroller-General of Customs must consider in deciding whether to approve an entity's participation in that trial;

(c) the conditions that approvals under section 179E in relation to that trial are subject to;

(d) the matters that the Comptroller-General of Customs must consider when deciding whether to vary, suspend or revoke an approval under section 179E in relation to that trial;

(e) the procedures that the Comptroller-General of Customs must follow when varying, suspending or revoking an approval under section 179E in relation to that trial;

(f) each obligation under a controlled trial provision that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial are released from;

(g) the following:

(i) each obligation under a controlled trial provision that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial cannot satisfy in the way required by this Act;

(ii) the way in which those entities must satisfy that obligation;

(h) each obligation that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial must comply with, being an obligation that is in relation to a controlled trial provision;

(i) the kind of benefits that entities holding an approval, that is in force, to participate in that trial may receive and any criteria to be satisfied for entities to receive those benefits;

(j) a matter that is incidental or ancillary to a matter covered by paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i).

Note: For ***controlled trial provision***, see subsection 4(1).

(4) To avoid doubt, rules made under this section may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

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(i) arrest or detention; or
(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

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Part XI—Agents and customs brokers

Division 1—Preliminary

180 Interpretation

In this Part, unless the contrary intention appears:

broker's licence means a licence to act as a customs broker granted under section 183C (including such a licence renewed under section 183CJ).

Committee means the National Customs Brokers Licensing Advisory Committee continued in existence by subsection 183D(1).

corporate customs broker means a customs broker that is a company or a partnership.

customs broker means a person who holds a broker's licence that is in force, and in relation to a place, means a person who holds a broker's licence to act as a customs broker at the place.

customs broker licence application charge means the customs broker licence application charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 183CA.

customs broker licence charge means the customs broker licence charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 183CJA.

nominee, in relation to a customs broker, means another customs broker whose name is endorsed on the broker's licence held by the first-mentioned customs broker as a nominee of the first-mentioned customs broker.

person means a natural person, a company or a partnership.

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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.

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Division 2—Rights and liabilities of agents

181 Authorised agents

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

(2) Where the Comptroller-General of Customs, 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 or her 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 broker at that place.

(3) Where an owner of goods authorizes a person to be his or her 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 broker—that agent; or

(b) where the agent is a customs broker—a nominee of that agent who is a customs broker 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 or she 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.

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(4A) Subsection (2) does not apply to the making of an export entry.

(5) A person who contravenes subsection (4) commits an offence punishable upon conviction by a penalty not exceeding 30 penalty units.

(6) Subsection (5) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

182 Authority to be produced

(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 broker claims that that customs broker 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 broker to be such an agent and, if that written authority is not produced, the officer may refuse to recognize the authority of the nominee to act on behalf of the owner at that place.

183 Agents personally liable

(1) Where a person is, holds himself or herself out to be or acts as if he or she 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 broker is the agent of an owner of goods for the purposes of the Customs Acts and a person who is, holds himself or herself out to be or acts as if he or she were a nominee of that customs broker acts in relation to those goods, that person shall, for

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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 broker for the purposes of the Customs Acts shall be deemed to be an act done or, a representation made, by that customs broker.

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

183A Principal liable for agents acting

(1) Where an agent of, or a nominee of a customs broker 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.

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Division 3—Licensing of customs brokers

183B Interpretation

(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 broker if:

(a) the person has authority as a nominee of, or as an agent, officer or employee of, the customs broker, to do any act or thing for the purposes of the Customs Acts on behalf of an owner of goods; or

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

(c) the person has authority to do any act or thing on behalf of the customs broker.

183C Grant of licence

(1) Subject to this Part, the Comptroller-General of Customs must, upon application by a person for the grant of a broker's licence:

(a) grant the person a licence, in writing, to act as a customs broker at a place or places specified in the licence; or

(b) refuse, in writing, to grant the person a broker's licence.

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

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183CA Application for licence

(1) An application for a broker's licence may be made by document or electronically.

(1A) A documentary application must:

(a) be in writing; and

(b) be in an approved form; and

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

(d) be accompanied by any documents required by the form; and

(e) be accompanied by the customs broker licence application charge.

(1B) An electronic application must:

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

(b) be accompanied by any documents required by the approved statement; and

(c) be accompanied by the customs broker licence application charge.

(2) Where a person makes an application, he or she must not, in the application, propose a person as his or her 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 a broker's licence is granted to the applicant, he or she will be eligible, to be a nominee of the applicant at that place.

(3) A person must not, in an application, be proposed as a nominee unless he or she has consented, in writing, to the proposal.

183CB Reference of application to Committee

(1) Where the Comptroller-General of Customs receives an application, he or she shall refer the application to the Committee for a report relating to the application and shall not grant, or refuse to grant, a broker's licence to the applicant unless he or she has received and considered the report.

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

183CC Requirements for grant of licence

(1) Where an application is made, the Comptroller-General of Customs shall not grant a broker's licence if, in his or her opinion:

(a) where the application is made by a natural person:

(i) the applicant is not a fit and proper person; or

(ii) the applicant is not qualified to be a customs broker; or

(iii) a person who would participate in the work of the applicant, if the applicant were a customs broker, is not a fit and proper person; or

(b) where the application is made by a company:

(i) a director of the company is not a fit and proper person; or

(ii) a person who would participate in the work of the company, if the company were a customs broker, is not a fit and proper person; or

(iii) the company is not a fit and proper company to hold a broker's licence; or

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

(i) a partner in the partnership is not a fit and proper person; or

(ii) a person who would participate in the work of the partnership, if the partnership were a customs broker, is not a fit and proper person.

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(2) For the purposes of subsection (1), an applicant shall be taken to be qualified to be a customs broker if, and only if:

(a) except where the applicant has been exempted under subsection (3), the applicant has completed a course of study or instruction approved under subsection (5); and

(b) the applicant has acquired experience that, in the opinion of the Comptroller-General of Customs, fits the applicant to be a customs broker.

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

(4) The Comptroller-General of Customs shall, in determining whether a person is a fit and proper person for the purposes of paragraph (1)(a), (b) or (c) (other than subparagraph (1)(b)(iii)), 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; and

(aa) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately preceding the making of the application; and

(b) whether the person is an undischarged bankrupt; and

(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-General of Customs shall, in determining whether a company is a fit and proper company to hold a broker's 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

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a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(b) any conviction of the company for an offence under a law of the Commonwealth, of a State or of a Territory that is punishable by a fine of $5,000 or more, being an offence committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

(c) whether a receiver of the property, or part of the property, of the company has been appointed;

(ca) whether the company is under administration within the meaning of the *Corporations Act 2001*;

(cb) whether the company has executed under Part 5.3A of that Act a deed of company arrangement that has not yet terminated;

(d) whether the company is under restructuring within the meaning of that Act;

(da) whether the company has made, under Division 3 of Part 5.3B of that Act, a restructuring plan that has not yet terminated;

(e) whether the company is being wound up.

(5) The Comptroller-General of Customs 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 a person to be a customs broker.

183CCA Notice of refusal to grant a broker's licence

If the Comptroller-General of Customs refuses to grant a broker's licence to a person, the Comptroller-General must give the person written notice of the refusal and of the reasons for the refusal.

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183CD Eligibility to be nominee

A person is eligible to be the nominee of a customs broker if, and only if:

(a) he or she is a natural person; and

(b) he or she is a customs broker; and

(c) he or she does not act as a customs broker in his or her own right; and

(g) he or she is not authorized to be an agent in accordance with subsection 181(1); and

(h) he or she is a customs broker at a place at which the first-mentioned customs broker is a customs broker.

183CE Original endorsement on licence

(1) Where the Comptroller-General of Customs grants a broker's licence, he or she 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 broker; and

(b) endorse on the licence the name of each customs broker 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 or she acts as a customs broker.

(2) The Comptroller-General of Customs shall not, in pursuance of subsection (1), endorse a licence so as to show a person as a nominee of a customs broker at a place if that person is not eligible to be a nominee of that customs broker at that place.

183CF Variation of licences

Places

(1) Subject to subsection (3), the Comptroller-General of Customs must, upon application by a customs broker:

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(a) vary 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 broker; or

(b) refuse, in writing, to vary the licence.

Nominees

(2) Subject to subsection (3), the Comptroller-General of Customs must, upon application by a customs broker:

(a) vary the licence so that a person is specified, or ceases to be specified, in the licence as a nominee of the customs broker; or

(b) refuse, in writing, to vary the licence.

Kind of application

(2A) An application under subsection (1) or (2) may be made by document or electronically.

(2B) A documentary application must:

(a) be in writing; and

(b) be in an approved form; and

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

(d) be accompanied by any documents required by the form; and

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

(2C) An electronic application must:

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

(b) be accompanied by any documents required by the approved statement.

Limitations

(3) The Comptroller-General of Customs must not vary the licence so that the licence ceases to comply with subsection 183C(2).

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(4) A person must not be specified under subsection (2) as a nominee of a customs broker unless he or she has consented, in writing, to the specification.

Notification of decisions

(5) If the Comptroller-General of Customs varies the licence, the Comptroller-General must give the holder of the licence a copy of the variation. The variation takes effect at the time the copy is given.

(6) If the Comptroller-General of Customs refuses to vary the licence, the Comptroller-General must give the holder of the licence written notice of the refusal and of the reasons for the refusal.

Note: See section 183UAA for the ways in which the notice may be given to the holder of the licence.

183CG Licence granted subject to conditions

(1) A broker's licence is subject to the condition that if:

(a) the holder of the licence is convicted of a prescribed offence; or

(b) in the case of a licence held by a natural person—the holder of the licence:

(i) becomes bankrupt; or

(ii) has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or

(c) in the case of a licence held by a company:

(i) a receiver of the property, or part of the property, of the company is appointed; or

(ii) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or

(iii) the company executes a deed of company arrangement under Part 5.3A of that Act; or

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(iiia) a small business restructuring practitioner for the company is appointed under section 453B of that Act; or

(iiib) the company makes a restructuring plan under Division 3 of Part 5.3B of that Act; or

(iv) the company begins to be wound up;

the holder of the licence shall, within 30 days after the occurrence of the event referred to in paragraph (a), (b) or (c), give the Comptroller-General of Customs particulars in writing of that event.

(2) A broker's licence held by a natural person is subject to the condition that the holder of the licence shall not act as a customs broker in his or her own right at any time at which he or she is a nominee of a customs broker.

(3) A broker's licence held by a customs broker 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 broker commences so to participate; or

(b) a nominee of the customs broker dies or ceases to act as nominee of the customs broker; or

(c) a person who participates in the work of the customs broker:

(i) is convicted of a prescribed offence; or

(ii) becomes bankrupt; or

(iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; 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

(ia) a member of the partnership has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was

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granted or last renewed, or within the 10 years immediately preceding that grant or renewal; 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 referred to in whichever of the preceding paragraphs applies, give the Comptroller-General of Customs particulars in writing of that event.

(4) A broker's licence held by a customs broker is subject to the condition that the broker shall do all things necessary to ensure that:

(a) all persons who participate in the work of the customs broker are fit and proper persons; and

(aa) in the case of a licence held by a company—all directors of the company are fit and proper persons; and

(b) in the case of a licence held by a partnership—all members of the partnership are fit and proper persons.

(5) A broker's licence is subject to such other conditions (if any) as are prescribed.

(6) A broker's licence is subject to such other conditions (if any) as are specified in the licence, being conditions considered by the Comptroller-General of Customs to be necessary or desirable:

(a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts; or

(c) for any other purpose.

(7) The Comptroller-General of Customs must, in writing and upon application by the holder of a broker's licence for a variation of the conditions to which the licence is subject:

(a) vary those conditions; or

(b) refuse to vary those conditions.

(7A) Subsection (7) does not limit section 183CGB.

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Kind of application

(7B) An application under subsection (7) may be made by document or electronically.

(7C) A documentary application must:
(a) be in writing; and
(b) be in an approved form; and
(c) contain such information as the form requires; and
(d) be accompanied by any documents required by the form; and
(e) be signed in the manner indicated in the form.

(7D) An electronic application must:
(a) communicate such information as is set out in an approved statement; and
(b) be accompanied by any documents required by the approved statement.

Notification of decisions

(7E) If the Comptroller-General of Customs, under subsection (7), varies the conditions to which the licence is subject, the Comptroller-General must give the holder of the licence a copy of the variation. The variation takes effect at the time the copy is given.

(7F) If the Comptroller-General of Customs, under subsection (7), refuses to vary the conditions to which the licence is subject, the Comptroller-General must give the holder of the licence written notice of the refusal and of the reasons for the refusal.

Note: See section 183UAA for the ways in which the notice may be given to the holder of the licence.

183CGA Comptroller-General of Customs may impose additional conditions to which a broker's licence is subject

(1) The Comptroller-General of Customs may, at any time, impose additional conditions to which the licence is subject if the

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Comptroller-General of Customs considers the conditions to be necessary or desirable:

(a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts; or

(c) for any other purpose.

(2) If the Comptroller-General of Customs imposes conditions under subsection (1):

(a) the Comptroller-General of Customs must, by written notice to the holder of the broker's licence, notify the holder of the conditions; and

(b) the conditions cannot take effect before:

(i) the end of 30 days after the giving of the notice; or

(ii) if the Comptroller-General of Customs considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

Note: See section 183UAA for the ways in which the notice may be given to the holder of the licence.

183CGB Comptroller-General of Customs may vary the conditions to which a broker's licence is subject

(1) The Comptroller-General of Customs may, by written notice to the holder of a broker's licence, vary:

(a) the conditions specified in the broker's licence under section 183CG; or

(b) the conditions imposed under section 183CGA to which the licence is subject.

Note: See section 183UAA for the ways in which the notice may be given to the holder of the licence.

(2) A variation under subsection (1) cannot take effect before:

(a) the end of 30 days after the giving of the notice under that subsection; or

(b) if the Comptroller-General of Customs considers that it is necessary for the variation to take effect earlier—the end of a

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shorter period specified in the notice given under that subsection.

(3) This section does not limit subsection 183CG(7).

183CGC Breach of conditions of a broker's licence

(1) The holder of a broker's licence must not breach a condition to which the licence is subject under section 183CG or 183CGA (including a condition varied under subsection 183CG(7) or section 183CGB).

Penalty: 60 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

183CH Duration of licence

(1) A broker's 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 the end of the licence expiry day next following the grant of the licence but may be renewed in accordance with section 183CJ.

(1A) For the purposes of this section:

(a) the first ***licence expiry day*** is 31 December 2000; and

(b) the next ***licence expiry day*** is 30 June 2003; and

(c) later ***licence expiry days*** occur at intervals of 3 years after the last licence expiry day.

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

183CJ Renewal of licence

(1) If a customs broker, within 2 months before the date on which his or her broker's licence is due to expire, applies in writing to the

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Comptroller-General of Customs for the renewal of the licence, the Comptroller-General of Customs must, by writing, renew the licence unless:

(a) the Comptroller-General of Customs has given an order under paragraph 183CS(1)(d) in relation to the licence; or

(b) the customs broker is, because of section 183CK, not entitled to hold a broker's 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 broker 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.

(5) Subject to this Part, a licence that has been renewed continues in force until the first licence expiry day (as defined in section 183CH) after the day on which the licence would have expired apart from the renewal, but may be further renewed.

Note: Additional conditions may be imposed on the licence under section 183CGA, and the conditions to which the licence is subject may be varied under subsection 183CG(7) or section 183CGB.

183CJA Licence charges

Grant of licence

(1) A customs broker licence charge is payable in respect of the grant of a broker's licence by the person seeking the grant.

(2) A person liable to pay a customs broker licence charge in respect of the grant of a broker's licence must pay the charge before the end of the day the licence comes into force.

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Renewal of licence

(3) A customs broker licence charge is payable in respect of the renewal of a broker's licence by the holder of the licence.

(4) The holder of a broker's licence liable to pay a customs broker licence charge in respect of the renewal of the broker's licence must pay the charge before the end of the day the renewal of the licence comes into force.

183CK Security

(1) The Comptroller-General of Customs may, by notice in writing given to a person making an application for a broker's licence or a person who holds a broker's licence, require that person to give, within the time specified in the notice, security in an amount determined by the Comptroller-General of Customs, not being an amount exceeding the amount prescribed in respect of the prescribed class of applicants or customs brokers to which the person belongs, by bond, guarantee or cash deposit, or by any or all of those methods, for compliance by him or her 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 a broker's licence, as the case may be, unless he or she gives security accordingly.

Note: See section 183UAA for the ways in which the notice may be given to the applicant or the holder of the licence.

(2) Where the amount of the security in force in respect of a customs broker is less than the amount prescribed in respect of the prescribed class of customs brokers to which the customs broker belongs, the Comptroller-General of Customs may, by notice in writing to the customs broker, require the customs broker 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 broker fails to comply with the

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notice, the customs broker shall not be entitled to hold a broker's licence.

Note: See section 183UAA for the ways in which the notice may be given to the customs broker.

(3) Where, by virtue of subsection (1), an applicant for a broker's licence is not entitled to be granted the licence, the Comptroller-General of Customs may, under subsection 183C(1), refuse to grant the licence to the applicant.

(4) Where, by virtue of subsection (1) or (2), a customs broker is not entitled to hold a broker's licence, the Comptroller-General of Customs may cancel the broker's licence held by the customs broker.

(5) Regulations made for the purposes of this section may prescribe different amounts in respect of different classes of applicants or customs brokers 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 brokers who are natural persons and corporate customs brokers.

183CM Nominees

For the purposes of this Part, a person shall be taken to be a nominee of a customs broker 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 broker until the nominee dies or until the Comptroller-General of Customs deletes the name of the nominee from that licence under section 183CP, whichever occurs first.

183CN Removal of nominee

The Comptroller-General of Customs shall delete the name of a nominee of a customs broker from the broker's licence of that customs broker if:

(a) the nominee dies; or

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(b) the nominee ceases to hold a broker's licence; or

(c) the nominee ceases to act as nominee of the customs broker; or

(d) the nominee requests the Comptroller-General of Customs, in writing, to delete his or her 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.

183CP Notice to nominate new nominee

If the broker's licence of a customs broker ceases to comply with subsection 183C(2), the Comptroller-General of Customs may, by notice in writing given to the customs broker, require the customs broker to apply within such period as is specified in the notice, for such variation of the licence as would result in the licence complying with that subsection.

Note: See section 183UAA for the ways in which the notice may be given to the customs broker.

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Division 4—Suspension, cancellation and non-renewal of licences

183CQ Investigation of matters relating to a broker's licence

(1) The Comptroller-General of Customs may give notice to a customs broker if the Comptroller-General of Customs has reasonable grounds to believe that:

(a) the customs broker has been convicted of a prescribed offence; or

(b) the customs broker, being a natural person, is an undischarged bankrupt; or

(ba) the customs broker, being a natural person, has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately preceding the giving of the notice; or

(c) the customs broker, being a company, is in liquidation; or

(d) the customs broker has ceased to perform the duties of a customs broker in a satisfactory and responsible manner; or

(e) the customs broker is guilty of conduct that is an abuse of the rights and privileges arising from his or her licence; or

(f) a customs broker licence charge payable in respect of the licence remains unpaid more than 28 days after the day the charge was due to be paid; or

(g) the customs broker made a false or misleading statement in the application for the licence; or

(h) the customs broker has not complied with a condition imposed on the grant or renewal of the licence; or

(j) the customs broker has not, within the time specified in a notice under section 183CP, complied with that notice;

or it otherwise appears to the Comptroller-General of Customs to be necessary for the protection of the revenue or otherwise in the public interest to give the notice.

Note: See section 183UAA for the ways in which the notice may be given to the customs broker.

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(2) Without limiting the generality of paragraph (1)(d), a customs broker shall be taken, for the purposes of that paragraph, to have ceased to perform the duties of a customs broker in a satisfactory and responsible manner if the documents prepared by the customs broker for the purposes of this Act contain errors that are unreasonable having regard to the nature or frequency of those errors.

Notice where no referral to Committee

(4) If the Comptroller-General of Customs gives a customs broker a notice under this section because of paragraph (1)(a), (c) or (f), the notice must:

(a) state the grounds on which the notice is given; and

(b) state the things the Comptroller-General may do in relation to the broker's licence under subsection 183CS(1); and

(c) invite the broker to make a written submission to the Comptroller-General in relation to the matter within the period specified in the notice (which must be at least 14 days after the day the notice is given).

Notice where referral to Committee

(4A) If the Comptroller-General of Customs gives a customs broker a notice under this section and subsection (4) does not apply, the notice must:

(a) state the grounds on which the notice is given; and

(b) state that the Comptroller-General is going to refer to the Committee, for investigation and report to the Comptroller-General, the question whether the Comptroller-General should take action in relation to the broker's licence under subsection 183CS(1); and

(c) state the things the Comptroller-General may do in relation to that licence under subsection 183CS(1); and

(d) state the rights of the customs broker under sections 183J and 183S to take part in the proceedings before the Committee.

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(5) If the Comptroller-General of Customs gives a notice under this section to a customs broker where subsection (4A) applies, the Comptroller-General of Customs must refer the question whether the Comptroller-General of Customs should take action in relation to the licence under subsection 183CS(1) to the Committee, for investigation and report to the Comptroller-General of Customs.

(6) Where the Comptroller-General of Customs refers a question to the Committee under subsection (5), the Comptroller-General of Customs shall give particulars to the Committee of all the information in his or her 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-General of Customs.

183CR Interim suspension by Comptroller-General of Customs

(1) Where the Comptroller-General of Customs gives a notice under section 183CQ to a customs broker, the Comptroller-General of Customs may, if the Comptroller-General of Customs considers it necessary for the protection of the revenue or otherwise in the public interest to do so, suspend the licence of the customs broker pending the making of a submission (if any) under paragraph 183CQ(4)(c) by the customs broker or pending the investigation and report of the Committee under subsection 183CQ(7) in relation to the customs broker.

(2) The Comptroller-General of Customs may suspend the broker's licence of a customs broker in pursuance of subsection (1) by:

(a) including in the notice to the customs broker 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 broker to the effect that the licence is suspended under that subsection.

Note: See section 183UAA for the ways in which a notice may be given to the customs broker.

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

(4) Where a broker's licence is suspended under this section, the Comptroller-General of Customs may at any time revoke the suspension.

183CS Powers of Comptroller-General of Customs

(1) If the Comptroller-General of Customs, after considering a submission (if any) under paragraph 183CQ(4)(c) by a customs broker, or after considering a report of the Committee under subsection 183CQ(7) in relation to a customs broker, 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 or she may, by notice to the customs broker:

(c) cancel the licence; or

(d) if the licence is about to expire—order that the licence not be renewed; or

(e) reprimand the customs broker; or

(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.

Note: See section 183UAA for the ways in which a notice may be given to the customs broker.

(1A) The notice under subsection (1) must set out the reasons for the giving of the notice.

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(2) Where the Comptroller-General of Customs, after considering a submission (if any) under paragraph 183CQ(4)(c) by a customs broker or after considering a report of the Committee under subsection 183CQ(7) in relation to a customs broker, decides not to take any further action in the matter, he or she shall, by notice in writing to the customs broker, inform the customs broker accordingly, and, if the licence of the customs broker is suspended, he or she shall revoke the suspension.

Note: See section 183UAA for the ways in which a notice may be given to the customs broker.

(4) The period for which the Comptroller-General of Customs 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-General of Customs orders under paragraph (1)(d) that a licence not be renewed, he or she shall notify the appropriate Collector accordingly.

183CSA Cancellation of broker's licence on request

The Comptroller-General of Customs may, by notice in writing given to the holder of a broker's licence, cancel the licence if the Comptroller-General receives a written request from the holder of the licence that the licence be cancelled on and after a specified day.

Note: See section 183UAA for the ways in which the notice may be given to the holder of the licence.

183CT Effect of suspension

(1) During a period in which a broker's licence held by a natural person is suspended under this Division:

(a) the person shall not act as a customs broker;

(b) the person shall not act as a nominee of a customs broker; and

(c) a nominee of the person shall not act as such a nominee.

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(2) During a period in which a broker's licence held by a corporate customs broker is suspended under this Division:

(a) the corporate customs agent shall not act as a customs broker; and

(b) a nominee of the corporate customs broker shall not act as such a nominee.

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Division 5—National Customs Brokers Licensing Advisory Committee

183D National Customs Brokers Licensing Advisory Committee

(1) The National Customs Agents Licensing Advisory Committee in existence immediately before the commencement of this subsection continues in existence as the National Customs Brokers Licensing Advisory Committee.

(2) The functions of the Committee are:
  (a) to investigate and report on applications referred to it by the Comptroller-General of Customs under section 183CB;
  (b) to investigate and report on questions referred to it by the Comptroller-General of Customs under section 183CQ;
  (c) to advise the Comptroller-General of Customs in relation to the approval of courses of study under section 183CC; and
  (d) where the Comptroller-General of Customs requests the Committee to advise him or her on the standards that customs brokers should meet in the performance of their duties and obligations as customs brokers—to advise the Comptroller-General of Customs accordingly.

183DA Constitution of Committee

(1) The Committee shall consist of the following members:
  (a) the Chair;
  (b) a member to represent customs brokers;
  (c) a member to represent the Commonwealth.

(2) The Chair 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-General of Customs, possesses special knowledge or skill in relation to matters that the Committee is to advise or report on.

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(3) A member referred to in paragraph (1)(a) or (b) shall be appointed by the Comptroller-General of Customs 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-General of Customs, represents customs brokers.

(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-General of Customs specifies, in writing signed by him or her, 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 or her nomination or appointment.

183DB Remuneration and allowances

(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 or she 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 Tribunal Act 1973*.

183DC Acting Chair

(1) Subject to subsection (2), the Comptroller-General of Customs may appoint a person to act as Chair:

(a) during a vacancy in the office of Chair; or

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

(2) A person shall not be appointed to act as Chair unless he or she is qualified, in accordance with subsection 183DA(2), to be appointed as Chair.

(3) A person appointed to act as Chair shall be paid such fees, allowances and expenses as the Comptroller-General of Customs determines.

183DD Deputy member

(1) The Comptroller-General of Customs 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-General of Customs 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-General of Customs 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-General of Customs determines.

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183E Procedure of Committees

The regulations may make provision for and in relation to the procedure of the Committee.

183F Evidence

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.

183G Proceedings in private

The proceedings of the Committee shall be held in private.

183H Determination of questions before a Committee

All questions before the Committee shall be decided according to the opinion of the majority of its members.

183J Customs broker affected by investigations to be given notice

(1) Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chair 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 given to 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.

Note: See section 183UAA for the ways in which a notice may be given to the applicant or the holder of the licence.

(2) Subject to subsection (3), the Committee shall afford the person on whom a notice has been given under subsection (1) an opportunity of examining witnesses, of giving evidence and calling witnesses on his or her behalf and of addressing the Committee.

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(3) Where the person on whom notice has been given under 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 or her 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 Chair 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 given to such other persons who, in the opinion of the Chair, have a special interest in, or are specially affected by, the inquiry.

Note: See section 183UAA for the ways in which a notice may be given to a person.

183K Summoning of witnesses

(1) The Chair of the Committee may, by writing under his or her 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 the person's custody or control which the person is required by the summons to produce.

Note: See section 183UAA for the ways in which the summons may be given to the person.

(2) A person who has been summoned to attend before the Committee as a witness shall appear and report himself or herself 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.

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183N Committee may examine upon oath or affirmation

(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, the witness may make an affirmation that he or she conscientiously objects to take an oath and that he or she will state the truth, the whole truth and nothing but the truth to all questions that are asked of him or her.

(3) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

183P Offences by witness

(1) A person summoned to attend before the Committee as a witness shall not:

(a) fail to attend, after payment or tender to him or her of a reasonable sum for his or her expenses of attendance; or

(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) refuse or fail to produce a book or document which he or she was required by the summons to produce.

Penalty: 10 penalty units.

(2) Paragraphs (1)(a) and (c) do not apply if the person has reasonable cause for the failure or refusal.

183Q Statements by witness

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

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book or document, might tend to incriminate the person or make him or her liable to a penalty, but the person's answer to any such question is not admissible in evidence against him or her in proceedings other than proceedings for:

(a) an offence against paragraph 183P(1)(b) or (c); or

(b) an offence in connection with the making by him or her of a statement in an examination before the Committee under section 183N.

183R Witness fees

(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 or she is required to attend or, in special circumstances, such fees and allowances as the Chair of the Committee directs (less any amount previously paid to the person for his or her expenses of attendance).

(2) The fees and allowances are payable:

(a) in the case of a witness summoned at the request of the customs broker to whom the inquiry relates—by that customs broker; and

(b) in any other case—by the Commonwealth.

183S Representation by counsel etc.

(1) In an inquiry before the Committee, the customs broker to whom the inquiry relates and the Comptroller-General of Customs 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.

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183T Protection of members

(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 or her 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.

183U Protection of barristers, witnesses etc.

(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.

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Division 6—Giving of notices or summons

183UAA Giving of notices or summons

A notice or summons under this Part from the Comptroller-General of Customs or the Chair of the Committee to a person must be given to the person by:

(a) sending it by email to:
  (i) in any case—the last known email address of the person; or
  (ii) in the case of a partnership—the last known email address of a partner in the partnership; or

(b) sending it by other electronic means to:
  (i) in any case—the person; or
  (ii) in the case of a partnership—a partner in the partnership; or

(c) delivering it personally to:
  (i) in any case—the person; or
  (ii) in the case of a partnership—a partner in the partnership; or

(d) sending it to the person by pre-paid post or registered post to the person's last known place of residence or business; or

(e) leaving it at:
  (i) the person's last known place of residence with some person apparently a resident of that place and apparently not less than 16 years of age; or
  (ii) the person's last known place of business with some person apparently employed at that place and apparently not less than 16 years of age.

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Customs Act 1901

No. 6, 1901

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Volume 1:	Parts I to VI sections 1 to 126C
Volume 2:	Parts IVA to XI sections 126D to 183UAA
Volume 3:	**Parts XII to XVA** **sections 183UA to 269SK**
Volume 4:	Parts XVB to XVII sections 269SM to 279 Schedule
Volume 5:	Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This compilation

This is a compilation of the *Customs Act 1901* that shows the text of the law as amended and in force on 27 August 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part XII—Officers

Division 1—Powers of officers

Subdivision A—Preliminary

183UA Definitions

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

authorised person means:

(a) in relation to an application for, or for the execution of, a search warrant—an officer of Customs; and

(b) in relation to an application for, or for the execution of, a seizure warrant in respect of goods referred to in subparagraph (a)(i) of the definition of ***forfeited goods***:

(i) an officer of Customs; or

(ii) an officer of police; or

(iii) a member of the Defence Force; and

(c) in relation to an application for, or for the execution of, a seizure warrant in respect of goods referred to in subparagraph (a)(ii) or paragraph (b) of the definition of ***forfeited goods***—an officer of Customs; and

(d) in relation to the exercise of powers under section 203B or 203C:

(i) an officer of Customs; or

(ii) an officer of police; or

(iii) a member of the Defence Force; and

(da) in relation to the exercise of powers under section 203CA or 203CB:

(i) an officer of Customs; or

(ii) a maritime officer who is exercising maritime powers under the *Maritime Powers Act 2013* in relation to a ship or aircraft to which section 203CA of this Act applies; or

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(iii) an officer of police; or

(iv) a member of the Defence Force; and

(e) in relation to an application for, or the execution of, a seizure warrant under section 203DA—an officer of Customs.

baggage means goods:

(a) that are carried by or for a traveller, including the captain and crew members, on board the same ship or aircraft as the traveller; or

(b) that a traveller intended to be so carried.

communication in transit means a communication (within the meaning of the *Telecommunications Act 1997*) passing over a telecommunications network (within the meaning of that Act).

container includes:

(a) a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another; and

(b) any baggage; and

(c) any other thing that is or could be used for the carriage of goods, whether or not designed for that purpose.

conveyance means an aircraft, railway rolling stock, vehicle or vessel of any kind.

Customs place means:

(aa) a place owned or occupied by the Commonwealth for use for the purposes of the Customs Acts; or

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

(aaa) a place to which a ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1), while that ship or aircraft remains at that place; or

(b) a place that is the subject of a permission under subsection 58(2); or

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

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(d) a place described in a depot licence that is granted under section 77G; or

(e) a place covered by a warehouse licence that is granted under subsection 79(1); or

(f) a place approved in an instrument under subsection (2) as a place for the examination of international mail; or

(g) a place from which a ship or aircraft that is the subject of a permission under section 175 is required to depart, between the grant of that permission and the departure of the ship or aircraft; or

(h) a place to which a ship or aircraft that is the subject of a permission under section 175 is required to return, while that ship or aircraft remains at that place; or

(i) a section 234AA place that is not a place, or a part of a place, referred to in paragraph (aa), (a), (aaa), (b), (c), (d), (g) or (h).

data held in a computer includes:

(a) data held in any removable data storage device for the time being held in a computer; or

(b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing containing, or designed to contain, data for use by a computer.

designated container means a container referred to in paragraph (c) of the definition of ***container***.

engineered stone has the same meaning as in regulation 5M of the *Customs (Prohibited Imports) Regulations 1956*.

evidential material, in relation to an offence, whether the offence is indictable or summary, means a thing relevant to the offence, including such a thing in electronic form.

executing officer, in relation to a search warrant or to a seizure warrant, means:

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(a) an authorised person named in the warrant by the judicial officer issuing it as being responsible for executing the warrant; or

(b) if that authorised person does not intend to be present at the execution of the warrant—any authorised person whose name has been written in the warrant by the authorised person so named; or

(c) another authorised person whose name has been written in the warrant by the authorised person last named in the warrant.

forfeited goods means:

(a) goods described as forfeited to the Crown under:

(i) section 228, 228A, 228B, 228C, 229, 229A or 230 of this Act; or

(ii) section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*; or

(b) tobacco forfeited to the Crown under paragraph 116(1)(aa) of the *Excise Act 1901* in respect of an offence committed against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*.

judicial officer means:

(a) in relation to a search warrant, or to a seizure warrant under section 203:

(i) a magistrate; or

(ii) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants; or

(b) in relation to a seizure warrant under section 203DA:

(i) 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 183UD(1), and a nomination under subsection 183UD(2), are in force; or

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(ii) a Judge of the Supreme Court of a State in respect of whom an appropriate arrangement in force under section 11 is applicable; or

(iii) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in subparagraph (i) and in respect of whom an appropriate arrangement in force under section 11 is applicable.

occupier, in relation to premises that are a conveyance or a container, means the person having charge of the conveyance or container.

offence means:

(a) an offence against this Act; or

(b) an offence against the *Commerce (Trade Descriptions) Act 1905*; or

(c) an offence against section 72.13 or Division 307 or 361 of the *Criminal Code*; or

(d) an offence against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*.

ordinary search means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and

(b) an examination of those items.

person assisting, in relation to a search warrant or to a seizure warrant, means:

(a) a person who is an authorised person and who is assisting in the execution of the warrant; or

(b) a person who is not an authorised person and who has been authorised by the Comptroller-General of Customs to assist in executing the warrant.

premises includes a place, a conveyance or a container.

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prohibited psychoactive substance means a psychoactive substance (within the meaning of Part 9.2 of the *Criminal Code*) that:

(a) is not a substance to which subsection 320.2(2) of the *Criminal Code* applies; and

(b) has been imported into Australia.

prohibited serious drug alternative means a substance:

(a) the presentation of which includes an express or implied representation that the substance is a serious drug alternative (within the meaning of Part 9.2 of the *Criminal Code*); and

(b) that is not a substance to which subsection 320.3(3) of the *Criminal Code* applies; and

(c) that has been imported into Australia.

recently used conveyance, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced.

search warrant means a warrant issued under section 198 or 199A.

seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

seizure notice means:

(a) in relation to Subdivision G—a notice of the kind mentioned in section 205A; and

(b) in relation to Subdivision GA—a notice of the kind mentioned in section 209E.

seizure warrant means a warrant issued under section 203 or 203DA.

serious offence has the same meaning as in Part IAA of the *Crimes Act 1914.*

special forfeited goods means:

(a) forfeited goods referred to in paragraph 229(1)(a) that:

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(i) are narcotic goods; or
(ii) are a prohibited psychoactive substance; or
(iii) are a prohibited serious drug alternative; or
(iv) consist of a border controlled precursor; or

(b) forfeited goods referred to in paragraph 229(1)(b), (da), (e), (n) or (na).

telecommunications facility means a facility within the meaning of the *Telecommunications Act 1997*.

vaping goods has the same meaning as in regulation 5A of the *Customs (Prohibited Imports) Regulations 1956*.

warrant premises means premises in relation to which a search warrant or a seizure warrant is in force.

(2) For the purposes of paragraph (f) of the definition of ***Customs place*** in subsection (1), the Comptroller-General of Customs may, by legislative instrument, approve a place as a place for the examination of international mail.

(2AA) For the purposes of this Part, an offence against section 6 of the *Crimes Act 1914* that relates to an offence against section 72.13 of the *Criminal Code* is taken to be an offence against section 72.13 of the *Criminal Code*.

(2A) For the purposes of this Part, an offence against section 6 of the *Crimes Act 1914* that relates to an offence against Division 307 or 361 of the *Criminal Code* is taken to be an offence against that Division.

(3) For the purposes of this Part:

(a) an offence against section 141.1, 142.1, 142.2 or 149.1 of the *Criminal Code* that relates to this Act is taken to be an offence against this Act; and

(aa) an offence against section 141.1, 142.1, 142.2 or 149.1 of the *Criminal Code* that relates to section 72.13 of the *Criminal Code* is taken to be an offence against section 72.13 of the *Criminal Code*; and

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(b) an offence against section 141.1, 142.1, 142.2 or 149.1 of the *Criminal Code* that relates to Division 307 or 361 of the *Criminal Code* is taken to be an offence against that Division.

183UB Law relating to legal professional privilege not affected

This Division does not affect the law relating to legal professional privilege.

183UC Comptroller-General of Customs may give directions concerning the exercise of powers under this Division

The Comptroller-General of Customs may, by legislative instrument, give directions concerning:

(a) the circumstances in which the powers in this Division may be exercised; and

(b) the officers of Customs who are entitled to exercise those powers; and

(c) the manner and frequency of reporting to the Comptroller-General of Customs concerning the exercise of those powers.

183UD Judges who may issue seizure warrants for goods in transit

(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 judicial officer for the purposes of paragraph (b) of the definition of ***judicial officer*** in subsection 183UA(1).

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Subdivision B—General regulatory powers

186 General powers of examination of goods subject to customs control

(1) Any officer may, subject to subsections (2) and (3), examine any goods subject to customs control, and the expense of the examination including the cost of removal to the place of examination shall be borne by the owner.

(2) In the exercise of the power to examine goods, the officer of Customs may do, or arrange for another officer of Customs or other person having the necessary experience to do, whatever is reasonably necessary to permit the examination of the goods concerned.

(3) Without limiting the generality of subsection (2), examples of what may be done in the examination of goods include the following:

(a) opening any package in which goods are or may be contained;

(b) using a device, such as an X-ray machine or ion scanning equipment, on the goods;

(c) testing or analysing the goods;

(d) measuring or counting the goods;

(e) if the goods are a document—reading the document either directly or with the use of an electronic device;

(f) using dogs to assist in examining the goods.

(4) Goods that are subject to customs control under section 31 do not cease to be subject to customs control merely because they are removed from a ship or aircraft in the course of an examination under this section.

186AA General powers of examination of goods loaded onto or unloaded from ships or aircraft

(1) This section applies in relation to the following:

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(a) a ship or aircraft in respect of a voyage or flight to a place in Australia from a place outside Australia;
(b) a ship or aircraft in respect of a voyage or flight to a place outside Australia from a place in Australia.

Goods to be loaded onto the ship or aircraft

(2) If:
(a) an officer has reason to believe that goods are to be loaded onto the ship or aircraft at an examinable place; and
(b) the goods are to be unloaded at another examinable place on the same voyage or flight;

then:
(c) any officer may, subject to subsections (5) and (6), examine the goods while the goods are at the examinable place mentioned in paragraph (a); and
(d) the goods are subject to customs control while the goods are being so examined.

Goods unloaded from the ship or aircraft

(3) If:
(a) goods are loaded onto the ship or aircraft at an examinable place; and
(b) the goods are unloaded from the ship or aircraft at another examinable place on the same voyage or flight;

then:
(c) any officer may, subject to subsections (5) and (6), examine the goods while the goods are at the examinable place mentioned in paragraph (b); and
(d) the goods are subject to customs control while the goods are being so examined.

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Rules relating to examination of goods

(4) The expense of an examination referred to in subsection (2) or (3), including the cost of removal to the place of examination, is to be borne by the owner of the goods.

(5) In the exercise of the power to examine goods, an officer may do, or arrange for another officer or other person having the necessary experience to do, whatever is reasonably necessary to permit the examination of the goods.

(6) Without limiting subsection (5), examples of what may be done in the examination of goods include the following:

(a) opening any package in which goods are or may be contained;

(b) using a device, such as an X-ray machine or ion scanning equipment, on the goods;

(c) testing or analysing the goods;

(d) measuring or counting the goods;

(e) if the goods are a document—reading the document either directly or with the use of an electronic device;

(f) using dogs to assist in examining the goods.

No limit on other provisions

(7) This section does not:

(a) limit the application of any other provision of this Act that provides for goods to be subject to customs control; and

(b) limit the application of any other provision of this Act that provides for the examination of goods.

Definition

(8) In this section:

examinable place means the following:

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(a) a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight);
(b) a place to which a ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1);
(c) a place that is the subject of a permission under subsection 58(2).

186A Power to make copies of, and take extracts from, documents in certain circumstances

(1) If:
(a) a document is examined under section 186 or 186AA; and
(b) as a result of that examination, an officer of Customs is satisfied that the document or part of the document may contain information relevant to:
(i) an importation or exportation, or to a proposed importation or exportation, of prohibited goods; or
(ii) the commission or attempted commission of any other offence against this Act or of any offence against a prescribed Act; or
(iii) the performance of functions under section 17 of the *Australian Security Intelligence Organisation Act 1979*; or
(iv) the performance of functions under section 6 of the *Intelligence Services Act 2001*; or
(v) security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*);

the officer of Customs may make a copy of, or take an extract from, the document, or arrange for another officer of Customs or other person having the necessary experience, to make such a copy or take such an extract.

(2) Without limiting the generality of subsection (1), a copy may be made of, or an extract taken from, a document:

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(a) by photocopying the document or a part of the document; or
(b) by photographing the document or a part of the document; or
(c) by electronically scanning the document or a part of the document; or
(d) by making an electronic copy of information contained in the document or a part of the document; or
(e) by making a written copy of information contained in the document or a part of the document.

186B Compensation for damage caused by copying

(1) If an activity undertaken in relation to the copying of a document, or the taking of an extract from a document, causes its loss or destruction or causes damage to the document, and the loss or destruction or the damage occurred wholly or partly as a result of:
(a) insufficient care being exercised in selecting the person to undertake the activity; or
(b) insufficient care being exercised by the person undertaking the activity;

compensation for the damage is payable to the owner of the documents concerned.

(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

(3) In this section, a reference either to the loss or destruction of a document, or to damage to a document, includes a reference to the erasure or addition of electronic data or the corruption of such data.

187 Power to board and search

An officer may:
(a) board any ship or aircraft; or
(b) board any Australian resources installation:
(i) that is subject to customs control; or
(ii) at which there is a ship or aircraft that has come to the installation from a place outside Australia; or

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(iii) on which an officer has reasonable grounds to believe there are goods that are subject to customs control; or

(c) board a resources installation (other than an Australian resources installation) in respect of which permission under section 5A has been granted; or

(d) board any Australian sea installation:

(i) that is subject to customs control; or

(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 customs control; or

(e) board a sea installation (other than an Australian sea installation) in respect of which permission under section 5B has been granted; or

(ea) board any Australian offshore electricity installation:

(i) that is subject to customs control; or

(ii) at which there is a ship or aircraft that has come to the installation from a place outside Australia; or

(iii) on which an officer has reasonable grounds to believe there are goods that are subject to customs control; or

(eb) board an overseas offshore electricity installation in respect of which permission under section 5BA has been granted; or

(f) search any ship or aircraft or an installation of the kind referred to in paragraph (b), (c), (d), (e), (ea) or (eb); or

(g) secure any goods on any ship or aircraft or on any installation of the kind referred to in paragraph (b), (c), (d), (e), (ea) or (eb).

188 Boarding

(1) 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.

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Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

189 Searching

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.

189A Officers may carry arms in certain circumstances

(1) Subject to any directions from the Comptroller-General of Customs, an authorised arms issuing officer:

(a) may issue approved firearms and other approved items of personal defence equipment to officers authorised to carry arms, for the purpose of enabling the safe exercise, by such officers, of powers conferred on them under this Act or any other Act; and

(b) must take all reasonable steps to ensure that approved firearms, and other approved items of personal defence equipment, that are available for issue under paragraph (a), are kept in secure storage at all times when not required for use.

(2) The Comptroller-General of Customs may, by legislative instrument, give directions relating to the deployment of approved firearms and other approved items of personal defence equipment under this section. The directions may deal with:

(a) the circumstances in which approved firearms and other approved items of personal defence equipment may be issued; and

(b) the circumstances in which such firearms and other items of equipment are to be recalled; and

(c) the circumstances in which such firearms and other items of equipment can be used and the manner of their use; and

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(d) the nature of the secure storage of such firearms and other items of equipment when recalled; and

(e) any other matters relating to the deployment of such firearms and other items of equipment the Comptroller-General of Customs thinks appropriate.

(3) An officer is not required under, or by reason of, a law of a State or Territory:

(a) to obtain a licence or permission for the possession or use of an approved firearm or approved item of personal defence equipment; or

(b) to register such a firearm or other item of equipment.

(4) Nothing in this section affects the operation of any other provision of, or of the regulations under, this Act to the extent that that provision relates to the use of firearms in circumstances other than the circumstances referred to in this section.

(5) In this section:

approved firearm means a firearm of a kind declared by the regulations to be an approved firearm for the purposes of this section.

approved item of personal defence equipment means an extendable baton, an oleoresin capsicum spray or anti-ballistic clothing, and includes any other item that is declared by the regulations to be an approved item of personal defence equipment for the purposes of this section.

authorised arms issuing officer means an officer of Customs authorised under subsection (6) to exercise the powers or perform the functions of an authorised arms issuing officer under this section.

officer authorised to carry arms means an officer of Customs authorised under subsection (7) to use approved firearms and approved items of personal defence equipment issued by an authorised arms issuing officer for the purpose specified in paragraph (1)(a).

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(6) The Comptroller-General of Customs may, by writing, authorise an officer of Customs to exercise the powers or perform the functions of an authorised arms issuing officer under this section.

(7) The Comptroller-General of Customs may, by writing, authorise an officer of Customs to use approved firearms and approved items of personal defence equipment issued by an authorised arms issuing officer for the purpose specified in paragraph (1)(a).

190 Securing goods

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.

191 Seals etc. not to be broken

(1) 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 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 customs control.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply to an opening, alteration, breaking or erasure by authority.

Note: For ***by authority***, see subsection 4(1).

192 Seals etc. on ship or aircraft in port bound to another port within Commonwealth

(1) 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

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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; 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 commit an offence against this Act.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply to an opening, alteration, breaking or erasure by authority.

Note: For ***by authority***, see subsection 4(1).

193 Officers may enter and remain upon coasts etc.

(1) An officer of Customs may, for the purpose of performing the officer's duties and functions as an officer, and a person assisting an officer of Customs may, for the purpose of assisting the officer to perform those duties and functions, enter and remain upon any part of the following:

(a) the coast, including but not limited to:
(i) the shores, banks and beaches of the coast; and
(ii) any man-made structure in or on the coast;

(b) a port, bay or harbour, including but not limited to:
(i) the shores, banks and beaches of the port, bay or harbour; and
(ii) any man-made structure in or on the port, bay or harbour;

(c) an airport (including an airport that has not been appointed under section 15) or airstrip;

(d) a lake or river, including but not limited to:
(i) the shores, banks and beaches of the lake or river; and
(ii) any man-made structure in or on the lake or river;

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(e) for the purpose of entering and remaining upon a place mentioned in paragraph (a), (b), (c), or (d)—an area of land or water that is adjacent to that place.

For this purpose, reasonable means, including reasonable force, may be used by the officer or the person assisting the officer.

(2) A person commits an offence if:

(a) the person is an owner, occupier or operator of any of the places mentioned in subsection (1); and

(b) the person is present at the place mentioned in subsection (1) at the time the officer, or the person assisting an officer, is exercising, or attempting to exercise, his or her powers under this section; and

(c) the person does not provide the officer, or the person assisting the officer, with all reasonable facilities and assistance, including a means of access to the place, that the person is reasonably capable of providing.

Penalty: 30 penalty units.

194 Ships on service may be moored in any place

(1) The officer in charge of a ship employed in the service of the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*) may:

(a) moor, or haul up and moor, the ship to:

(i) any part of the coast or the shores, banks or beaches of any port, bay, harbour, lake or river; or

(ii) any man-made structure at or in any of the places mentioned in subparagraph (i); or

(iii) any man-made structure anywhere in the territorial sea of Australia, the contiguous zone of Australia, or the exclusive economic zone of Australia; and

(b) remain at the mooring as long as the officer considers necessary.

(2) A person commits an offence if:

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(a) the person is an owner, occupier or operator of any of the places mentioned in paragraph (1)(a); and
(b) the person does not provide the officer with all reasonable facilities and assistance that the person is reasonably capable of providing; and
(c) the person does not do so in circumstances where the officer is exercising, or attempting to exercise, his or her powers under this section.

Penalty: 30 penalty units.

195 Power to question passengers etc.

(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), (e), (ea) or (eb); or
(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 or her has on his or her person, in his or her baggage or otherwise with him or her any:
(d) dutiable goods; or
(e) excisable goods; or
(f) prohibited goods.

(2) A person shall answer questions put to him or her in pursuance of subsection (1).

Penalty: 30 penalty units.

(3) Subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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195A Power to question persons found in restricted areas

If a person is in a section 234AA place, an officer may ask the person for, and require the person to provide:

(a) the person's name; and

(b) the person's reason for being in the section 234AA place; and

(c) evidence of the person's identity.

Note: Failing to answer a question or produce a document when required to do so by an officer may be an offence (see sections 243SA and 243SB). However, a person does not have to answer if doing so would tend to incriminate the person (see section 243SC).

196C Power to question persons claiming packages

(1) Before an officer of Customs decides whether or not to authorise the delivery into home consumption of goods referred to in section 71, the officer may:

(a) request the person to state his or her full name and residential address; and

(b) ask the person whether he or she is the owner of the goods; and

(c) where the person states that he or she 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 or her in compliance with a request made of him or her in pursuance of paragraph (a) or (c).

(2) A person shall not refuse or fail to comply with a request made of him or her, or to answer a question put to him or her, in pursuance of subsection (1).

Penalty: 10 penalty units.

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

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

(a) detain the person for the purposes of establishing his or her 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 or her, 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.

197 Power to stop conveyances about to leave a Customs place

(1) If a conveyance is in a Customs place, an officer of Customs may:

(a) require the conveyance to stop; and

(b) check to establish that there is appropriate documentation authorising the movement of any goods in or on the conveyance that are subject to customs control within the meaning of section 30.

(2) For the purposes of subsection (1), an officer of Customs may question the person apparently in charge of the conveyance about any goods in, on, or in a container on, the conveyance.

(3) The power in paragraph (1)(b) includes a power to give directions relating to:

(a) the unloading of any goods from the conveyance; or

(b) their movement to a particular part of the Customs place for further examination.

(4) If a direction under subsection (3) is not complied with, an officer of Customs may do what is necessary to give effect to the direction or to arrange for it to be done.

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(5) An officer of Customs must not detain a conveyance under this section for longer than is necessary and reasonable to exercise the powers conferred by this section.

(6) A person in charge of a conveyance commits an offence if:
  (a) the conveyance is in a Customs place; and
  (b) an officer of Customs requires the conveyance to stop; and
  (c) the person does not stop the conveyance as so required.

Penalty: 60 penalty units.

(7) This offence is an offence of strict liability.

Subdivision C—Search warrants in respect of things believed to be evidential material

198 When search warrants relating to premises can be issued

(1) A judicial officer may issue a warrant to search premises if the judicial officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the next 72 hours there will be, any evidential material, other than evidential material that is also a forfeited good, on or in the premises.

(2) If:
  (a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or the seizure of goods that are on or in, the same premises; and
  (b) the premises are not a Customs place;

the person must state particulars of those applications and their outcome in the information.

(3) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:
  (a) the offence to which the warrant relates; and
  (b) a description of the premises to which the warrant relates; and

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(c) the kind of evidential material that is to be searched for under the warrant; and

(d) the name of the authorised person who, unless he or she inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(e) the time at which the warrant expires (see subsection (3A)); and

(f) whether the warrant may be executed at any time or only during particular hours.

(3A) The time stated in the warrant under paragraph (3)(e) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(4) The judicial officer is also to state in the warrant:

(a) that it authorises the seizure of things (other than evidential material of the kind referred to in paragraph (3)(c)) found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:

(i) to be evidential material in relation to an offence to which the warrant relates or to another offence, or to be evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); and

(ii) not to be forfeited goods;

if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and

(b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has

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any evidential material or seizable items in his or her possession.

(5) Paragraph (3)(e) and subsection (3A) do not prevent the issue of successive warrants in relation to the same premises.

(6) If the application for the warrant is made under section 203M, this section (other than subsection (3A)) applies as if:
  (a) subsection (1) referred to 48 hours rather than 72 hours; and
  (b) paragraph (3)(e) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

(7) A judicial officer of a particular State or Territory may issue a warrant in respect of the search of premises in another State or Territory.

(8) This section is not to be taken to limit any power of search granted to an officer of Customs under any other provision of a law of the Commonwealth.

199 The things that are authorised by a search warrant relating to premises

(1) A search warrant that is in force in relation to premises authorises the executing officer or a person assisting:
  (a) to enter the warrant premises; and
  (b) to search for and to record fingerprints found on or in the premises, and take samples of things (other than human biological fluid or tissue) found on or in the premises for forensic purposes; and
  (c) to search the premises for the kind of evidential material specified in the warrant, and to seize things of that kind found on or in the premises; and
  (d) to seize other things found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:

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(i) to be evidential material in relation to an offence to which the warrant relates or to another offence, or to be evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); and

(ii) not to be forfeited goods;

if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and

(e) if the warrant so allows:

(i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession; and

(ii) to seize any such material or items found in the course of the search.

(2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

(3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:

(a) permits entry of the conveyance, wherever it is; and

(b) extends to every container on the conveyance.

(4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.

(4A) A warrant that is in force in relation to premises authorises the executing officer or a person assisting:

(a) to use:

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(i) a computer, or data storage device, found in the course of a search authorised under the warrant; or

(ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or

(iii) any other electronic equipment; or

(iv) a data storage device;

for the purpose of obtaining access to data (the ***relevant data***) that is held in the computer or device mentioned in subparagraph (i) at any time when the warrant is in force, in order to determine whether the relevant data is evidential material of a kind specified in the warrant; and

(b) if necessary to achieve the purpose mentioned in paragraph (a)—to add, copy, delete or alter other data in the computer or device mentioned in subparagraph (a)(i); and

(c) if, having regard to other methods (if any) of obtaining access to the relevant data which are likely to be as effective, it is reasonable in all the circumstances to do so:

(i) to use any other computer or a communication in transit to access the relevant data; and

(ii) if necessary to achieve that purpose—to add, copy, delete or alter other data in the computer or the communication in transit; and

(d) to copy any data to which access has been obtained, and that:

(i) appears to be relevant for the purposes of determining whether the relevant data is evidential material of a kind specified in the warrant; or

(ii) is evidential material of a kind specified in the warrant; and

(e) to do any other thing reasonably incidental to any of the above.

Note: As a result of the warrant, a person who, by means of a telecommunications facility, obtains access to data stored in a computer etc. will not commit an offence under Part 10.7 of the *Criminal Code* or equivalent State or Territory laws (provided that the person acts within the authority of the warrant).

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(4B) Subsection (4A) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that is likely to:

(a) materially interfere with, interrupt or obstruct:

(i) a communication in transit; or

(ii) the lawful use by other persons of a computer;

unless the addition, deletion or alteration, or the doing of the thing, is necessary to do one or more of the things specified in the warrant; or

(b) cause any other material loss or damage to other persons lawfully using a computer.

(4C) It is immaterial whether a thing mentioned in subsection (4A) is done:

(a) at the warrant premises; or

(b) at any other place.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

199A When search warrants relating to persons can be issued

(1) A judicial officer may issue a warrant authorising an ordinary search or a frisk search of a person if the judicial officer is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that the person has in the person's possession, or will within the next 72 hours have in the person's possession, any computer, or data storage device, that is evidential material.

(2) If the person applying for the warrant has, at any time previously, applied for a warrant under this section relating to the same person, the person applying for the warrant must state particulars of those applications, and their outcome, in the information.

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(3) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

(a) the offence to which the warrant relates; and

(b) the name or description of the person to whom the warrant relates; and

(c) the name of the authorised person who, unless the authorised person inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(d) the time at which the warrant expires (see subsection (4)); and

(e) whether the warrant may be executed at any time or only during particular hours.

(4) The time stated in the warrant under paragraph (3)(d) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(5) The judicial officer is also to state, in a warrant in relation to a person:

(a) that the warrant authorises the seizure of a computer or data storage device found, in the course of the search, on or in the possession of the person or in a recently used conveyance, if the executing officer or a person assisting believes on reasonable grounds that:

(i) the computer or device is evidential material in relation to an offence to which the warrant relates; and

(ii) the seizure of the computer or device is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and

(b) the kind of search of a person that the warrant authorises.

(6) Paragraph (3)(d) and subsection (4) do not prevent the issue of successive warrants in relation to the same person.

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199B The things that are authorised by a search warrant relating to a person

(1) A warrant that is in force in relation to a person (the ***target person***) authorises the executing officer or person assisting:

(a) to search:

(i) the target person as specified in the warrant; and

(ii) any recently used conveyance;

for computers or data storage devices of the kind specified in the warrant; and

(b) to:

(i) seize computers or data storage devices of that kind; or

(ii) record fingerprints from computers or data storage devices; or

(iii) to take samples for forensic purposes from computers or data storage devices;

found in the course of the search; and

(c) to seize other things found on or in the possession of the target person or in the conveyance in the course of the search that the executing officer or person assisting believes on reasonable grounds to be:

(i) prohibited goods that are unlawfully carried by the target person; or

(ii) seizable items.

(2) A warrant that is in force in relation to a person (the ***target person***) authorises the executing officer or a person assisting:

(a) to use:

(i) a computer, or data storage device, found in the course of a search authorised under the warrant; or

(ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or

(iii) any other electronic equipment; or

(iv) a data storage device;

for the purpose of obtaining access to data (the ***relevant data***) that is held in the computer or device mentioned in

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subparagraph (i) at any time when the warrant is in force, in order to determine whether the relevant data is evidential material of a kind specified in the warrant; and

(b) if necessary to achieve the purpose mentioned in paragraph (a)—to add, copy, delete or alter other data in the computer or device mentioned in subparagraph (a)(i); and

(c) if, having regard to other methods (if any) of obtaining access to the relevant data which are likely to be as effective, it is reasonable in all the circumstances to do so:

(i) to use any other computer or a communication in transit to access the relevant data; and

(ii) if necessary to achieve that purpose—to add, copy, delete or alter other data in the computer or the communication in transit; and

(d) to copy any data to which access has been obtained, and that:

(i) appears to be relevant for the purposes of determining whether the relevant data is evidential material of a kind specified in the warrant; or

(ii) is evidential material of a kind specified in the warrant; and

(e) to do any other thing reasonably incidental to any of the above.

Note: As a result of the warrant, a person who, by means of a telecommunications facility, obtains access to data stored in a computer etc. will not commit an offence under Part 10.7 of the *Criminal Code* or equivalent State or Territory laws (provided that the person acts within the authority of the warrant).

(3) Subsection (2) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that is likely to:

(a) materially interfere with, interrupt or obstruct:

(i) a communication in transit; or

(ii) the lawful use by other persons of a computer;

unless the addition, deletion or alteration, or the doing of the thing, is necessary to do one or more of the things specified in the warrant; or

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(b) cause any other material loss or damage to other persons lawfully using a computer.

(4) It is immaterial whether a thing mentioned in subsection (2) is done:
(a) in the presence of the target person; or
(b) at any other place.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(6) If the warrant authorises an ordinary search or a frisk search of the target person, a search of the target person different from that so authorised must not be done under the warrant.

200 Use of equipment to examine or process things

(1) The executing officer of a warrant in relation to premises, or a person assisting, may bring to the warrant premises any equipment reasonably necessary for the examination or processing of a thing found on or in the premises in order to determine whether it is a thing that may be seized under the warrant.

(2) A thing found at warrant premises, or a thing found during a search under a warrant that is in force in relation to a person, may be moved to another place for examination or processing in order to determine whether it may be seized under a warrant if:
(a) both of the following apply:
(i) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance;
(ii) there are reasonable grounds to believe that the thing contains or constitutes evidential material; or
(b) for a thing found at warrant premises—the occupier of the premises consents in writing; or
(c) for a thing found during a search under a warrant that is in force in relation to a person—the person consents in writing.

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(3) If a thing is moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

(a) inform the person referred to in paragraph (2)(b) or (c) (as the case requires) of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow that person or his or her representative to be present during the examination or processing.

(3A) The thing may be moved to another place for examination or processing for no longer than whichever of the following is applicable:

(a) if the thing is a computer or data storage device—30 days;

(b) otherwise—72 hours.

(3B) An executing officer may apply to a judicial officer for one or more extensions of that time if the executing officer believes on reasonable grounds that the thing cannot be examined or processed within the time applicable under subsection (3A) or that time as previously extended.

(3C) The executing officer must give notice of the application to the person referred to in paragraph (2)(b) or (c) (as the case requires), and that person is entitled to be heard in relation to the application.

(3D) If the thing is a computer or data storage device, a single extension cannot exceed 14 days.

(4) The executing officer of a warrant in relation to premises, or a person assisting, may operate equipment already on or in the warrant premises to carry out the examination or processing of a thing found on or in the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or person assisting believes on reasonable grounds that:

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or the thing.

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201 Use of electronic equipment on or in premises

(1) The executing officer or a person assisting may operate electronic equipment at the warrant premises to access data (including data not held at the premises) if he or she believes on reasonable grounds that:

(a) the data might constitute evidential material; and

(b) the equipment can be operated without damaging it.

Note: An executing officer can obtain an order requiring a person with knowledge of a computer or computer system to provide assistance: see section 201A.

(1A) If the executing officer or person assisting believes on reasonable grounds that any data accessed by operating the electronic equipment might constitute evidential material, he or she may:

(a) copy the data to a disk, tape or other associated device brought to the premises; or

(b) if the occupier of the premises agrees in writing—copy the data to a disk, tape or other associated device at the premises;

and take the device from the premises.

(1B) If:

(a) the executing officer or person assisting takes the device from the premises; and

(b) the Comptroller-General of Customs is satisfied that the data is not required (or is no longer required) for:

(i) investigating an offence against the law of the Commonwealth, a State or a Territory; or

(ii) judicial proceedings or administrative review proceedings; or

(iii) investigating or resolving a complaint under the *Ombudsman Act 1976* or the *Privacy Act 1988*;

the Comptroller-General of Customs must arrange for:

(c) the removal of the data from any device subject to customs control; and

(d) the destruction of any other reproduction of the data subject to customs control.

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(2) If the executing officer or a person assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can, by using facilities on or in the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced.

(3) The executing officer or a person assisting may seize equipment under paragraph (2)(a) only if it is not practicable to copy the material as mentioned in subsection (1A) or to put the material in documentary form as mentioned in paragraph (2)(b).

(4) If the executing officer or a person assisting believes on reasonable grounds that:

(a) evidential material may be accessible by operating electronic equipment on or in the premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

(5) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

(6) The equipment may be secured:

(a) for a period not exceeding 24 hours; or

(b) until the equipment has been operated by the expert;

whichever first occurs.

(7) If the executing officer or a person assisting believes on reasonable grounds that the expert assistance will not be available within 24

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hours, he or she may apply to a judicial officer for an extension of that period.

(8) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

(9) The provisions of this Subdivision relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

201AA Use of electronic equipment at other place

(1) If electronic equipment is moved to another place under subsection 200(2), the executing officer or a person assisting may operate the equipment to access data (including data held at another place).

(2) If the executing officer or person assisting suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes evidential material, the executing officer or person assisting may copy any or all of the data accessed by operating the electronic equipment to a disk, tape or other associated device.

(3) If the Comptroller-General of Customs is satisfied that the data is not required (or is no longer required) for:

(a) investigating an offence against a law of the Commonwealth, a State or a Territory; or

(b) judicial proceedings or administrative review proceedings; or

(c) investigating or resolving a complaint under the *Ombudsman Act 1976* or the *Privacy Act 1988*;

the Comptroller-General of Customs must arrange for:

(d) the removal of the data from any device subject to customs control; and

(e) the destruction of any other reproduction of the data subject to customs control.

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(4) If the executing officer or a person assisting, after operating the equipment, finds that evidential material is accessible by doing so, the executing officer or person assisting may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can be put in documentary form—put the material in that form and seize the documents so produced.

(5) The executing officer or a person assisting may seize equipment under paragraph (4)(a) only if:

(a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in paragraph (4)(b); or

(b) possession of the equipment by the person referred to in paragraph 200(2)(b) or (c) (as the case requires) could constitute an offence.

201A Person with knowledge of a computer or a computer system to assist access etc.

(1) An executing officer may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the officer to do one or more of the following:

(a) access data held in, or accessible from, a computer or data storage device that:

(i) is on warrant premises; or

(ii) has been seized under this Subdivision; or

(iii) is found in the course of an ordinary search of a person, or a frisk search of a person, authorised by a search warrant;

(b) copy data held in, or accessible from, a computer, or data storage device, described in paragraph (a) to another data storage device;

(c) convert into documentary form or another form intelligible to an executing officer:

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(i) data held in, or accessible from, a computer, or data storage device, described in paragraph (a); or

(ii) data held in a data storage device to which the data was copied as described in paragraph (b).

(2) The magistrate may grant the order if the magistrate is satisfied that:

(a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer or data storage device; and

(b) the specified person is:

(i) reasonably suspected of having committed the offence stated in the relevant warrant; or

(ii) the owner or lessee of the computer or device; or

(iii) an employee of the owner or lessee of the computer or device; or

(iv) a person engaged under a contract for services by the owner or lessee of the computer or device; or

(v) a person who uses or has used the computer or device; or

(vi) a person who is or was a system administrator for the system including the computer or device; and

(c) the specified person has relevant knowledge of:

(i) the computer or device or a computer network of which the computer or device forms or formed a part; or

(ii) measures applied to protect data held in, or accessible from, the computer or device.

Offences

(3) A person commits an offence if:

(a) the person is subject to an order under this section; and

(b) the person is capable of complying with a requirement in the order; and

(c) the person omits to do an act; and

(d) the omission contravenes the requirement.

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Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) A person commits an offence if:

(a) the person is subject to an order under this section; and

(b) the person is capable of complying with a requirement in the order; and

(c) the person omits to do an act; and

(d) the omission contravenes the requirement; and

(e) the offence to which the relevant warrant relates is a serious offence.

Penalty for contravention of this subsection: Imprisonment for 10 years or 600 penalty units, or both.

201B Accessing data held on other premises—notification to occupier of that premises

(1) If:

(a) data that is held on premises other than the warrant premises is accessed under subsection 201(1) or 201AA(1); and

(b) it is practicable to notify the occupier of the other premises that the data has been accessed under a warrant;

the executing officer must:

(c) do so as soon as practicable; and

(d) if the executing officer has arranged, or intends to arrange, for continued access to the data under subsection 201(1A) or (2) or 201AA(2) or (4)—include that information in the notification.

(2) A notification under subsection (1) must include sufficient information to allow the occupier of the other premises to contact the executing officer.

202 Compensation for damage to equipment or data

(1) If:

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(a) damage is caused to equipment as a result of it being operated as mentioned in section 200, 201 or 201AA; or

(b) the data recorded on or accessible from the equipment is damaged;

and the damage was caused as a result of:

(c) insufficient care being exercised in selecting the person who was to operate the equipment; or

(d) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment or the user of the data concerned.

(2) For the purposes of subsection (1), damage to data includes damage by erasure of data or addition of other data.

(3) Compensation is payable out of money appropriated by the Parliament for the purpose.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

202A Copies of seized things to be provided

(1) Subject to subsection (2), if the executing officer or a person assisting seizes, under a warrant relating to premises:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device, the information in which can be readily copied;

the executing officer or person assisting must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the document, film, computer file, thing or information to that person as soon as practicable after the seizure.

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(2) Subsection (1) does not apply if:

(a) the thing that has been seized was seized under subsection 201(1A) or paragraph 201(2)(b) or 201AA(4)(a); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

202B Relationship of this Subdivision to parliamentary privileges and immunities

To avoid doubt, this Subdivision does not affect the law relating to the powers, privileges and immunities of any of the following:

(a) each House of the Parliament;

(b) the members of each House of the Parliament;

(c) the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

Subdivision D—Seizure of goods believed to be forfeited goods

203 When seizure warrants for forfeited goods can be issued

(1) A judicial officer may issue a warrant to seize goods on or in particular premises if the judicial officer is satisfied by information on oath that an authorised person:

(a) has reasonable grounds for suspecting that the goods:

(i) are forfeited goods; and

(ii) are, or within the next 72 hours will be, on or in the premises; and

(b) has demonstrated the necessity, in all the circumstances, for seizure of the goods.

(2) Subsection (1) does not apply to the seizure of goods under section 203B, 203C, 203CA or 203CB.

(3) In considering whether the authorised person has demonstrated the necessity, in all the circumstances, for seizure of the goods, the

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judicial officer may have regard to, but is not limited to, consideration of the following factors:

(a) the seriousness or otherwise of any offence by reason of the commission of which the goods are believed to be forfeited goods;

(b) the circumstances in which any such offence is believed to have been committed;

(c) the pecuniary or other penalty that might be imposed for any such offence;

(d) the nature, quality, quantity and estimated value of the goods;

(e) whether an infringement notice might be given for any such offence;

(f) the inconvenience or cost to any person having a legal or equitable interest in the goods if they were seized.

(4) If:

(a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or seizure of goods that are on or in, the same premises; and

(b) the premises are not a Customs place;

the person must state particulars of those applications and their outcome in the information.

(5) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

(a) a description of the goods to which the warrant relates; and

(b) a description of the premises on or in which the goods are believed to be located; and

(c) the name of the authorised person who, unless that authorised person inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(d) the time at which the warrant expires (see subsection (5A)); and

(e) whether the warrant may be executed at any time or only during particular hours.

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(5A) The time stated in the warrant under paragraph (5)(d) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(6) The judicial officer is also to state in the warrant:

(a) that it authorises the seizure of goods (other than forfeited goods of the kind referred to in paragraph (5)(a)) found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods; and

(b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has any forfeited goods of the kind referred to in paragraph (5)(a), special forfeited goods or seizable items in his or her possession; and

(c) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has in his or her possession any relevant evidential material.

(7) Paragraph (5)(d) and subsection (5A) do not prevent the issue of successive warrants in relation to the same premises.

(8) If the application for the warrant is made under section 203M, this section (other than subsection (5A)) applies as if:

(a) subsection (1) referred to 48 hours rather than 72 hours; and

(b) paragraph (5)(d) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

(9) A judicial officer of a particular State or Territory may issue a warrant in respect of the seizure of goods on or in premises in another State or Territory.

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(10) In this section:

relevant evidential material means evidential material in relation to an offence by reason of the commission of which goods are believed to be:

(a) forfeited goods of the kind referred to in paragraph (5)(a); or

(b) special forfeited goods.

203A The things that are authorised by seizure warrants for forfeited goods

(1) A seizure warrant that is in force under section 203 in relation to premises authorises the executing officer or a person assisting:

(a) to enter the warrant premises; and

(b) to search for the goods described in the warrant; and

(c) to seize the goods described in the warrant; and

(d) to seize other goods:

(i) that are found on or in the premises in the course of searching for the goods the subject of the warrant; and

(ii) that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods; and

(e) if the warrant so allows:

(i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any goods that are goods the subject of the warrant, special forfeited goods or seizable items in his or her possession; and

(ii) to seize any such goods or items found in the course of that search; and

(f) if the warrant so allows:

(i) to conduct an ordinary search or a frisk search of a person who is at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has in his or her possession any relevant evidential material; and

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(ii) to seize any relevant evidential material found in the course of that search.

(2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

(3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:

(a) permits entry of the conveyance, wherever it is; and

(b) extends to every container on the conveyance.

(4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

(6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

(7) In this section:

relevant evidential material means evidential material in relation to an offence by reason of the commission of which goods are believed to be:

(a) goods that are the subject of the warrant; or

(b) special forfeited goods.

203B Seizure without warrant of special forfeited goods, or of evidential material relating to special forfeited goods, at a Customs place

(1) This section applies in 2 circumstances, namely:

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(a) in a circumstance where an authorised person suspects on reasonable grounds that there are special forfeited goods:
  (i) at, or in a container (other than a designated container in the immediate physical possession of a person to whom subparagraph (b)(i) applies) at, a Customs place; or
  (ii) in, on, or in a container (other than a designated container in the immediate physical possession of a person to whom subparagraph (b)(i) applies) on, a conveyance at a Customs place; or

(b) in a circumstance where a person:
  (i) is at a Customs place that is also a designated place; and
  (ii) has a designated container, or has goods reasonably suspected by an authorised person to be special forfeited goods, in his or her immediate physical possession; but
  (iii) is not carrying that container or those goods on his or her body.

Note 1: ***Container*** and ***designated container*** have special definitions for the purposes only of this Division.

Note 2: The baggage of a passenger entering or leaving Australia or of the captain or crew of a vessel or aircraft so entering or leaving is not a designated container.

Note 3: To determine the question whether a person is carrying a designated container, or goods reasonably suspected of being special forfeited goods, on his or her body, see subsection 4(19).

(2) In the circumstance referred to in paragraph (1)(a), the authorised person may, without warrant:
  (a) search the Customs place, or the container at that place, for special forfeited goods; or
  (b) stop and detain at the Customs place the conveyance and search it and any container on it for special forfeited goods;

as the case requires, and seize any goods that the authorised person reasonably suspects are special forfeited goods if the authorised person finds them there.

(2A) In the circumstance referred to in paragraph (1)(b), an authorised person who is an officer of Customs may, without warrant:

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(a) search any designated container in the immediate physical possession of the person to whom that paragraph applies; and

(b) seize any goods reasonably suspected by the authorised person of being special forfeited goods (whether or not those goods are found as a result of such a search).

(2B) An authorised person must not exercise the powers referred to in subsection (2A) unless the person having immediate physical possession of the container to be searched is present at the time when the container is searched.

(2C) For the avoidance of doubt, the power of the authorised person under subsection (2) to seize, without warrant, goods found as a result of a search of, or at, a Customs place that are reasonably suspected of being special forfeited goods includes the power to seize, without warrant, any goods that:

(a) have been produced as a result of a frisk search of a person; or

(b) have been discovered on the body of a person as a result of an external search or an internal search of the person;

if the search is conducted under Division 1B at the Customs place and the goods are reasonably so suspected.

(3) If, in the course of searching under subsection (2) or (2A) for special forfeited goods, an authorised person finds a thing that the authorised person believes on reasonable grounds is evidential material relating to an offence committed in respect of those special forfeited goods, the authorised person may, without warrant, seize that thing whether or not the authorised person has found any such special forfeited goods.

(4) For the purposes of a search conducted under subsection (2) or (2A), the authorised person may question any person apparently in charge of the place, conveyance or container about any goods or thing at the place, in or on the conveyance, or in the container.

(5) The authorised person must exercise his or her powers subject to section 203D.

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203C Seizure without warrant of narcotic goods or of evidential material relating to narcotic goods at other places

(1) This section applies if:

(a) an authorised person suspects on reasonable grounds that there are special forfeited goods that are narcotic goods:

(i) at, or in a container at, a place other than a Customs place; or

(ii) in, on, or in a container on, a conveyance at a place other than a Customs place; or

(iii) in a container in the immediate physical possession of, but not carried on the body of, a person at a place other than a Customs place; and

(b) it is necessary to exercise a power under this section in order to prevent such goods from being concealed, lost or destroyed.

Note: Container has a special definition for the purposes only of this Division.

(2) The authorised person may, without warrant:

(a) search the place or any container at the place for narcotic goods; or

(b) stop and detain the conveyance about to leave the place, and search it and any container on it for narcotic goods; or

(c) search the container in the immediate physical possession of the person for narcotic goods;

as the case requires, and seize any goods that the authorised person reasonably suspects are narcotic goods if the authorised person finds them there.

(2A) For the avoidance of doubt, the power of the authorised person to seize, without warrant, goods found at a place other than a Customs place that are reasonably suspected of being narcotic goods includes the power to seize, without warrant, any goods that:

(a) have been produced as a result of a frisk search of a person; or

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(b) have been discovered on the body of a person as a result of an external search or an internal search of the person;

if the search is conducted under Division 1B at a place other than a Customs place and the goods are reasonably so suspected.

(3) If, in the course of searching under subsection (2) for special forfeited goods that are narcotic goods, an authorised person finds a thing that the authorised person believes on reasonable grounds is evidential material relating to an offence committed in respect of those goods, the authorised person may, without warrant, seize that thing whether or not the authorised person has found those goods.

(4) For the purposes of a search conducted under subsection (2), the authorised person may question any person apparently in charge of the place, conveyance or container about any goods or thing at the place, in or on the conveyance, or in the container.

(5) The authorised person must exercise his or her powers subject to section 203D.

203CA Seizure without warrant of certain goods on ship or aircraft in the Protected Zone

(1) This section applies to a ship if:

(a) the ship is outside the territorial sea of a foreign country; and

(b) the ship could be boarded under the *Maritime Powers Act 2013*; and

(c) the ship is exempt from any provision of the Customs Acts under subsection 30A(3) of this Act or the voyage of the ship is exempt from any such provision under subsection 30A(5) of this Act.

Note: Section 30A gives effect to provisions of the Torres Strait Treaty in relation to certain traditional activities.

(2) This section applies to an aircraft if:

(a) the aircraft has landed in Australia as a result of a maritime officer requiring the person in charge of the aircraft to land

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the aircraft under subsection 55(7) of the *Maritime Powers Act 2013*; and

(b) in the case of an Australian aircraft—the requirement is made when the aircraft is over anywhere except a foreign country; and

(c) in the case of an aircraft that is not an Australian aircraft—the requirement is made when the aircraft is over Australia; and

(d) the flight of the aircraft is exempt from any provision of the Customs Acts under subsection 30A(5) of this Act.

Note: Section 30A gives effect to provisions of the Torres Strait Treaty in relation to certain traditional activities.

(3) An authorised person may seize without warrant any goods (other than narcotic goods) on the ship or aircraft that the authorised person reasonably suspects are special forfeited goods.

Note: For seizure of narcotic goods without warrant, see section 203C of this Act and subparagraph 67(1)(b)(ii) of the *Maritime Powers Act 2013*.

(4) If, in the course of searching the ship or aircraft, an authorised person finds a thing that he or she believes on reasonable grounds is evidential material relating to an offence committed in respect of special forfeited goods, the authorised person may, without warrant, seize that thing.

(5) The authorised person must exercise his or her powers subject to section 203D.

203CB Seizure without warrant of certain other goods in the Protected Zone

(1) This section applies if an authorised person suspects on reasonable grounds that:

(a) goods are:

(i) at, or in a container at, a place that is near a ship or aircraft to which paragraph 203CA(1)(c) or (2)(d) applies; or

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(ii) in, on, or in a container on, a conveyance at such a place; or

(iii) in a container in the immediate physical possession of, but not carried on the body of, a person at such a place; and

(b) the goods:

(i) in the case of an arriving ship or aircraft—have been unloaded from that ship or aircraft; or

(ii) in the case of a leaving ship or aircraft—will be loaded onto that ship or aircraft; and

(c) the goods are special forfeited goods (other than narcotic goods).

(2) The authorised person may, without warrant:

(a) search the place or any container at the place for special forfeited goods (other than narcotic goods); or

(b) stop and detain the conveyance about to leave the place, and search it and any container on it for such goods; or

(c) search the container in the immediate physical possession of the person for such goods;

as the case requires, and seize any goods that the authorised person reasonably suspects are special forfeited goods (other than narcotic goods) if the authorised person finds them there.

Note: For seizure of narcotic goods without warrant, see section 203C of this Act and subparagraph 67(1)(b)(ii) of the *Maritime Powers Act 2013*.

(3) If, in the course of searching under subsection (2) for special forfeited goods, an authorised person finds a thing that he or she believes on reasonable grounds is evidential material relating to an offence committed in respect of those goods, the authorised person may, without warrant, seize that thing whether or not the authorised person has found those goods.

(4) For the purposes of a search conducted under subsection (2), the authorised person may question any person apparently in charge of the place, conveyance or container about any goods or thing at the place, in or on the conveyance, or in the container.

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(5) The authorised person must exercise his or her powers subject to section 203D.

203D How an authorised person is to exercise certain powers

(1) An authorised person who exercises powers under section 203B, 203C, 203CA or 203CB in relation to a conveyance must not detain the conveyance for longer than is necessary and reasonable to exercise those powers.

(2) An authorised person exercising powers under section 203B, 203C, 203CA or 203CB may use such force as is necessary and reasonable in the circumstances, but must not:

(a) forcibly remove any container or other goods from a person's physical possession; or

(b) damage any place, conveyance, container or other goods of which the person is apparently in charge;

unless:

(c) the person has been given a reasonable opportunity to facilitate the exercise of the powers by providing access to the place, conveyance, container or goods or by opening the conveyance or container; or

(d) it is not possible to give that person such an opportunity.

Subdivision DA—Seizure of certain goods in transit

203DA When seizure warrants for goods in transit can be issued

(1) A judicial officer may issue a warrant to seize goods on or in particular premises if the judicial officer is satisfied by information on oath that the Minister has reasonable grounds for suspecting that:

(a) the goods are, or within the next 72 hours will be, on or in the premises; and

(b) the goods have been or will be brought into Australia on a ship or aircraft and are intended to be kept on board the ship or aircraft for shipment on to a place outside Australia,

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without being imported into Australia or exported from Australia; and

(c) the goods satisfy either or both of the following subparagraphs:

(i) the goods are connected, whether directly or indirectly, with the carrying out of a terrorist act, whether a terrorist act has occurred, is occurring or is likely to occur;

(ii) the existence or the shipment of the goods prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.

(2) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

(a) a description of the goods to which the warrant relates; and

(b) a description of the premises on or in which the goods are believed to be located; and

(c) the name of the authorised person who, unless that authorised person inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and

(d) the time at which the warrant expires (see subsection (3)); and

(e) whether the warrant may be executed at any time or only during particular hours.

(3) The time stated in the warrant under paragraph (2)(d) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(4) The judicial officer is also to state in the warrant that it authorises the seizure of goods found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods.

(5) Paragraph (2)(d) and subsection (3) do not prevent the issue of successive warrants in relation to the same premises.

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(6) If the application for the warrant is made under section 203M, this section (other than subsection (3)) applies as if:
  (a) subsection (1) referred to 48 hours rather than 72 hours; and
  (b) paragraph (2)(d) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

(7) A judicial officer of a particular State or Territory may issue a warrant in respect of the seizure of goods on or in premises in another State or Territory.

203DB The things that are authorised by seizure warrants for goods in transit

(1) A seizure warrant that is in force under section 203DA in relation to premises authorises the executing officer or a person assisting:
  (a) to enter the warrant premises; and
  (b) to search for the goods described in the warrant; and
  (c) to seize the goods described in the warrant; and
  (d) to seize other goods:
    (i) that are found on or in the premises in the course of searching for the goods the subject of the warrant; and
    (ii) that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods.

(2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

(3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:
  (a) permits entry of the conveyance, wherever it is; and
  (b) extends to every container on the conveyance.

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(4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.

(5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

Subdivision E—Provisions applicable both to search and seizure warrants

203E Conduct of ordinary searches and frisk searches

An ordinary search or a frisk search of a person under this Division must, if practicable, be conducted by a person of the same sex as the person being searched.

203F Announcement before entry

(1) The executing officer must, before any person enters premises under a search warrant or a seizure warrant:
  (a) announce that he or she is authorised to enter the premises; and
  (b) give any person at the premises an opportunity to allow entry to the premises.

(2) The executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
  (a) the safety of a person (including the executing officer); or
  (b) that the effective execution of the warrant is not frustrated.

203G Details of warrant to be given to occupier

(1) If a search warrant or a seizure warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed, the executing officer or a person assisting must make available to that person a copy of the warrant.

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(2) If a person is searched under a warrant in relation to premises, the executing officer or a person assisting must show the person a copy of the warrant.

(3) The executing officer must identify himself or herself to the person at the place where the warrant is executed.

(4) At the time of executing the warrant, the executing officer or a person assisting:

(a) is not required to have in his or her possession or under his or her immediate control the original warrant; but

(b) must have in his or her possession or under his or her immediate control a copy of the warrant.

(5) In this section:

a copy of the warrant means:

(a) in relation to a warrant issued under section 198, 203 or 203DA—a copy that includes the signature of the judicial officer who issued the warrant; and

(b) in relation to a warrant issued under section 203M—a completed form of warrant that includes the name of the judicial officer who issued the warrant.

203H Occupier entitled to be present during search or seizure

(1) If a search warrant or a seizure warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search or seizure being conducted.

(2) The right to observe the search or seizure being conducted ceases if the person impedes the search or seizure.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

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203HA Requirement to provide name or address etc.

Request to provide name or address etc.

(1) If:

(a) a search warrant or seizure warrant in relation to premises is being executed; and

(b) the designated warrant officer believes on reasonable grounds that a person who is at or near the premises may be able to assist the officer in the execution of the warrant;

the officer may request the person to provide his or her name or address, or name and address, to the officer.

Offence—person's refusal or failure to comply with request etc.

(2) A person commits an offence if:

(a) a designated warrant officer:

(i) has made a request of the person under subsection (1); and

(ii) has informed the person of the reason for the request; and

(iii) has complied with any request that the person has made under paragraph (4)(b); and

(b) the person refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

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Offence—designated warrant officer's refusal or failure to comply with request etc.

(4) A designated warrant officer commits an offence if:

(a) the officer makes a request of a person under subsection (1); and

(b) the person requests the officer to provide to the person:

(i) his or her name or the address of his or her place of duty; or

(ii) his or her name and that address; or

(iii) if the officer is not in uniform and it is practicable for the officer to provide the evidence—evidence that he or she is an officer; and

(c) the officer refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

Definition

(5) In this section:

designated warrant officer, in relation to a search warrant or seizure warrant, means:

(a) the executing officer; or

(b) a person who is an authorised person and who is assisting in the execution of the warrant.

203J Availability of assistance and use of force in executing a warrant

In executing a search warrant or a seizure warrant:

(a) the executing officer may obtain such assistance; and

(b) the executing officer, or a person who is an authorised person and who is assisting in executing the warrant, may use such force against persons and things;

as is necessary and reasonable in the circumstances.

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203K Specific powers available to executing officers

(1) In executing a search warrant or a seizure warrant in relation to premises, the executing officer or a person assisting may:

(a) for a purpose incidental to the execution of the warrant; or

(b) if the occupier of the premises consents in writing;

take photographs or video recordings of the premises or of things on or in the premises.

(2) If a search warrant or a seizure warrant in relation to premises is being executed, the executing officer and the persons assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:

(a) for not more than one hour; or

(b) for a longer period if the occupier of the premises consents in writing.

(3) If:

(a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and

(b) the order is later revoked or reversed on appeal; and

(c) the warrant is still in force;

the execution of the warrant may be completed.

(4) If:

(a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and

(b) the order is later revoked or reversed on appeal; and

(c) the warrant has ceased to be in force;

the court revoking or reversing the order may reissue the warrant for a further period not exceeding 7 days.

(5) The court must not exercise the power under subsection (4) unless it is satisfied of the matters set out in subsection 198(1), 199A(1), 203(1) or 203DA(1).

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203L Use of animals in executing a warrant

In executing a search warrant or a seizure warrant in relation to premises, the executing officer or a person assisting may bring to the premises any animals reasonably necessary for locating things the subject of the warrant.

203M Warrants by telephone or other electronic means

(1) An authorised person may apply to a judicial officer for a search warrant or for a seizure warrant by telephone, telex, fax or other electronic means:

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The judicial officer:

(a) may require communication by voice to the extent that it is practicable in the circumstances; and

(b) may make a recording of the whole or any part of any such communication by voice.

(3) An application under this section must include all information required to be provided in an ordinary application for a search warrant or for a seizure warrant, but the application may, if necessary, be made before the information is sworn.

(4) If an application is made to a judicial officer under this section and the judicial officer, after considering the information and having received and considered such further information (if any) as the judicial officer required, is satisfied that:

(a) a search warrant or a seizure warrant in the terms of the application should be issued urgently; or

(b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the judicial officer may complete and sign the same form of warrant that would be issued under section 198, 199A, 203 or 203DA.

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(5) If the judicial officer decides to issue the warrant, the judicial officer is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the judicial officer, stating on the form the name of the judicial officer and the day on which and the time at which the warrant was signed.

(7) The applicant must, not later than the day after:
   (a) the day of expiry of the warrant; or
   (b) the day on which the warrant was executed;

whichever is the earlier, give or transmit to the judicial officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

(8) The judicial officer must:
   (a) attach to the documents provided under subsection (7) the form of warrant signed by the judicial officer; and
   (b) give or transmit to the applicant the attached documents.

(9) If:
   (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
   (b) the form of warrant signed by the judicial officer is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

203N Receipts for things seized under warrant

(1) If a thing is seized under a search warrant or a seizure warrant, the executing officer or a person assisting must provide a receipt for the thing.

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(2) If 2 or more things are seized, they may be covered in the one receipt.

203P Offence for making false statements in warrants

A person must not make, in an application for a search warrant or for a seizure warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

203Q Offences relating to telephone warrants

(1) A person must not:

(a) state in a document that purports to be a form of warrant under section 203M the name of a judicial officer; or

(b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the judicial officer; or

(c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:

(i) has not been approved by a judicial officer under that section; or

(ii) departs in a material particular from the terms authorised by a judicial officer under that section; or

(d) give to a judicial officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

(2) Paragraph (1)(a) does not apply if the judicial officer named in the warrant issued it.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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Subdivision F—Dealing with things seized as evidential material

203R Retention of things seized as evidential material

(1) Subject to any law of the Commonwealth, a State or a Territory permitting the retention, destruction or disposal of a thing seized as evidential material by an officer of Customs under a search warrant or by an authorised person under subsection 203B(3), 203C(3), 203CA(4) or 203CB(3), the officer or authorised person must return it if:

(a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

(b) 120 days after its seizure:

(i) proceedings in respect of which the thing may afford evidence have not been started; and

(ii) an order permitting the thing to be retained has not been made under section 203S; and

(iii) an order of a court of the Commonwealth or of a State or Territory permitting the retention, destruction or disposal of the thing has not been made;

whichever first occurs.

(2) For the purposes of this section, the return of a thing requires its return to the person reasonably believed to be the owner of the thing in a condition as near as practicable to the condition in which it was seized.

203S Magistrate may permit a thing seized as evidential material to be retained

(1) If a thing is seized as evidential material by an officer of Customs under a search warrant, or by an authorised person under subsection 203B(3), 203C(3), 203CA(4) or 203CB(3), and:

(a) before the end of 120 days after the seizure; or

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(b) before the end of a period previously specified in a magistrate's order under this section;

proceedings in respect of which the thing may afford evidence have not been started:

(c) if the thing is seized by an officer of Customs under a search warrant—an officer of Customs may apply to a magistrate for an order that the thing be retained; or

(d) if the thing is seized by an authorised person under subsection 203B(3), 203C(3), 203CA(4) or 203CB(3)—an authorised person may apply to a magistrate for an order that the thing be retained.

(2) If the magistrate is satisfied:

(a) that it is necessary for the retention of the thing be continued:

(i) for the purposes of an investigation as to whether an offence has been committed; or

(ii) to enable evidence of an offence to be assembled for the purposes of a prosecution; and

(b) that there has been no avoidable delay in conducting the investigation or assembling the evidence concerned;

the magistrate may order that the thing be retained for a period specified in the order.

(3) Before making the application, the officer of Customs or the authorised person must:

(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, notify each person who the officer believes to have such an interest of the proposed application.

Subdivision G—Dealing with goods seized as forfeited goods

203SA Subdivision does not apply to seized transit goods

This Subdivision does not apply to goods that have been seized under a seizure warrant under section 203DA, except for goods

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seized under paragraph 203DB(1)(d) (which covers goods suspected of being special forfeited goods).

Note: For seized transit goods, see Subdivision GA.

203T Seizure of protected objects

(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-General of Customs 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 customs control.

(4) Where an officer seizes an object under subsection (3), the officer shall forthwith deliver the object into the custody of an inspector.

204 Seized goods to be secured

(1) In this section:

approved place, in relation to goods, means a place approved by a Collector as a place for the storage of goods of that kind.

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(2) If an officer of Customs seizes any goods other than narcotic-related goods under a seizure warrant or under section 203B, 203CA or 203CB, the officer must, as soon as practicable, take those goods to an approved place.

(3) If a person other than an officer of Customs seizes any goods other than narcotic-related goods under a seizure warrant or under section 203B, 203CA or 203CB, the person must, as soon as practicable, deliver the goods into the custody of an officer of Customs.

(4) If a person other than a member of the Australian Federal Police seizes:

(a) any narcotic-related goods under a seizure warrant or under section 203B, 203CA or 203CB; or

(b) any narcotic goods under section 203C;

the person must, as soon as practicable, deliver the goods into the custody of a member of the Australian Federal Police.

(5) If goods are delivered to an officer of Customs under subsection (3), the officer must:

(a) if paragraph (b) does not apply—as soon as practicable, deliver the goods to an approved place; or

(b) if the goods are delivered to the officer at an approved place—leave the goods at that place.

205 Requirement to serve seizure notices

(1) After goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2), the responsible person must serve, within 7 days after the seizure, a seizure notice on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized.

(2) Subsection (1) applies whether or not a claim for the return of the goods seized has been made under section 205B.

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(3) The notice must be in writing and must be served:
  (a) personally or by post; or
  (b) if no person of the kind referred to in subsection (1) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(4) A seizure notice may be served on a person who is outside Australia.

(5) In this section:

responsible person means:
  (a) in relation to goods other than narcotic-related goods—the officer of Customs who seized the goods or to whom the goods were delivered under subsection 204(3); or
  (b) in relation to narcotic-related goods—the member of the Australian Federal Police who seized the goods or to whom the goods were delivered under subsection 204(4).

205A Matters to be dealt with in seizure notices

A seizure notice must set out the following:
  (a) a statement identifying the goods;
  (b) the day on which they were seized;
  (c) the ground, or each of the grounds, on which they were seized;
  (d) the effect of sections 205B and 205C; and
  (e) if the notice is to be served in a foreign country—a statement that the person served, if that person has not yet made a claim for the return of the goods, may not make such a claim unless he or she has first appointed in writing an agent in Australia with authority to accept service of documents, including process in any proceedings arising out of the matter.

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205B Claim for return of goods seized

(1) Subject to subsections (1A) and (1B), if goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2), the owner of the goods may, whether or not a seizure notice has yet been served on the owner, make a claim to the appropriate person for the return of the goods.

(1A) A claim may not be made for the return of goods that have been taken to be condemned as forfeited to the Crown under subsection 243Y(1).

(1B) Subsection (1A) ceases to apply in relation to the goods if subsection 243Y(1) ceases to apply in relation to the goods because of the operation of subsection 243Y(4).

(1C) A claim under subsection (1) may be made by document or electronically.

(2) A documentary claim:

(a) must be in writing in an approved form; and

(b) must specify the grounds on which the claim is made; and

(c) if it is made by a person who does not reside or have a place of business in Australia, must:

(i) appoint an agent in Australia with authority to accept service of documents, including process in any proceedings, arising out of the matter; and

(ii) specify the address of the agent for service; and

(iii) be accompanied by the written consent of the agent signed by the agent, agreeing to act as agent.

(2A) An electronic claim:

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

(b) must specify the grounds on which the claim is made; and

(c) if it is made by a person who does not reside or have a place of business in Australia, must:

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(i) appoint an agent in Australia with authority to accept service of documents, including process in any proceedings, arising out of the matter; and

(ii) specify the address of the agent for service; and

(iii) be accompanied by the written consent of the agent signed by the agent, agreeing to act as agent.

(3) In this section:

appropriate person means:

(a) in relation to goods other than narcotic-related goods—the Comptroller-General of Customs; and

(b) in relation to narcotic-related goods:

(i) the Commissioner of Police; or

(ii) a Deputy Commissioner of Police.

205C Treatment of goods seized if no claim for return is made

(1) If:

(a) goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); and

(b) a seizure notice has been served; and

(c) at the end of 30 days after the day the notice was served, no claim has been made for the return of the goods and subsection 205B(1A) has not applied in relation to the goods;

the goods are taken to be condemned as forfeited to the Crown.

(2) If:

(a) goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); and

(b) a seizure notice has been served; and

(c) an infringement notice for an offence in relation to the importation of the goods has been given; and

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(d) the penalty specified in the infringement notice is paid within the period within which, or by the time by which, the penalty is required to be paid; and

(e) the infringement notice is withdrawn and, as a result, subsection 205B(1A) ceases to apply in relation to the goods; and

(f) at the end of 30 days after the day notice of the withdrawal of the infringement notice is given to the person, no claim has been made for the return of the goods;

the goods are taken to be condemned as forfeited to the Crown.

205D Treatment of goods seized if a claim for return is made—general

(1) This section applies if:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); and

(aa) a claim for the return of the goods may be made under section 205B; and

(b) before the end of the 30-day period referred to in paragraph 205C(1)(c) or (2)(f), a claim is made under section 205B for return of the goods.

(1A) However, this section does not apply in relation to goods seized on the belief or suspicion that they are a prohibited psychoactive substance.

(2) The authorised person who seized the goods must, subject to any law of the Commonwealth, a State or a Territory permitting their retention, destruction or disposal, return the goods unless:

(a) the goods have been dealt with under section 206 or 207; or

(aa) the goods have been taken to be condemned as forfeited to the Crown under subsection 243Y(1); or

(b) not later than 120 days after the claim for their return is made, proceedings in respect of an offence involving the goods have been commenced and, on completion of the

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proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(c) not later than 120 days after the claim for their return is made:

(i) an order permitting the goods to be retained for a specified period has been made under section 205E; and

(ii) before the end of that specified period, proceedings in respect of an offence involving the goods have been commenced and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(d) not later than 120 days after the claim for their return is made:

(i) an order permitting the goods to be retained for a specified period has been made under section 205E; and

(ii) before the end of that specified period proceedings have been commenced before a court of summary jurisdiction for a declaration that the goods are special forfeited goods and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or

(e) if the goods were seized as special forfeited goods—not later than 120 days after the claim for their return is made, proceedings before a court of summary jurisdiction for a declaration that the goods are special forfeited goods have been commenced and, on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(2A) Paragraph (2)(aa) ceases to apply in relation to the goods if subsection 243Y(1) ceases to apply in relation to the goods because of the operation of subsection 243Y(4).

(3) If:

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(a) goods seized otherwise than as special forfeited goods have not been dealt with under section 206; and

(b) proceedings of the kind referred to in paragraph (2)(b) or (c) are commenced in respect of an offence involving the goods; and

(c) on completion of the proceedings, the court:

(i) finds that the offence is proved; and

(ii) is satisfied, in all the circumstances of the case, that it is appropriate that an order be made for condemnation of the goods as forfeited to the Crown;

the court must make an order to that effect.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(4) If:

(a) goods seized as special forfeited goods have not been dealt with under section 206 or 207; and

(b) proceedings of the kind referred to in paragraph (2)(b) or (c) are commenced in respect of an offence involving the goods; and

(c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;

the court must make an order for condemnation of the goods as forfeited to the Crown, whether or not the court finds the offence proved.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(5) Subject to subsection (6) if:

(a) goods seized as special forfeited goods have not been dealt with under section 206 or 207; and

(b) proceedings of the kind referred to in paragraph (2)(d) or (e) are commenced in respect of the goods; and

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(c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;

the court must declare the goods to be special forfeited goods and make an order for condemnation of the goods as forfeited to the Crown.

Note: Subsection (9) gives special forfeited goods a wider meaning for the purposes of this section.

(6) A court must not make an order for condemnation of goods under subsection (5) if proceedings for an offence involving the goods have been commenced.

(7) If the finding of a court in proceedings under paragraph (2)(b), (c), (d) or (e) in respect of goods that have not been dealt with under section 206 or 207 may be taken on appeal to another court, the goods are not to be returned under subsection (2), or disposed of under section 208D or 208DA, while that appeal may be made, or, if it is made, until the completion of that appeal.

(8) For the purposes of this section, the return of goods requires their return to the person reasonably believed to be the owner of the goods in a condition as near as practicable to the condition in which they were seized.

(9) In this section:

offence means an offence against any law of the Commonwealth, a State or a Territory.

special forfeited goods includes goods that are forfeited under section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*.

(10) In this section, a reference to completion of proceedings includes a reference to completion of any appeal process arising from those proceedings.

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205E Magistrate may permit goods seized to be retained

(1) If goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2) and:

(a) before the end of 120 days after the making of a claim for their return; or

(b) before the end of the period previously specified in a magistrate's order under this section;

proceedings of the kind referred to in paragraph 205D(2)(b) have not been started, an authorised person may apply to a magistrate for an order that the goods be retained.

(2) If the magistrate is satisfied that:

(a) it is necessary that the retention of the goods continue while evidence of the offence to which the proceedings referred to in paragraph 205D(2)(b) relate is assembled; and

(b) there has been no avoidable delay in assembling that evidence;

the magistrate may order that the goods be retained for a period specified in the order.

(3) Before making the application, the authorised person must:

(a) take reasonable steps to discover who has an interest in the retention of the goods; and

(b) if it is practicable to do so, notify each person who the officer believes to have such an interest of the proposed application.

(4) This section does not apply in relation to goods seized on the belief or suspicion that they are a prohibited psychoactive substance.

205EA Treatment of goods seized if a claim for return is made—suspected prohibited psychoactive substances

(1) This section applies if:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the goods are seized on belief or suspicion that they are a prohibited psychoactive substance; and

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(c) a claim for the return of the goods may be made under section 205B; and

(d) not later than 30 days after the day the seizure notice was served, a claim is made under section 205B for return of the goods.

(2) The authorised person who seized the goods must, subject to any law of the Commonwealth, a State or a Territory permitting their retention, destruction or disposal, return the goods unless:

(a) the goods have been dealt with under section 206; or

(b) not later than 30 days after the day the claim is made, the Comptroller-General of Customs gives the claimant a written notice stating that the goods will be condemned as forfeited if the claimant does not, within 30 days after receiving the notice, institute proceedings against the Commonwealth:

(i) to recover the goods; or

(ii) for a declaration that the goods are not forfeited.

(3) A notice under paragraph (2)(b):

(a) must be served personally or by post; and

(b) may be served on a person who is outside Australia.

(4) The goods are condemned as forfeited to the Crown if:

(a) the claimant does not institute proceedings of a kind referred to in paragraph (2)(b) within the period of 30 days after receiving the notice under that paragraph (or within that period as extended, or further extended, under section 205EB); or

(b) the claimant institutes such proceedings within that period (or within that period as extended or further extended), and at the end of the proceedings there is not:

(i) an order for the claimant to recover the goods; or

(ii) an order for the Commonwealth to pay the claimant the market value of the goods at the time they were disposed of or destroyed, if they have been disposed of or destroyed before the end of the proceedings; or

(iii) a declaration that the goods are not forfeited.

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(5) For the purposes of subsection (4), if the proceedings go to judgment, they end:
   (a) at the end of the period for lodging an appeal against the judgment, if no appeal is lodged within that period; or
   (b) when the appeal lapses or is finally determined, if an appeal is lodged against the judgment within that period.

(6) For the purposes of this section, the return of goods requires their return to the person reasonably believed to be the owner of the goods in a condition as near as practicable to the condition in which they were seized.

205EB Extending the period for instituting proceedings for recovery of suspected prohibited psychoactive substances

(1) A person who has been given a notice under paragraph 205EA(2)(b) in relation to goods may, before the end of the applicable period under paragraph 205EA(4)(a), apply to a magistrate for an extension, or a further extension, of the period.

(2) If the magistrate is satisfied that:
   (a) it is necessary that the retention of the goods continue while information is assembled relating to whether the goods are a prohibited psychoactive substance; and
   (b) there has been no avoidable delay in assembling that information;

   the magistrate may order that the period be extended, or further extended, for a period specified in the order.

205EC Proceedings for recovery of suspected prohibited psychoactive substances

(1) Proceedings of a kind referred to in paragraph 205EA(2)(b) may be instituted or continued even if the goods to which the proceedings relate are disposed of or destroyed.

(2) In proceedings of a kind referred to in paragraph 205EA(2)(b):

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(a) the Commonwealth bears the onus of proving that the goods to which the proceedings relate were imported; and

(b) the person instituting the proceedings bears the onus of proving that the goods:

(i) are not a psychoactive substance; or

(ii) are a substance to which, because of subsection 320.2(2) of the *Criminal Code*, section 320.2 of the *Criminal Code* does not apply.

(3) If:

(a) the goods to which proceedings of a kind referred to in paragraph 205EA(2)(b) relates have been disposed of or destroyed before the end of the proceedings; and

(b) the court hearing the proceedings decides that, apart from the disposal or destruction, it would have ordered that the goods be returned to a person;

the court must order the Commonwealth to pay the person an amount equal to the market value of the goods at the time they were disposed of or destroyed.

205F Right of compensation in certain circumstances for goods disposed of or destroyed

(1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because no claim for their return or recovery was made, a person may apply to a court of competent jurisdiction under this section for compensation.

(2) A right to compensation exists if:

(a) the goods are not special forfeited goods within the meaning of section 205D; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the person establishes, to the satisfaction of the court:

(i) that he or she is the rightful owner of the goods; and

(ii) that there were circumstances providing a reasonable excuse for the failure to claim the goods before the end

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of the 30-day period referred to in paragraph 205C(1)(c) or (2)(f) (as the case may be).

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to:

(a) if the goods have been sold—the proceeds of the sale; and

(b) if the goods have been destroyed—the market value of the goods at the time of their destruction.

205G Effect of forfeiture

When goods are, or are taken to be, condemned as forfeited to the Crown, the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

206 Immediate disposal of certain goods

Perishable goods and live animals

(1) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the goods are perishable goods or live animals; and

(c) the Comptroller-General of Customs is satisfied that the retention of the goods would constitute:

(i) a danger to public health; or

(ii) if the goods are live animals—a danger to the health of other animals or a danger to plants or to agricultural produce;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

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Dangerous goods

(1A) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the Comptroller-General of Customs is satisfied that the retention of the goods would constitute a danger to public health or safety;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

Unseaworthy vessels

(2) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the goods are a vessel in the possession of an officer of Customs; and

(c) the Comptroller-General of Customs is satisfied that the vessel is so unseaworthy that its custody or maintenance is impracticable;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

Prohibited psychoactive substances, tobacco products and prohibited serious drug alternatives

(2A) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the Comptroller-General of Customs is satisfied that the goods are a prohibited psychoactive substance, tobacco products or a prohibited serious drug alternative;

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the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

Vaping goods

(2B) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the Comptroller-General of Customs is satisfied that the goods are vaping goods that are prohibited imports;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as the Comptroller-General considers appropriate (including the destruction of the goods).

Engineered stone

(2C) If:

(a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and

(b) the Comptroller-General of Customs is satisfied that the goods are engineered stone that is a prohibited import;

the Comptroller-General of Customs may cause the goods to be dealt with in such manner as the Comptroller-General considers appropriate (including the destruction of the goods).

Notice

(3) As soon as practicable, but not later than 7 days after the goods referred to in subsection (1), (1A), (2), (2A), (2B) or (2C) have been dealt with, the Comptroller-General of Customs must give or publish a notice in accordance with subsection (5).

(4) The notice must be in writing and must be served:

(a) personally or by post on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized; or

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(b) if no person of the kind referred to in paragraph (a) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(5) The notice must:
(a) identify the goods; and
(b) state that the goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2) and give the reason for the seizure; and
(c) state that the goods have been dealt with under subsection (1), (1A), (2), (2A), (2B) or (2C) and specify the manner in which they have been so dealt with and the reason for doing so; and
(d) set out the terms of subsection (6).

Right to recover market value of goods

(6) If goods are dealt with in accordance with subsection (1), (1A), (2), (2A), (2B) or (2C), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

(7) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1), (1A), (2), (2A), (2B) or (2C) exists if:
(a) the goods are not special forfeited goods within the meaning of section 205D; and
(b) the goods were not used or otherwise involved in the commission of an offence; and
(c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

(8) If a person establishes a right to recover the market value of the goods at the time they were dealt with, the Court must order the

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payment by the Commonwealth of an amount equal to that value at that time.

207 Immediate disposal of narcotic goods

(1) If:

(a) goods are seized:

(i) under a seizure warrant; or

(ii) under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); or

(iii) under section 67 of the *Maritime Powers Act 2013*; and

(b) the goods are reasonably believed by the Commissioner of Police or a Deputy Commissioner of Police to be special forfeited goods that are narcotic goods;

the Commissioner or Deputy Commissioner may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

(2) If goods are dealt with in accordance with subsection (1), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

(3) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) exists if:

(a) the goods are not special forfeited goods; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

(4) If a person establishes a right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) or (2), the Court must order the payment by the Commonwealth of an amount equal to that value at that time.

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208 Release of goods on security

(1) This section applies to goods:

(a) that have been seized under a seizure warrant; and

(b) that are not special forfeited goods; and

(c) that are not taken to be forfeited to the Crown under section 205C; and

(d) in respect of which proceedings have not yet been brought by the Commonwealth under section 205D.

(2) The owner of the goods may apply to a court of summary jurisdiction for an order that the goods be released to the owner on provision to the Comptroller-General of Customs of security for an amount determined by the court in accordance with subsection (4).

(3) In determining whether or not to order the release of the goods on provision of a security, the court may have regard to:

(a) the impact that the continued retention of the goods would have on the economic interests of third parties; and

(b) whether the continued retention of the goods would prevent the provision of services by third parties which would place at risk the health, safety or welfare of the community; and

(c) any other like matters that the court considers relevant.

(4) For the purposes of this section, the security to be provided in respect of the goods is security for an amount determined by the court that does not exceed the sum of:

(a) the market value of the goods at the time when the order is made; and

(b) the costs incurred by the Commonwealth for storage of the goods from the time of their seizure until the time of their release under this section;

reduced by the amount of any duty that has been paid on the goods.

(5) If the security is given, the Comptroller-General of Customs is to release the goods to the applicant.

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208C Service by post

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a seizure notice under section 205 or a notice under subsection 206(3) on a person, such a notice posted as a letter addressed to that person at the last address of that person known to the sender shall be deemed to be properly addressed.

208D Disposal of forfeited goods

All goods seized under a seizure warrant, under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2) or under section 67 of the *Maritime Powers Act 2013* that are taken to be condemned as forfeited to the Crown under section 205C or that are so condemned under section 205D or 205EA shall be dealt with and disposed of in accordance with:

(a) in the case of goods other than narcotic-related goods—the directions of the Comptroller-General of Customs; or

(b) in the case of narcotic goods—the directions of the Commissioner of Police or a Deputy Commissioner of Police; or

(c) in the case of narcotic-related goods other than narcotic goods—in accordance with section 208DA.

208DA Disposal of narcotic-related goods other than narcotic goods

(1) In this section:

condemned goods means goods seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2):

(a) that are taken to be condemned as forfeited to the Crown under section 205C; or

(b) that are so condemned under section 205D.

Official Trustee means the Official Trustee in Bankruptcy.

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prescribed officer means an SES employee, or acting SES employee, in the Department.

(2) All condemned goods that are narcotic-related goods (other than narcotic goods) must, subject to any direction given under subsection (4) in relation to those goods, be transferred to the Official Trustee to be dealt with under subsection (3).

(3) Where goods are transferred to the Official Trustee under subsection (2), the Official Trustee must, as soon as practicable:

(a) if the goods are money—credit the amount of the money to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*; and

(b) if the goods are not money:

(i) sell or otherwise dispose of the goods; and

(ii) apply the proceeds of the sale or disposition in accordance with subsection (3A); and

(iii) credit an amount equal to the remainder of those proceeds to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*.

(3A) The proceeds of the sale or disposition of condemned goods transferred to the Official Trustee under subsection (2) must be applied in payment of:

(a) the Official Trustee's remuneration; and

(b) the other costs, charges and expenses of the kind referred to in section 243P that are payable to, or incurred by, the Official Trustee in connection with the sale or disposition; and

(c) if the goods were seized by, or delivered into the custody of, a member of the Australian Federal Police under a seizure warrant, or under section 203B, 203C, 203CA, 203CB or 204—the costs, charges and expenses incurred by, or on behalf of, the Commonwealth in connection with the transportation, storage, custody and control of the goods before their transferral to the Official Trustee.

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(4) If condemned goods consist of, or include, narcotic-related goods (other than narcotic goods), the Minister, or a prescribed officer authorised by the Minister for the purposes of this section, may, at any time before the condemned goods are transferred to the Official Trustee under subsection (2), direct that those narcotic-related goods be disposed of, or otherwise dealt with, as specified in the direction.

208E Sales subject to conditions

Where a ship or aircraft is sold under section 206 or sold or otherwise disposed of under section 208D, the ship or aircraft may be sold or disposed of subject to conditions, including, without limiting the generality of the foregoing:

(a) a condition that, before the expiration of a period specified in the condition, the ship or aircraft is to be exported from Australia; or

(b) a condition that, before the expiration of a period specified in the condition, the ship or aircraft is to be broken up.

209 Power to impound certain forfeited goods and release them on payment of duty and penalty

(1) This section applies to dutiable goods that are forfeited by virtue of paragraph 229(1)(a), (g), (o), (p), (q) or (qa) (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), an officer may impound goods instead of obtaining a seizure warrant to seize them if:

(a) the goods are in a Customs place; and

(b) either:

(i) the goods are goods to which this section applies; or

(ii) the officer has reason to believe that the goods are goods to which this section applies.

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(3) An officer must not exercise the power to impound goods under subsection (2) if, in the opinion of the officer, the amount of duty sought to be evaded in respect of the goods exceeds $5,000.

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

(5) Where an officer impounds goods under this section, he or she 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) if the goods are an article—the article; or

(ii) if the goods consist of separate articles—each of those articles; or

(iii) in any other case—the goods;

and stating that the article, articles or goods have been impounded under subsection (2); and

(b) setting out the amount of duty demanded in respect of the article, each of the articles, or the goods, identified in the notice; and

(c) setting out the date on which the goods were impounded; and

(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) if the goods were found in the course of a search of the baggage of a person who has arrived in Australia from a place outside Australia—an amount specified in the notice, being an amount equal to the amount of that duty that, in the

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opinion of the officer issuing the notice, the owner has sought to evade; or

(b) if paragraph (a) does not apply to the goods—an amount specified in the notice, being an amount equal to twice the amount of that duty that, in the opinion of the officer issuing the notice, the owner has sought to evade;

the following provisions apply:

(c) the Collector shall authorize the delivery of the article or goods to the owner;

(d) the article ceases, or the goods cease, to be forfeited; and

(e) proceedings shall not be brought for an offence against this Act in relation to the importation of the article or goods.

(7) Where the owner of an article or goods identified in a notice served under subsection (5) does not pay duty and penalty in respect of the article or goods in accordance with subsection (6), the article or goods are taken:

(a) to have been seized under a seizure warrant at the end of 21 days after the notice is served; and

(b) to have been so seized by the officer who served the notice under subsection (5).

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

(10) For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post on the owner of goods of a notice under subsection (5), such a notice posted as a letter addressed to the owner at his or her 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 or her person or otherwise with him or her.

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(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.

209A Destruction or concealment of evidential material or forfeited goods

A person must not:

(a) destroy, or render incapable of identification, a document or thing that is, or may be, evidential material or a forfeited good; or

(b) render illegible or indecipherable such a document or thing; or

(c) place or conceal on his or her body, or in any clothing worn by the person, such a document or thing;

with the intention of preventing it from being seized by an authorised person in the exercise of the person's powers under a search warrant, a seizure warrant or section 203B, 203C, 203CA or 203CB.

Penalty: Imprisonment for 2 years.

Subdivision GA—Dealing with goods in transit seized under a section 203DA warrant

209B Subdivision applies to seized transit goods

This Subdivision applies to goods that have been seized under a seizure warrant under section 203DA, except for goods seized under paragraph 203DB(1)(d) (which covers goods suspected of being special forfeited goods).

Note: For other kinds of seized goods, see Subdivision G.

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209C Seized goods to be secured

An officer of Customs who seizes any goods to which this Subdivision applies must, as soon as practicable, take the goods to a place approved by a Collector as a place for the storage of goods of that kind.

209D Requirement to serve seizure notices

(1) The officer must serve, within 7 days after the seizure, a seizure notice on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized.

(2) Subsection (1) applies whether or not an application for the return of the goods seized has been made under section 209F.

(3) The notice must be in writing and must be served:
  (a) personally or by post; or
  (b) if no person of the kind referred to in subsection (1) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(4) A seizure notice may be served on a person who is outside Australia.

209E Matters to be dealt with in seizure notices

A seizure notice must set out the following:
  (a) a statement identifying the goods;
  (b) the day on which they were seized;
  (c) the ground, or each of the grounds, on which they were seized;
  (d) a statement that, if an application for the return of the goods has not already been made, and is not made within 30 days

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after the day the notice is served, the goods will be taken to be condemned as forfeited to the Crown.

209F Application for return of seized goods

(1) The owner of the goods may, whether or not a seizure notice has yet been served on the owner, apply to a court of competent jurisdiction for the return of the goods.

(2) An application must be made no later than 30 days after a seizure notice is issued in respect of the goods.

(3) If the court finds that:

(a) the goods are not goods of the kind mentioned in subsection 203DA(1); and

(b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and

(c) the person is the rightful owner of the goods;

the court must order that the goods be returned to the owner.

(4) Goods required to be so returned are required to be returned in a condition as near as practicable to the condition in which they were seized.

(5) If the court finds otherwise than as mentioned in subsection (3), the goods are condemned as forfeited to the Crown.

209G Status of goods seized if no application for return is made

If:

(a) a seizure notice has been served; and

(b) at the end of 30 days after the day on which the notice was served, no application has been made for return of the goods;

the goods are condemned as forfeited to the Crown.

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209H Right of compensation for certain goods disposed of or destroyed

(1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because no application for their return was made, a person may apply to a court of competent jurisdiction under this section for compensation.

(2) A right to compensation exists if:
  (a) the goods are not goods of the kind mentioned in subsection 203DA(1); and
  (b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and
  (c) the person establishes, to the satisfaction of the court:
    (i) that he or she is the rightful owner of the goods; and
    (ii) that there were circumstances providing a reasonable excuse for the failure to apply for the return of the goods not later than 30 days after the day the seizure notice was served.

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to:
  (a) if the goods have been sold—the proceeds of the sale; and
  (b) if the goods have been destroyed or otherwise disposed of—the goods' market value at the time of their destruction or disposal.

209I Effect of forfeiture

When goods are condemned as forfeited to the Crown under this Subdivision, the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

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209J Immediate disposal of unsafe goods

(1) If the Comptroller-General of Customs is satisfied that the retention of goods seized would constitute a danger to public health or safety, the Comptroller-General of Customs may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

(2) As soon as practicable, but not later than 7 days after the goods have been dealt with, the Comptroller-General of Customs must give or publish a notice in accordance with subsection (4).

(3) The notice must be in writing and must be served:

(a) personally or by post on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized; or

(b) if no person of the kind referred to in paragraph (a) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(4) The notice must:

(a) identify the goods; and

(b) state that the goods have been seized under a seizure warrant under section 203DA and give the reason for the seizure; and

(c) state that the goods have been dealt with under subsection (1) and specify the manner in which they have been so dealt with and the reason for doing so; and

(d) set out the terms of subsection (5).

(5) If goods are dealt with in accordance with subsection (1), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

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(6) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) exists if:

(a) the goods were not goods of the kind mentioned in subsection 203DA(1); and

(b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and

(c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

(7) If a person establishes a right to recover the market value of the goods at the time they were dealt with, the Court must order the payment by the Commonwealth of an amount equal to that value at that time.

209K Disposal of forfeited goods

(1) All goods that are condemned as forfeited to the Crown under this Subdivision must be dealt with and disposed of in accordance with the directions of the Comptroller-General of Customs.

(2) In particular, the Comptroller-General of Customs may direct that the goods be given to a relevant authority of a foreign country in order that the goods be used in an investigation or prosecution under the laws of that country.

(3) Subsection (2) does not limit the generality of subsection (1).

209L Service by post

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a seizure notice under section 209D or a notice under subsection 209J(3) on a person, such a notice posted as a letter addressed to that person at the last address of that person known to the sender is taken to be properly addressed.

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Subdivision GB—Surrender of prescribed prohibited imports

209M Application of Subdivision

This Subdivision applies to goods that are prohibited imports of a kind prescribed by regulations made for the purposes of this section.

209N Surrender of goods

(1) An officer of Customs may, instead of seizing goods under section 203B, permit a person to surrender the goods to the officer in a section 234AA place if:

(a) the officer has reasonable grounds to believe that the goods:

(i) have been imported by the person; and

(ii) have not been concealed from the officer by the person; and

(iii) are accompanied personal or household effects of the person; and

(b) the person has been informed by the officer, in writing, of the available options for dealing with the goods and the consequences of exercising each of those options; and

(c) the person has indicated to the officer, in writing, that he or she intends to surrender the goods; and

(d) the officer has indicated to the person that the goods may be surrendered to the officer.

(2) Without limiting the meaning of ***concealed*** in subparagraph (1)(a)(ii), a person is taken to have concealed goods from an officer of Customs if the person was required to give information about the goods to the Department in accordance with section 71, 71K or 71L and the person failed to do so.

209P Effect of surrender

If goods are surrendered under section 209N:

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(a) proceedings cannot be brought for an offence against this Act in relation to the importation of the goods; and

(b) the goods are taken to be condemned as forfeited to the Crown, such that the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

209Q Right of compensation in certain circumstances for goods disposed of or destroyed

(1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because the goods have been surrendered under section 209N, a person may apply to a court of competent jurisdiction under this section for compensation.

(2) A right to compensation exists if:

(a) the goods were not prohibited imports; and

(b) the goods were not used or otherwise involved in the commission of an offence; and

(c) the person establishes, to the satisfaction of the court, that he or she is the rightful owner of the goods.

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to the market value of the goods at the time of their disposal or destruction.

209R Disposal of surrendered goods

All goods surrendered under section 209N must be dealt with and disposed of in accordance with the directions of the Comptroller-General of Customs.

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Subdivision GC—Post-importation permission

209S Definitions

(1) In this Subdivision:

application period, for goods that have been detained under section 209U, means the period that, in accordance with subparagraph 209X(1)(d)(i), is specified in the detention notice identifying the goods.

detention notice means a notice of the kind mentioned in section 209X.

grant period, for goods that have been detained under section 209U, means the period that, in accordance with subparagraph 209X(1)(d)(ii), is specified in the detention notice identifying the goods.

(2) If regulations made under section 50 provide that the importation of goods is prohibited unless a licence, permission, consent, approval or other document (however described) is granted or given, then the licence, permission, consent, approval or other document is a ***required permission to import the goods***.

209T Application of Subdivision

This Subdivision applies to goods that are prohibited imports of a kind prescribed by regulations made for the purposes of this section.

209U Power to detain goods

(1) An officer of Customs may, instead of seizing goods under section 203B, detain the goods if:

(a) the goods have been imported without one or more required permissions to import the goods having been granted or given; and

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(b) any other conditions or restrictions specified in regulations made under section 50 in respect of the importation of the goods have been complied with; and

(c) the officer has reasonable grounds to believe that:

(i) the goods have not been concealed from the officer by the person who imported them; and

(ii) no application for any of the required permissions to import the goods has previously been refused; and

(d) if the goods are accompanied personal or household effects of the person—the person:

(i) has been informed by the officer, in writing, of the available options for dealing with the goods and the consequences of exercising each of those options; and

(ii) has indicated to the officer, in writing, that he or she has applied, or intends to apply, for each of the required permissions to import the goods that have not already been granted or given.

(2) Without limiting the meaning of ***concealed*** in subparagraph (1)(c)(i), a person is taken to have concealed goods from an officer of Customs if the person was required to give information about the goods to the Department in accordance with section 71, 71K or 71L and the person failed to do so.

209V Detained goods to be secured

(1) In this section:

approved place, in relation to goods detained under section 209U, means a place approved by a Collector as a place for the storage of goods of that kind.

(2) If an officer of Customs detains goods under section 209U, the officer must, as soon as practicable, take those goods to an approved place.

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209W Requirement to serve detention notice

(1) If an officer of Customs detains goods under section 209U, the officer must serve, within 7 days after the day on which the goods were detained, a detention notice on:

(a) the owner of the goods; or

(b) if the owner cannot be identified after reasonable inquiry—the person in whose possession or under whose control the goods were when they were detained.

(2) The notice must be in writing and must be served:

(a) personally or by post; or

(b) if no person of the kind referred to in paragraph (1)(a) or (b) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were detained.

(3) A detention notice may be served on a person who is outside Australia.

209X Matters to be dealt with in detention notices

(1) A detention notice must set out the following:

(a) a statement identifying the goods;

(b) the day on which the goods were detained;

(c) the ground, or each of the grounds, on which the goods were detained;

(d) a statement that the goods will be taken to be seized if:

(i) written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported is not provided to the Department by the end of a specified period (the ***application period***); or

(ii) not all of the required permissions to import the goods are granted, or given, by the end of a specified period (the ***grant period***); or

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(iii) during the application period or the grant period, the owner of the goods notifies the Department, in writing, that an application for a required permission to import the goods has been refused;

(e) a statement that, if the goods are taken to be seized because written evidence is not provided to the Department by the end of the application period, the goods will be taken to be seized on the day after the end of the application period;

(f) a statement that, if the goods are taken to be seized because not all of the required permissions to import the goods are granted, or given, by the end of the grant period, the goods will be taken to be seized on the day after the end of the grant period;

(g) a statement that, if the goods are taken to be seized because during the application period or the grant period the owner of the goods notifies the Department, in writing, that an application for a required permission to import the goods has been refused, the goods will be taken to be seized on the day after the Department is so notified;

(h) the ground, or each of the grounds, on which the goods will be taken to be seized;

(i) a statement that, if the goods are taken to be seized and a claim for the return of the goods has not already been made, and is not made within 30 days after the day the goods are taken to be seized, the goods will be taken to be condemned as forfeited to the Crown;

(j) if the notice is to be served in a foreign country—a statement that the person served, if that person has not yet made a claim for the return of the goods, may not make such a claim unless he or she has first appointed in writing an agent in Australia with authority to accept service of documents, including process in any proceedings arising out of the matter.

(2) The application period specified in a detention notice under subparagraph (1)(d)(i) must be the period that:

(a) starts on the day that the notice is served; and

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(b) ends 30 days, or such other period as is prescribed by the regulations, after that day.

(3) The grant period specified in a detention notice under subparagraph (1)(d)(ii) must be the period that:

(a) starts on the day written evidence of the making of an application for a required permission to import the goods is first provided to the Department; and

(b) ends 30 days, or such other period as is prescribed by the regulations, after the first day on which written evidence of the making of an application for all of the required permissions to import the goods that were not granted, or given, by the time the goods were imported has been provided to the Department.

209Y Effect of detaining goods

While goods are detained under section 209U:

(a) an application for a required permission to import the goods may be made; and

(b) a required permission to import the goods may be granted or given;

despite the goods having already been imported.

209Z Evidence not provided or permission not granted or given

(1) This section applies if:

(a) goods have been detained under section 209U; and

(b) a detention notice identifying the goods has been served; and

(c) any of the following apply:

(i) written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported has not been provided to the Department by the end of the application period for the goods;

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(ii) not all of the required permissions to import the goods have been granted, or given, by the end of the grant period for the goods;

(iii) during the application period, or the grant period, for the goods, the owner of the goods has notified the Department, in writing, that an application for a required permission to import the goods has been refused.

(2) If the goods are at an approved place within the meaning of section 209V, they cease to be detained under section 209U and are taken to be seized under section 203B on:

(a) if, during the application period, the owner of the goods notified the Department, in writing, that an application for a required permission to import the goods was refused—the day after the Department was so notified; or

(b) if paragraph (a) does not apply and written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported was not provided to the Department by the end of the application period—the day after the end of the application period; or

(c) if paragraphs (a) and (b) do not apply and, during the grant period, the owner of the goods notified the Department, in writing, that an application for a required permission to import the goods was refused—the day after the Department was so notified; or

(d) if paragraphs (a), (b) and (c) do not apply and not all of the required permissions to import the goods were granted, or given, by the end of the grant period—the day after the end of the grant period.

(3) The detention notice is also taken to be a seizure notice that:

(a) is in accordance with section 205A; and

(b) was served:

(i) under section 205 by the responsible person; and

(ii) on the day the goods are taken to be seized.

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209ZA Evidence provided and permission granted or given

(1) This section applies if:

(a) goods have been detained under section 209U; and

(b) a detention notice identifying the goods has been served; and

(c) written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported has been provided to the Department by the end of the application period for the goods; and

(d) all of the required permissions to import the goods have been granted, or given, on or before the end of the grant period for the goods.

(2) An officer of Customs must return the goods to the owner.

(3) At the time the last required permission to import the goods is granted or given, the goods cease to be prohibited imports.

(4) Proceedings cannot be brought for an offence against this Act in relation to the importation of the goods.

209ZB Service by post

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a detention notice under this Subdivision 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 is taken to be properly addressed.

209ZC Liability for detention of goods

Neither the Commonwealth nor an officer or other person is under any liability in relation to the detention of any goods under this Subdivision for which there was reasonable cause.

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Subdivision H—Arrest and related matters

210 Power of arrest without warrant

(1) An officer of Customs or police may without warrant arrest a person if the officer believes on reasonable grounds that:

(a) the person has committed or is committing one or more of the following offences:

(i) an offence against subsection 33(1) or 33(5);

(ii) an offence against section 33C, 231 or 233;

(iii) an offence against subsection 233BAA(4) or (5), 233BAB(5) or (6), 233BABAB(1), 233BABAC(1) or 233BABAD(1), (2), (2A) or (2B);

(iv) an offence against section 72.13 or Division 307 or 361 of the *Criminal Code*;

(v) an offence against section 308.2 of the *Criminal Code* where the substance involved in the offence is reasonably suspected of having been imported into Australia, or being intended for export from Australia, in contravention of this Act;

(vi) an offence against section 147.1, 147.2 or 149.1 of the *Criminal Code* in relation to an officer of Customs;

(vii) an offence against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*; and

(b) proceedings by summons against the person would not achieve one or more of the following purposes:

(i) ensuring the appearance of the person before a court in respect of the offence;

(ii) preventing a repetition or continuation of the offence or the commission of another offence;

(iii) preventing the concealment, loss or destruction of evidence relating to the offence;

(iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;

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(v) preventing the fabrication of evidence in respect of the offence;

(vi) preserving the safety or welfare of the person.

(2) A person commits an offence if the person resists, obstructs or prevents the arrest of any person under this section.

Penalty: 10 penalty units.

(3) If:

(a) a person has been arrested for an offence under subsection (1); and

(b) before the person is charged with the offence, the officer of Customs or police in charge of the investigation ceases to believe on reasonable grounds:

(i) that the person committed the offence; or

(ii) that holding the person in custody is necessary to achieve a purpose referred to in paragraph (1)(b);

the person must be released.

(4) An officer of Customs or police may without warrant arrest a person whom he or she believes on reasonable grounds has escaped from lawful custody to which the person is still liable under this Subdivision.

210A Use of force in making arrest

(1) An officer of Customs or police must not, in the course of arresting a person under section 210, use more force, or subject the person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the person after the arrest.

(2) Without limiting the operation of subsection (1), an officer of Customs or police must not, in the course of arresting a person under section 210, do anything that is likely to cause the death of, or grievous bodily harm to, the person unless:

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(a) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or

(b) if the person is attempting to escape arrest by fleeing:

(i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and

(ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

210B Person to be informed of grounds of arrest

(1) An officer of Customs or police who arrests a person under section 210 must inform the person, at the time of the arrest, of the offence for which the person is being arrested.

(2) It is sufficient if the person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

(3) Subsection (1) does not apply to the arrest of the person if:

(a) the person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or

(b) the person's actions make it impracticable for the officer to inform the person of the offence for which he or she is being arrested.

211 Power to conduct a frisk search of an arrested person

An officer of Customs or police who arrests a person under section 210, or who is present at such an arrest, may, if the officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items:

(a) conduct a frisk search of the person at or soon after the time of arrest; and

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(b) seize any seizable items found as a result of the search.

211A Power to conduct an ordinary search of an arrested person

An officer of Customs or police who arrests a person under section 210, or who is present at such an arrest, may, if the officer suspects on reasonable grounds that the person is carrying:

(a) evidential material in relation to the offence for which the person is arrested or another offence; or

(b) a seizable item;

conduct an ordinary search of the person at or soon after the time of arrest, and seize any such thing found as a result of the search.

212 How arrested person to be dealt with

An officer of Customs who arrests a person under section 210 must ensure that the person is either:

(a) delivered into the custody of a police officer; or

(b) taken before a magistrate or bail justice;

as soon as practicable to be dealt with according to law.

213 Requirement to provide name etc.

(1) An officer of Customs or police may request a person arrested under section 210 to provide his or her name or address, or name and address, to the officer if the person's name or address is, or name and address are, unknown to the officer.

(2) A person commits an offence if:

(a) an officer of Customs or police:

(i) has made a request of a person under subsection (1); and

(ii) has complied with any request that the person has made under paragraph (4)(b); and

(b) the person refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

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(3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) An officer of Customs or police commits an offence if:

(a) the officer makes a request of a person under subsection (1); and

(b) the person requests the officer to provide to the person:

(i) his or her name or the address of his or her place of duty; or

(ii) his or her name and that address; or

(iii) if he or she is not in uniform and it is practicable for the officer to provide the evidence—evidence that he or she is an officer; and

(c) the officer refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

Subdivision HA—Information about people working in restricted areas or issued with security identification cards

213A Providing an authorised officer with information about people working in restricted areas

(1) A person who employs or engages a restricted area employee must, within 7 days after doing so, provide to an authorised officer the required identity information in respect of the employee.

(2) If a person (the ***employer***):

(a) employs or engages another person after the commencement of this section; and

(b) at a later time the other person becomes a restricted area employee of the employer;

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the employer must, within 7 days after that later time, provide to an authorised officer the required identity information in respect of the employee.

(3) If:

(a) a person (the ***employer***) employed or engaged another person before the commencement of this section; and

(b) the other person is a restricted area employee of the employer; and

(c) an authorised officer suspects on reasonable grounds that the other person has committed, or is likely to commit, an offence against a law of the Commonwealth;

the authorised officer may, in writing, request the employer to provide to the authorised officer, within 7 days after receiving the request, the required identity information in respect of the employee. The employer must comply with the request.

(4) A person does not comply with an obligation under subsection (1), (2) or (3) to provide information unless the person provides the information:

(a) in writing; or

(b) in such other form as the Comptroller-General of Customs determines in writing.

(5) A person commits an offence if the person fails to comply with subsection (1), (2) or (3).

Penalty: 30 penalty units.

(6) Subsection (5) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(7) In this section:

required identity information, in relation to a person, means any one or more of the following:

(a) the name and address of the person;

(b) the person's date and place of birth;

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(c) any other information prescribed by the regulations.

restricted area employee means a person whose duties include working in an area covered by a notice under subsection 234AA(3), but does not include a person who is issued with a security identification card.

security identification card means a card of a kind specified in the regulations.

213B Provision of information about people issued with security identification cards

(1) If a person has issued a security identification card to another person in respect of an airport appointed under section 15, an issuing authority in relation to the card must, within 7 days after the card is issued, provide to an authorised officer the required identity information in respect of the other person.

(2) If:

(a) before the commencement of this section, a person issued a security identification card to another person in respect of an airport appointed under section 15; and

(b) an authorised officer suspects on reasonable grounds that the other person has committed, or is likely to commit, an offence against a law of the Commonwealth;

the authorised officer may, in writing, request an issuing authority in relation to the card to provide to the authorised officer, within 7 days after receiving the request, the required identity information in respect of the other person. The issuing authority must comply with the request.

(2A) If a person has issued a security identification card to another person in respect of an airport appointed under section 15, an authorised officer may, at any time, in writing, request an issuing authority in relation to the card to provide to the authorised officer, within 7 days after receiving the request, information for the purposes of updating required identity information previously

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provided in respect of the other person under subsection (1) or this subsection. The issuing authority must comply with the request.

(2B) If a security identification card expires or is revoked, an issuing authority in relation to the card must notify an authorised officer of the expiry or revocation within 7 days after it occurs.

(3) A person does not comply with an obligation under subsection (1), (2), (2A) or (2B) to provide information unless the person provides the information:

(a) in writing; or

(b) in such other form as the Comptroller-General of Customs determines in writing.

(4) In this section:

issuing authority, in relation to a security identification card, means any of the following:

(a) the person who issued the card;

(b) a person who is authorised to perform the functions, or exercise the powers, of the person who issued the card.

required identity information has the meaning given by section 213A.

security identification card has the meaning given by section 213A.

Subdivision J—General powers to monitor and audit

214AA Occupier of premises

In this Subdivision:

occupier of premises includes a person who is apparently in charge of the premises.

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214AB What are *monitoring powers*?

Monitoring powers

(1) For the purposes of this Subdivision, the following are ***monitoring powers***:

(a) the power to search premises;

(b) the power to take photographs (including a video recording), or make sketches, of premises or anything at premises;

(c) the power to inspect, examine, count, measure, weigh, gauge, test or analyse, and take samples of, anything in or on premises;

(d) the power to inspect any document or record in or on premises;

(e) the power to take extracts from, or make copies of, any document or record in or on premises;

(f) the power to take into or onto premises any equipment or material reasonably necessary for the purpose of exercising a power under paragraph (a), (b), (c), (d) or (e);

(g) the power to test and operate record-keeping, accounting, computing or other operating systems of any kind that are at premises and may be used to generate or record information or documents of a kind that may be communicated to the Department;

(h) the power to secure a thing that:

(i) is found during a search of premises; and

(ii) a monitoring officer believes on reasonable grounds affords evidence of the commission of an offence against a Customs-related law and may be lost, destroyed or tampered with;

until a warrant is obtained to seize the thing or 72 hours elapses after the securing of the thing, whichever first occurs;

(i) the powers in subsections (2) and (3).

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Power to operate equipment to check information

(2) For the purposes of this Subdivision, ***monitoring powers*** include the power to operate equipment at premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is at the premises; and

(ii) can be used with the equipment or is associated with it;

contains information that is relevant to assessing:

(c) whether a person is complying with a Customs-related law; or

(d) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or

(e) the correctness of information communicated by a person to the Department (whether in documentary or other form).

Power to copy information found by operating equipment

(3) For the purposes of this Subdivision, ***monitoring powers*** include the following powers in relation to information described in subsection (2) that is found in the exercise of the power under that subsection:

(a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;

(b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device:

(i) that is brought to the premises for the exercise of the power; or

(ii) that is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;

(c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

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214AC Monitoring officers

*Who is a **monitoring officer**?*

(1) A ***monitoring officer*** is an officer who is authorised by the Comptroller-General of Customs under this section to enter premises and exercise monitoring powers (whether the authorisation applies generally, during a specified period or in or on specified premises).

Who may be authorised to be a monitoring officer

(2) The Comptroller-General of Customs must not authorise an officer to enter premises and exercise monitoring powers unless the Comptroller-General of Customs is satisfied that the officer is suitably qualified, because of the officer's abilities and experience, to exercise those powers.

Authorising officers to exercise monitoring powers

(3) The Comptroller-General of Customs may authorise in writing an officer to enter premises and exercise monitoring powers:
  (a) generally; or
  (b) during a specified period; or
  (c) in or on specified premises; or
  (d) during a specified period in or on specified premises.

Availability of assistance and use of force in exercising monitoring powers

(4) In entering premises and exercising monitoring powers:
  (a) a monitoring officer may obtain such assistance; and
  (b) a monitoring officer or a person assisting a monitoring officer may use such force against things;

as is necessary and reasonable in the circumstances.

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Monitoring powers to be used only as authorised

(5) This Subdivision does not allow:

(a) an officer who is authorised to enter premises and exercise monitoring powers during a specified period to enter the premises or exercise the powers at a time outside that period; or

(b) an officer who is authorised to enter, and exercise monitoring powers in or on, specified premises to enter, or to exercise the powers in or on, other premises.

214ACA Monitoring officer to notify occupier of premises of the occupier's rights and obligations

Before exercising monitoring powers in respect of premises, a monitoring officer must give to the occupier of the premises a written notice setting out the occupier's rights and obligations under this Subdivision.

214AD Notice of proposal to exercise monitoring powers

Before seeking consent under section 214AE to enter premises and exercise monitoring powers there, a monitoring officer may give to the occupier of the premises written notice stating that the officer wishes to enter the premises and exercise monitoring powers and specifying the period from the giving of the notice during which the officer wishes to exercise the powers.

Note: If the occupier had, before a notice is given under section 214AD, made to the Department a statement that was false or misleading, a voluntary notification made by the occupier after the notice is given is not a defence to a prosecution for an offence against section 243T or 243U in respect of the statement.

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214AE Exercise of monitoring powers with consent

(1) A monitoring officer may enter, and exercise monitoring powers in or on, premises to the extent that it is reasonably necessary for the purpose of assessing:

(a) whether a person is complying with a Customs-related law; or

(b) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or

(c) the correctness of information communicated by a person to the Department (whether in documentary or other form).

(2) However, a monitoring officer must not enter premises under this section unless the occupier of the premises has consented to the monitoring officer entering, and exercising monitoring powers in or on, the premises.

(3) Before obtaining such a consent, a monitoring officer must tell the occupier of the premises that he or she can refuse consent.

(4) A consent may be expressed to be limited to entry to, and the exercise of monitoring powers in or on, the premises to which the consent relates during a particular period unless the consent is withdrawn before the end of that period.

(5) A consent that is not limited as mentioned in subsection (4) has effect in relation to any entry to, and any exercise of monitoring powers in or on, the premises to which the consent relates until the consent is withdrawn.

(6) Before a monitoring officer enters premises or exercises any monitoring powers, he or she must produce his or her identity card to the occupier.

(7) A monitoring officer must leave the premises if the occupier withdraws the consent.

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(8) A consent, or a withdrawal of consent, does not have effect unless the consent or withdrawal is in writing.

214AF Exercise of monitoring powers under a warrant

(1) A monitoring officer may apply to a magistrate for a warrant under this section in relation to particular premises.

(2) The magistrate must issue a warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the monitoring officer should have access to the premises for the purpose of assessing:

(a) whether a person is complying with a Customs-related law; or

(b) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or

(c) the correctness of information communicated by a person to the Department (whether in documentary or other form).

(3) If the magistrate requires further information about the grounds on which the issue of the warrant is applied for, he or she must not issue the warrant until the monitoring officer or someone else has given the magistrate the further information, either orally (on oath or affirmation) or by affidavit.

(4) The warrant must:

(a) state the purpose for which the warrant is issued; and

(b) identify the premises to which the warrant relates; and

(c) name the monitoring officer who is responsible for executing the warrant; and

(d) authorise any monitoring officer named in the warrant to enter the premises and exercise monitoring powers from time to time while the warrant remains in force, with such assistance, and using such force against things, as are necessary and reasonable; and

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(e) state the hours during which entry under the warrant is authorised to be made; and

(f) specify the day (not more than 6 months after the day of issue of the warrant) on which the warrant ceases to have effect.

(5) A magistrate in a particular State or Territory may issue a warrant in respect of premises in another State or Territory.

214AG Warrants may be granted by telephone or other electronic means

(1) A monitoring officer may apply to a magistrate for a warrant in relation to premises by telephone, telex, fax or other electronic means (of any kind):

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

(3) An application under this section must include all information required to be provided in an application for a warrant under section 214AF but the application may, if necessary, be made before the information is sworn.

(4) The magistrate must complete and sign the same form of warrant used under section 214AF as soon as he or she:

(a) has considered the information included in the application under this section, and the further information (if any) required by him or her; and

(b) is satisfied that:

(i) a warrant in the terms of the application should be issued urgently; or

(ii) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

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(5) If the magistrate decides to issue the warrant, the magistrate is to tell the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day and time when it was signed.

(6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day and time when the warrant was signed.

(7) The applicant must give or send to the magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn. The applicant must do so not later than the day after the earlier of the following days:

(a) the day of expiry of the warrant;

(b) the day on which the warrant was first executed.

(8) The magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

(9) If:

(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and

(b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

214AH Monitoring officer may ask questions

(1) If a monitoring officer is in or on premises that he or she entered with the consent of the occupier of the premises, the officer may request the occupier to answer any questions put by the monitoring officer, but the occupier is not obliged to comply with the request.

(2) If a monitoring officer is in or on premises that he or she has entered under a warrant issued under section 214AF or 214AG, the

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officer may require any person on the premises to answer any questions put by the monitoring officer.

Note: Failure to answer a question put under this subsection may be an offence. See section 243SA.

214AI Monitoring officer may ask for assistance

(1) If a monitoring officer is in or on premises that he or she entered with the consent of the occupier of the premises under section 214AE, the officer may request the occupier to provide reasonable assistance to the officer at any time while the officer is entitled to remain in or on the premises, but the occupier is not obliged to comply with the request.

(2) If a monitoring officer is in or on premises that he or she entered under a warrant issued under section 214AF or 214AG, the officer may require the occupier to provide reasonable assistance to the officer at any time while the officer is entitled to remain on the premises.

(3) The monitoring officer may request or require the assistance for the purpose of the exercise of monitoring powers by the officer in relation to the premises.

(4) A person must not fail to comply with a requirement made of the person under subsection (2).

Penalty: 30 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

214AJ Compensation for damage to electronic equipment

(1) This section applies if:

(a) damage is caused to equipment as a result of it being operated as mentioned in subsection 214AB(2); or

(b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;

because:

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(c) insufficient care was exercised in selecting the person who was to operate the equipment; or

(d) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay to the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as they agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings against the Commonwealth in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1), ***damage to data*** includes damage by erasure of data or addition of other data.

214B Powers of officers for purposes of *Customs Tariff (Anti-Dumping) Act 1975*

(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 or she shall, if requested to do so by the occupier

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or person in charge of the premises, produce for inspection written evidence of the fact that he or she is an authorized officer and, if he or she fails to do so, he or she 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 or her powers under subsection (1).

Penalty: 10 penalty units.

(4) An authorized officer may, by notice signed by him or her, require a person whom he or she 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 or her at the time and place specified in the notice and there to answer questions and produce to him or her 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).

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(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 the person or make him or her liable to a penalty, but the person's answer to any such question or the production by him or her of any such accounts, books, documents or other records is not admissible in evidence against him or her 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 or her 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 or she will give to questions asked of him or her will be true.

(9) A person shall not refuse or fail:

(a) to attend before an authorized officer; or

(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: 10 penalty units.

(10) Subsection (9) does not apply if the person has a reasonable excuse.

Subdivision JA—Powers to monitor and audit—Australia-United States Free Trade Agreement

214BAA Simplified outline

The following is a simplified outline of this Subdivision:

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- This Subdivision allows certain officers (***verification officers***) to enter premises, and to exercise certain powers (***AUSFTA verification powers***) in or on the premises, for the purpose of verifying information relating to the export, production or transportation of textile and clothing goods that are exported to the US.
- However, verification officers may only enter premises under this Subdivision with the occupier's consent.
- In entering premises and exercising AUSFTA verification powers, verification officers may be accompanied by US customs officials, but only with the occupier's consent.

214BAB Definitions

In this Subdivision:

Agreement means the Australia-United States Free Trade Agreement done at Washington DC on 18 May 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible through the website of the Department of Foreign Affairs and Trade.

AUSFTA verification powers has the meaning given by section 214BAC.

Harmonized System has the same meaning as in section 153YA.

occupier of premises includes a person who is apparently in charge of the premises.

textile and clothing goods means goods that are classified to:

(a) subheading 4202.12, 4202.22, 4202.32 or 4202.92 of Chapter 42 of the Harmonized System; or
(b) any of Chapters 50 to 63 of the Harmonized System; or
(c) heading 7019 of Chapter 70 of the Harmonized System; or

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(d) subheading 9409.90 of Chapter 94 of the Harmonized System.

US means the United States of America.

US customs official means a person representing the customs administration of the US.

verification officer means a person authorised under section 214BAD to enter premises and to exercise AUSFTA verification powers.

214BAC AUSFTA verification powers

(1) For the purposes of this Subdivision, the following are the ***AUSFTA verification powers***:

(a) the power to search premises;

(b) the power to take photographs (including a video recording), or make sketches, of premises or anything at premises;

(c) the power to inspect, examine, count, measure, weigh, gauge, test or analyse, and take samples of, anything in or on premises;

(d) the power to inspect any document or record in or on premises;

(e) the power to take extracts from, or make copies of, any document or record in or on premises;

(f) the power to take into or onto premises any equipment or material reasonably necessary for the purpose of exercising a power under paragraph (a), (b), (c), (d) or (e);

(g) the power to test and operate record-keeping, accounting, computing or other operating systems of any kind that are at premises and may be used to generate or record information or documents of a kind that may be communicated to the Department;

(h) the powers in subsections (2) and (3).

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Operation of equipment

(2) For the purposes of this Subdivision, the ***AUSFTA verification powers*** include the power to operate equipment at premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is at the premises; and

(ii) can be used with the equipment or is associated with it;

contains information that is relevant to the verification of information relating to the export, production or transportation of textile and clothing goods that are exported to the US.

Removing documents and disks etc.

(3) For the purposes of this Subdivision, the ***AUSFTA verification powers*** include the following powers in relation to information described in subsection (2) that is found in the exercise of the power under that subsection:

(a) the power to operate equipment or other facilities at the premises to put the information in documentary form and remove the documents so produced;

(b) the power to operate equipment or other facilities at the premises to transfer the information to a disk, tape or other storage device:

(i) that is brought to the premises for the exercise of the power; or

(ii) that is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;

and to remove the disk, tape or other storage device from the premises.

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214BAD Appointment of verification officers

(1) The Comptroller-General of Customs may, by writing, authorise an officer to enter premises, and to exercise AUSFTA verification powers in or on premises, for the purposes of this Subdivision.

Who may be authorised to be a verification officer

(2) The Comptroller-General of Customs must not do so unless the Comptroller-General of Customs is satisfied that the officer is suitably qualified, because of the officer's abilities and experience, to exercise AUSFTA verification powers.

Form of authorisation

(3) An authorisation may apply:
  (a) generally; or
  (b) during a specified period; or
  (c) in or on specified premises; or
  (d) during a specified period in or on specified premises.

AUSFTA verification powers to be used only as authorised

(4) This Subdivision does not allow:
  (a) an officer who is authorised to enter premises and exercise AUSFTA verification powers during a specified period to enter the premises or exercise the powers at a time outside that period; or
  (b) an officer who is authorised to enter specified premises and to exercise AUSFTA verification powers in or on the premises to enter other premises or to exercise the powers in or on the other premises.

214BAE Verification officers may enter premises and exercise AUSFTA verification powers with consent

(1) A verification officer may enter premises, and exercise AUSFTA verification powers in or on the premises, to the extent that it is

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reasonably necessary for the purpose of verifying information relating to the export, production or transportation of textile and clothing goods that are exported to the US.

Occupier's consent required

(2) However, a verification officer must not enter premises under this section unless the occupier of the premises consents to the officer entering the premises and exercising AUSFTA verification powers in or on the premises.

(3) Before obtaining a consent under subsection (2), a verification officer must give to the occupier of the premises a written notice stating:

(a) that the officer wishes to enter the premises and exercise AUSFTA verification powers in or on the premises; and

(b) the period during which the officer wishes to exercise the powers; and

(c) the name of any US customs official who the officer proposes will accompany the officer.

(4) Before obtaining a consent under subsection (2), a verification officer must tell the occupier of the premises that the occupier may refuse consent.

(5) An occupier of premises may express a consent to be limited to entry to the premises, and to the exercise of AUSFTA verification powers in or on the premises, during a particular period unless the occupier withdraws the consent before the end of that period.

(6) An occupier's consent that is not so limited has effect in relation to any entry to the premises, and to any exercise of AUSFTA verification powers in or on the premises, until the occupier withdraws the consent.

Verification officer must leave premises if consent withdrawn

(7) A verification officer must leave the premises if the occupier withdraws the consent.

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Consent to be voluntary

(8) A consent of a person does not have effect for the purposes of this section unless it is voluntary.

Consent, or withdrawal of consent, to be in writing

(9) A consent of a person, or a withdrawal of consent by a person, does not have effect for the purposes of this section unless it is in writing.

Notice setting out the occupier's rights and obligations

(10) Before exercising AUSFTA verification powers in respect of premises, a verification officer must give to the occupier of the premises a written notice setting out the occupier's rights and obligations under this Subdivision.

Production of identity card

(11) Before a verification officer enters premises or exercises any AUSFTA verification powers, he or she must produce his or her identity card to the occupier.

214BAF US customs officials may accompany verification officers

Occupier's consent required

(1) In entering premises and exercising AUSFTA verification powers, a verification officer may be accompanied by one or more US customs officials, but only if the officer obtains the consent of the occupier of the premises to those officials accompanying the officer.

(2) Before obtaining such a consent, a verification officer must tell the occupier of the premises that the occupier may refuse consent.

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US customs officials must leave premises if consent withdrawn

(3) The US customs officials must leave the premises if the occupier withdraws the consent.

Consent to be voluntary

(4) A consent of a person does not have effect for the purposes of this section unless it is voluntary.

Consent, or withdrawal of consent, to be in writing

(5) A consent of a person, or a withdrawal of consent by a person, does not have effect for the purposes of this section unless it is in writing.

214BAG Availability of assistance in exercising AUSFTA verification powers

In entering premises and exercising AUSFTA verification powers, a verification officer may obtain such assistance as is necessary and reasonable in the circumstances.

214BAH Verification officer may ask questions

(1) If a verification officer is in or on premises that he or she entered under this Subdivision, the officer may request the occupier to answer any questions put by the officer.

(2) The occupier is not obliged to comply with the request.

214BAI Verification officer may ask for assistance

(1) If a verification officer is in or on premises that he or she entered under this Subdivision, then, while the officer is entitled to remain in or on the premises, the officer may request the occupier to provide reasonable assistance to the officer for the purpose of the officer's exercise of AUSFTA verification powers in or on the premises.

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(2) The occupier is not obliged to comply with the request.

214BAJ Verification officer may disclose information to US

A verification officer may disclose any information obtained in exercising AUSFTA verification powers to a US customs official for the purpose of a matter covered by Article 4.3 of the Agreement.

214BAK Operation of electronic equipment at premises

A person may operate electronic equipment at premises in order to exercise a power under this Subdivision only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

214BAL Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of equipment being operated as mentioned in section 214BAC:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal

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Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

damage, in relation to data, includes damage by erasure of data or addition of other data.

Subdivision K—Miscellaneous

214BA Nature of functions of magistrate under sections 203S and 205E

(1) A function of making an order conferred on a magistrate by section 203S or 205E is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), an order made by a magistrate under section 203S or 205E has effect only by virtue of this Act and is not taken, by implication, to be made by a court.

(3) A magistrate performing a function of, or connected with, making an order under section 203S or 205E has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).

(4) The Governor-General may make arrangements with the Governor of a State, the Chief Minister of the Australian Capital Territory or the Administrator of the Northern Territory for the performance, by all or any of the persons who from time to time hold office as

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magistrates in that State or Territory, of the function of making orders under section 203S or 205E.

215 Collector may impound documents

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.

217 Translations of foreign invoices

If any document in a foreign language be presented to any officer for any purpose connected with the Customs Acts, 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 or she may require.

218 Samples

Samples of any goods under customs control may for any purpose deemed necessary by the Collector be taken utilized and disposed of by any officer in manner prescribed.

218A Disposal of certain abandoned goods

(1) If a Collector has reason to believe that goods found at a Customs place:

(a) are not required to be, or are not able to be, entered for home consumption; and

(b) have been abandoned by their owner;

the Collector may take steps to dispose of the goods in any manner he or she thinks appropriate.

(2) For the purposes of subsection (1), a Collector is taken to have reason to believe that goods found at a Customs place have been

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abandoned if a period prescribed for the purposes of this subsection, not exceeding 120 days, has passed since the goods were found at that place and no person has claimed ownership of the goods.

(3) If the Collector sells the goods, any expenses incurred by the Commonwealth in collecting and housing them and ultimately arranging for their disposal may be offset against any money realised on their sale.

(4) Nothing in this provision prevents a person, at any time after the end of the prescribed period in relation to particular goods found at a Customs place, from seeking compensation for those goods in accordance with section 4AB.

(5) For the purposes of this section, the Collector must ensure that there is created and maintained a record, in writing, specifying, in respect of particular goods found at a Customs place:

(a) the date on which and place at which the goods were found; and

(b) if the goods are subsequently disposed of—the date and manner of their disposal; and

(c) if the goods are sold—the amount realised on their sale and any amount offset against that amount in accordance with subsection (3).

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Division 1B—Detention and search of suspects

Subdivision A—Detention and frisk search of suspects

219L Detention for frisk search

(1) Where a detention officer suspects on reasonable grounds that a person is unlawfully carrying any prohibited goods on his or her body, an officer of Customs may, while a person is at a designated place, detain the person at the place for the purposes of being searched under this Subdivision.

(1A) If:

(a) officers have boarded a ship, aircraft or installation under section 187 for the purpose of conducting a search, or exercising any other power, under that section, in relation to that ship, aircraft or installation; and

(b) a detention officer suspects on reasonable grounds that a person who is on board the ship, aircraft or installation is unlawfully carrying prohibited goods on his or her body;

the detention officer may detain the person for the purpose of being searched under this Subdivision.

(2) Without limiting the generality of subsection (1) or (1A), a suspicion on reasonable grounds for the purposes of that subsection includes a suspicion reasonably formed on the basis of any of the following:

(a) the person's travel itinerary, including plans in relation to places that have been visited or are intended to be visited by the person;

(b) declarations or statements made under a law of the Commonwealth by the person in the course of arriving in or departing from Australia;

(c) documents in the person's possession, including passports, visas or tickets;

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(d) unusual behaviour of the person observed by or reported to an officer of Customs;

(e) the contents of or appearance of any visible item carried by the person or, if the person has baggage, of the person's baggage, whether or not carried by the person;

(f) the answers given by the person in relation to questions asked by an officer of Customs in the exercise of powers under this Act, or the refusal or failure of the person to answer such questions;

(g) the documents produced by the person in compliance with an obligation under this Act, or the refusal or failure of the person to produce such documents.

219M Frisk search

(1A) If a person is detained under section 219L, an officer of Customs may:

(a) carry out a frisk search of the person to determine whether the person is unlawfully carrying prohibited goods; and

(b) recover any prohibited goods found in the course of the frisk search.

(1) A frisk search of a person detained under section 219L is not to be carried out unless it is carried out:

(a) as soon as practicable after the detainee is detained; and

(b) by an officer of Customs who is of the same sex as the detainee.

(2) Before carrying out the frisk search of a person who is detained in a designated place that is a section 234AA place, the officer of Customs must:

(a) advise the detainee of the detainee's right to request that the search be carried out in an area of the place of detention that would, in the opinion of the Comptroller-General of Customs, provide adequate personal privacy to the detainee during the search; and

(b) if the detainee so requests, take the detainee to such an area.

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(3) If the detainee is detained at a designated place other than a section 234AA place, then, in the conduct of a frisk search of the detainee, the officer conducting the search must use his or her best endeavours to give the detainee as much personal privacy as the circumstances of the search allow.

219N Power to require the production of things

The officer of Customs carrying out a frisk search of a person detained in the circumstances referred to in subsection 219L(1) or (1A) may require the production of any thing found, as a result of that search, to be carried on the body of the detainee in order to determine whether it is, or contains, prohibited goods unlawfully carried by the detainee.

219P Persons to whom section 219R applies

Section 219R applies to a person detained under subsection 219L(1) or (1A) if:

(a) the detainee refuses to submit to a frisk search under this Subdivision; or

(b) the detainee, having submitted to the frisk search, refuses to produce a thing that he or she is required to produce under section 219N.

Subdivision B—Detention and external search of suspects

219Q Detention for external search

(1) Where a detention officer or police officer suspects on reasonable grounds that a person is unlawfully carrying any prohibited goods on his or her body, an officer of Customs or police officer may detain the person for the purposes of being searched under this Subdivision.

(2) Where a person is so detained, an officer of Customs or police officer must, as soon as practicable, take the person to:

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(a) a detention place that the officer considers suitable for the detention of the person for the purposes of this Subdivision; or

(b) a place (other than a detention place):

(i) if the person is detained by a detention officer—that, in the opinion of the Comptroller-General of Customs, affords adequate personal privacy to the person; or

(ii) if the person is detained by a police officer—that, in the police officer's opinion, affords adequate personal privacy to the person.

219R External search

External search by consent or order

(1) Where:

(a) by force of section 219P, this section applies to a person detained under section 219L; or

(b) a detention officer or police officer suspects on reasonable grounds that a person detained under section 219Q is unlawfully carrying prohibited goods on his or her body;

then:

(c) if:

(i) there are reasonable grounds to believe that the detainee is not in need of protection; and

(ii) the detainee consents to be searched; and

(iii) the requirements of section 219RAA are met in respect of that consent;

an officer of Customs or police officer must, as soon as practicable, carry out an external search of the detainee; or

(d) in any other case, the detention officer or police officer must, as soon as practicable, apply to a Justice or, in the circumstances set out in subsection (1A), to an authorised officer, for an order for an external search of the detainee.

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(1A) The detention officer or police officer may apply to an authorised officer only if:

(a) the detainee has waived his or her right to have the application for an order considered by a Justice; or

(b) a Justice is not reasonably available to consider such an application.

Making an order for an external search

(2) Subject to subsection (3), the person to whom an application is made may order that an external search of the detainee be carried out.

Note: A copy of the order is to be given to the detainee (or the person in whose presence the external search is to be carried out) under section 219ZAD.

(3) The person must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is unlawfully carrying prohibited goods.

Order for release of detainee

(4) Where the person does not make such an order, he or she must order that the detainee be released immediately.

Detainee in need of protection

(5) If an external search of the detainee is ordered and the person making the order is satisfied that the detainee is in need of protection, the person must order that the search be carried out in the presence of:

(a) the detainee's legal guardian; or

(b) a specified person (not being an officer of Customs or a police officer) who is capable of representing the detainee's interests in relation to the search.

(6) So far as is practicable, a person mentioned in an order under subsection (5) as the person in whose presence an external search is to be carried out must be acceptable to the detainee.

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Communicating with others

(7) Subject to subsection (8), the detainee may at any time communicate with another person.

(8) An officer of Customs or police officer may stop the detainee from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person.

Carrying out external search

(9) Where:

(a) an external search of the detainee is ordered; and

(b) a detention officer or police officer still suspects on reasonable grounds that the detainee is unlawfully carrying prohibited goods;

the detention officer or police officer must ensure that an external search of the detainee is carried out as soon as practicable.

(10) The search must be carried out:

(a) by an officer of Customs or a police officer; and

(b) in accordance with the order and this section.

(11) An external search of the detainee is to be carried out by a person who is of the same sex as the detainee.

External search using prescribed equipment

(11A) Prescribed equipment may be used in carrying out the external search if, and only if, consent to the use of the equipment in carrying out the search has been given by the detainee and the requirements of section 219ZAA are met.

Note 1: Section 219ZAB deals with regulations prescribing equipment.

Note 2: A detainee may be given, under section 219ZAD, a copy of the record of the invitation to consent and any consent of the detainee.

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Note 3: Any photograph or image taken using the prescribed equipment must be destroyed in accordance with section 219ZAE.

(11B) If use of the prescribed equipment involves samples from the detainee's body, the equipment may be used in the search only with samples from the outer surface of the detainee's hand.

Note: Any samples taken must be destroyed in accordance with section 219ZAE.

(11C) To avoid doubt, the search may be continued without the use of the prescribed equipment if the use of the equipment produces an indication that the detainee is or may be carrying prohibited goods.

Questioning a detainee

(12) While:

(a) a person is detained under section 219L and, by force of section 219P, this section applies to the person; or

(b) a person is detained under section 219Q;

a detention officer or police officer may question the person:

(c) for the purpose of carrying out an external search of the person under this section; or

(d) concerning any prohibited goods found to have been illegally carried by the person on his or her body as a result of the carrying out of an external search of the person under this section.

(13) The detention officer or police officer must not question the detainee under subsection (12) unless the detention officer or police officer has informed the detainee:

(a) that the detainee is not obliged to answer any questions asked of him or her; and

(b) that anything said by him or her may be used in evidence; and

(c) of his or her right to communicate with another person.

*Meaning of **authorised officer***

(14) In this section:

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authorised officer means an officer of Customs who is a member of a class of officers of Customs declared by the Comptroller-General of Customs to be authorised officers in relation to particular circumstances or places.

219RAA Videotape record may be made of external search

(1) In inviting a detainee to consent to an external search, an officer of Customs must have told the detainee:

(a) that a videotape or other electronic record may be made of the external search; and

(b) that, if such a record is made, the record could be used in evidence against the detainee in a court; and

(c) that, if such a record is made, a copy of the record will be provided to the detainee; and

(d) that the invitation, and any giving of consent, was being or would be itself recorded by audiotape, videotape or other electronic means or in writing.

Note: Any videotape or electronic record made of an external search must be destroyed in accordance with section 219ZAE.

(2) The invitation to consent and any giving of consent must have been recorded by audiotape, videotape or other electronic means or in writing.

Note: A detainee may be given, under section 219ZAD, a copy of the record of the invitation to consent and any consent of the detainee.

(3) The officer making the videotape or other electronic record must be of the same sex as the detainee.

(4) If, in the absence of consent by the detainee to an external search, an application is made for an order under subsection 219R(2) for an external search, that order may authorise the making of a videotape or other electronic record of the external search.

(5) If, in the course of carrying out an external search, an officer of Customs or a police officer finds evidence that the detainee is unlawfully carrying prohibited goods, that officer may, without the

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further consent of the detainee, take a photograph of the prohibited goods on the detainee.

Note: Any photograph taken must be destroyed in accordance with section 219ZAE.

Subdivision C—Detention and internal search of persons suspected of internally concealing substances etc.

219RA Certain Judges and Magistrates eligible to give orders under this Subdivision

(1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Federal Circuit and Family Court of Australia (Division 1) may, by writing, consent to be nominated by the Minister under subsection (2).

(2) The Minister may, by writing, nominate a Judge of a court referred to in subsection (1) in relation to whom a consent is in force under that subsection to be a Division 1B Judge.

219S Initial detention

(1) If a detention officer or police officer suspects on reasonable grounds that a person is internally concealing a suspicious substance, an officer of Customs or police officer may detain the person for the purposes of:

(a) carrying out an internal non-medical scan under section 219SA; or

(b) enabling an application to be made under section 219T for an order for the person to be detained.

(2) If the person is so detained, an officer of Customs or police officer:

(a) must, as soon as practicable, take the person to the nearest detention place that the officer considers suitable for the detention of the person for the purposes of this Subdivision; and

(b) may detain the person at that place for those purposes.

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Note: See also subsections 219Z(3) to (6) for places at which a person can be detained if an internal medical search of the person is carried out.

219SA Internal non-medical scan using prescribed equipment

(1) If a person has been detained under section 219S, an officer of Customs may carry out an internal non-medical scan of the person, as soon as practicable, if:

(a) there are reasonable grounds to believe that the detainee is not in need of protection; and

(b) the detainee consents to an internal non-medical scan using equipment prescribed for the purposes of this subsection; and

(c) the requirements of section 219ZAA are met in inviting the detainee to so consent.

(2) An internal non-medical scan of a detainee must be carried out:

(a) using equipment prescribed for the purposes of subsection (1); and

(b) by an officer who is authorised for the purposes of subsection 219ZAA(3) to use that equipment.

Note 1: The officer must also be the same sex as the detainee (see subsection 219ZAA(3)).

Note 2: Any photograph or image taken using the prescribed equipment must be destroyed in accordance with section 219ZAE.

219SB Seeking detention order following invitation to consent to internal non-medical scan

If a person has been detained under section 219S, the Comptroller-General of Customs or a police officer must, as soon as practicable, apply for an order under section 219T that the detainee be detained if:

(a) the detainee has been invited to consent to an internal non-medical scan using equipment prescribed for the purposes of subsection 219SA(1); and

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(b) any of the following apply:

(i) the detainee does not consent to the internal non-medical scan;

(ii) the internal non-medical scan of the detainee is begun but not completed, and a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance;

(iii) after carrying out the internal non-medical scan of the detainee, a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance; and

(c) subsection 219V(2) does not apply (consent to internal medical search).

Note 1: An officer of Customs or a police officer must arrange for an internal medical search of the detainee by a medical practitioner if subsection 219V(2) applies.

Note 2: The detainee must be released under section 219ZE if no detention officer suspects on reasonable grounds that the detainee is concealing a suspicious substance.

219T Initial order for detention

(1A) This section applies if:

(a) a person is detained under section 219S; and

(b) subsection 219V(2) does not apply (consent to internal medical search); and

(c) for a person who has been invited to consent to an internal non-medical scan using prescribed equipment—the Comptroller-General of Customs or a police officer is required, under section 219SB, to apply for an order under this section.

(1) The Comptroller-General of Customs or a police officer must, as soon as practicable, apply:

(a) if there are reasonable grounds to suspect that the person is in need of protection—to a Division 1B Judge; or

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(b) in any other case—to a Division 1B Judge or a Division 1B Magistrate;

for an order that the detainee be detained.

(2) Subject to subsection (3), the Judge or Magistrate may order that the detainee be detained under this section for a period of 48 hours from:

(a) the time at which the detention began; or

(b) the time at which the order is made;

as the Judge or Magistrate thinks fit.

(3) The Judge or Magistrate must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

(4) Where the Judge or Magistrate does not make such an order, he or she must order that the detainee be released immediately.

(5) Where:

(a) a Judge or Magistrate orders that a detainee be detained under this section; and

(b) the Judge or Magistrate is satisfied that the detainee is in need of protection;

the Judge or Magistrate must appoint a person (not being an officer of Customs or police officer) to represent the detainee's interests in relation to this Division until the detainee is no longer in need of protection.

(6) So far as is practicable, a person so appointed must be acceptable to the detainee.

219U Renewal of order for detention

(1) Where:

(a) a person is being detained under an order under section 219T; and

(b) a detention officer or police officer decides that a further period of detention is necessary in order to determine

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whether the person is internally concealing a suspicious substance;

the Comptroller-General of Customs or a police officer may apply:

(c) if there are reasonable grounds to suspect that the detainee is in need of protection—to a Division 1B Judge; or

(d) in any other case—to a Division 1B Judge or a Division 1B Magistrate;

for an order that the detainee be further detained.

(2) Subject to subsection (3), the Judge or Magistrate may order that the detainee be further detained under this section for a period of 48 hours from the end of the period for which the unexpired order is in force.

(3) The Judge or Magistrate must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

(4) Where the Judge or Magistrate does not make such an order, he or she must order that, at the end of the period for which the unexpired order is in force, the detainee be released immediately.

219V Arrangement for internal medical search

Application of section

(1) This section applies only so long as a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance.

Consent to internal medical search

(2) If:

(a) there are no reasonable grounds to believe that the detainee is in need of protection; and

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(b) the detainee signs a written consent to an internal medical search;

an officer of Customs or police officer must, as soon as practicable, arrange for an internal medical search of the detainee.

Note: A detainee may be given, under section 219ZAD, a copy of the consent of the detainee.

Application for order for internal medical search

(3) If:

(a) there are no reasonable grounds to believe that the detainee is in need of protection; and

(b) the detainee has been detained under section 219U; and

(c) the detainee has not signed a written consent to an internal medical search;

the Comptroller-General of Customs or a police officer must, before the end of the period of detention under that section, apply to a Division 1B Judge for an order for an internal medical search of the detainee.

(4) If there are reasonable grounds to believe that the detainee is in need of protection, the Comptroller-General of Customs or a police officer must:

(a) if a person has been appointed under subsection 219T(5) or 219X(3) to represent the detainee's interests in relation to this Division and that person consents to an internal medical search of the detainee—as soon as practicable after the consent is given; or

(b) if paragraph (a) does not apply, and the detainee has been detained under section 219U—before the end of the period of that detention;

apply to a Division 1B Judge for an order for an internal medical search of the detainee.

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Extension of detention period

(5) After the end of a period of detention under section 219S, 219T or 219U, the detainee may be further detained by force of this subsection:

(a) if subsection (2) applies—until the internal medical search is completed; or

(b) if subsection (3) or (4) applies—until an order under this section is granted.

Order for internal medical search

(6) Subject to subsections (9) and (10), the Judge may order that:

(a) an internal medical search of the detainee be carried out, the search to start:

(i) if consent to the search has been given under paragraph (4)(a)—as soon as practicable after the order is made and no later than a time specified in the order; or

(ii) in any other case—no sooner than the end of the period of detention under section 219U, but as soon as practicable after the end of that period and no later than a time specified in the order; and

(b) the detainee be detained for so long as is reasonably necessary for the internal medical search to be completed.

Order for release

(7) Where the Judge does not make such an order, he or she must order that the detainee be released immediately.

Extension of time for starting internal medical search

(8) Subject to subsections (9) and (10), on an application made by the Comptroller-General of Customs or a police officer within the time specified in an order under paragraph (6)(a), or the time as extended under this subsection, the Judge may extend that time.

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Limitation on making order

(9) The Judge must not make an order under subsection (6), or grant an extension of time under subsection (8), unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

Time for starting internal medical search

(10) Subject to subsection (11), the time specified in an order under paragraph (6)(a), including that time as extended under subsection (8), must not be later than 48 hours after:
  (a) if the detainee is being detained under section 219S, 219T or 219U—the end of the period of that detention; or
  (b) if the detainee is being detained under subsection (5)—the time when that detention began.

(11) If the Judge is satisfied that the detainee will refuse, or has refused, to submit to an internal medical search in spite of an order having been made under subsection (6), the time specified in the order under paragraph (6)(a), including that time as extended under subsection (8), is to be such time as the Judge considers appropriate in order to allow an internal medical search to be carried out.

219W Detention under this Subdivision

(1) A person detained under this Subdivision may at any time:
  (a) consult a lawyer; or
  (b) subject to subsection (3), communicate with another person.

(2) Where a person detained under this Subdivision wishes to consult a lawyer, an officer of Customs or police officer must arrange for the person to consult a lawyer of the person's choice.

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(3) An officer of Customs or police officer may stop a person so detained from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person.

(4) While a person is being detained under an order under this Subdivision, or has consented to an internal search under this Subdivision, a detention officer or police officer may ask the person such questions as are reasonable:

(a) to determine whether the person is internally concealing a suspicious substance; or

(b) concerning any such substance found to have been internally concealed by the person.

(5) The detention officer or police officer must not question the detainee under subsection (4) unless the detention officer or police officer has informed the detainee:

(a) that the detainee is not obliged to answer any questions asked of him or her; and

(b) that anything said by him or her may be used in evidence; and

(c) of his or her right to consult a lawyer or communicate with another person.

(6) While the person is detained under an order made under this Subdivision:

(a) subject to section 219ZG, the person is to be detained at a detention place; and

(b) the detention is to be conducted with such medical supervision as is specified in an order relating to the person's detention under this Subdivision; and

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(c) the detainee, his or her representative or (where applicable) a person appointed under subsection 219T(5) or 219X(3) to represent the detainee's interests in relation to this Division may at any time apply to:

(i) if the order was made by a Judge—a Division 1B Judge; or

(ii) if the order was made by a Magistrate—a Division 1B Judge or a Division 1B Magistrate;

for the order to be revoked.

219X Detainee becoming in need of protection

(1) If:

(a) at any time while a person is being detained under this Subdivision, there are reasonable grounds to believe that the detainee has become in need of protection; and

(b) until that time, the detainee has not been treated under this Subdivision as being in need of protection;

the Comptroller-General of Customs or a police officer must, as soon as practicable, apply for an order under this section.

(2) The application is to be made:

(a) if the person is being detained under an order made by a Division 1B Judge or Division 1B Magistrate—to such a Judge or Magistrate, as the case may be; or

(b) if not—to a Division 1B Judge.

(3) The Judge or Magistrate must, if satisfied that the detainee is in need of protection, appoint a person (not being an officer of Customs or a police officer) to represent the detainee's interests in relation to this Division until the detainee is no longer in need of protection.

(4) So far as is practicable, a person so appointed must be a person acceptable to the detainee.

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219Y Applications for orders under this Subdivision

(1) A detainee must be given adequate opportunity to obtain legal advice and legal representation in relation to an application for an order under this Subdivision.

(2) An application under this Subdivision may be made orally or in writing and, subject to subsection (5), must be made in person, and on oath or affirmation, at a hearing before the relevant Judge or Magistrate.

(3) Subject to subsection (4), the detainee has the right to be present at, to make submissions to, and to be represented before, any hearing before the Judge or Magistrate.

(4) The Judge or Magistrate, to the extent that he or she thinks necessary to:

(a) safeguard the processes of law enforcement; or

(b) protect the life and safety of any person;

may:

(c) restrict the rights under subsection (3) of the detainee to hear or have access to evidence presented by or on behalf of the Comptroller-General of Customs or a police officer; or

(d) order that a witness not be required to answer a question or to produce a document.

(5) Where it is not practicable to make an application under this Subdivision in person, the application may be made by telephone or any other appropriate method of communication, and:

(a) if the Judge or Magistrate so requires—the detainee or the detainee's representative is to be given an opportunity to make submissions to the Judge or Magistrate by the same method of communication; and

(b) as soon as practicable after making the application, the Comptroller-General of Customs or a police officer must give the Judge or Magistrate a statutory declaration setting out the facts and reasons supporting the application.

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219Z Internal medical search by medical practitioner

(1) An internal medical search is to be carried out by a medical practitioner.

(2) Where the detainee is in need of protection, the search is to be carried out in the presence of the person appointed under subsection 219T(5) or 219X(3).

(3) Subject to subsection (5), the search is to be carried out at a place that:
  (a) is specified in regulations made for the purposes of this subsection; or
  (b) is provided with the technical, paramedical and other services prescribed for the purposes of this subsection.

(4) If the person is not being detained at such a place, an officer of Customs or police officer must, as soon as practicable:
  (a) take the person to the nearest such place that the officer considers, on reasonable grounds, to be suitable for the search; and
  (b) continue the person's detention at that place.

(5) The recovery, during the search, of a substance or thing internally concealed by the detainee is to be carried out at a place that:
  (a) is specified in regulations made for the purposes of this subsection; or
  (b) is provided with the technical, paramedical and other services prescribed for the purposes of this subsection.

(6) If the person is not being detained at such a place, an officer of Customs or police officer must:
  (a) take the person to the nearest such place that the officer considers, on reasonable grounds, to be suitable for the recovery; and
  (b) continue the person's detention at that place.

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Subdivision CA—Prescribed equipment for external searches and internal non-medical scans

219ZAA Use of prescribed equipment for external search or internal non-medical scan

Requirements in inviting consent

(1) In inviting a detainee to consent to the use of prescribed equipment in an external search, or to an internal non-medical scan using prescribed equipment, an officer of Customs must tell the detainee the following:

(a) what the prescribed equipment is;

(b) the purpose for which the prescribed equipment would be used;

(c) that use of the prescribed equipment could produce evidence against the detainee that could be used in a court;

(d) what known risk (if any) would be posed to the detainee's health by use of the prescribed equipment;

(e) the procedure for the use of the prescribed equipment;

(f) that the prescribed equipment would be used by an officer of Customs authorised to use the equipment;

(g) in the case of an external search—that the search would be continued without the use of the prescribed equipment should use of the equipment indicate that the detainee was or might be carrying prohibited goods;

(h) in the case of an internal non-medical scan—that an order may be sought for the detainee to be detained, and for an internal medical search of the detainee to be carried out, if:

(i) the detainee does not consent to the internal non-medical scan; or

(ii) after carrying out an internal non-medical scan of the detainee, a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance;

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(i) in any case—that the invitation, and any giving of consent, was being or would be recorded by audiotape, videotape or other electronic means or in writing;

(j) that the detainee is entitled to a copy of those records.

Note: A detainee may be given, under section 219ZAD, a copy of the record of the invitation to consent and any consent of the detainee.

(2) The invitation to consent and any consent must be recorded by audiotape, videotape or other electronic means or in writing.

Equipment to be operated by officer of same sex as detainee

(3) The prescribed equipment must be operated by an authorised officer who is of the same sex as the detainee.

Note: Section 219ZAC deals with authorisation of an officer to operate equipment.

219ZAB Prescribing equipment for use in external searches and internal non-medical scans

Equipment that may be prescribed for external searches

(1) For the purposes of subsection 219R(11A), the regulations may prescribe only equipment that can produce an indication that a person is or may be carrying prohibited goods on his or her body.

Equipment that may be prescribed for internal non-medical scans

(2) For the purposes of subsection 219SA(1), the regulations may prescribe only equipment that can produce an indication that a person is or may be internally concealing a suspicious substance.

(2A) Any equipment prescribed under subsection (2) must be configured so that the equipment's use, when carrying out an internal non-medical scan, is limited to that necessary to produce an indication that a person is or may be internally concealing a suspicious substance.

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Requirement for statement from Comptroller-General of Customs

(3) Before the Governor-General makes a regulation prescribing equipment for the purposes of subsection 219R(11A) or 219SA(1), the Minister must obtain from the Comptroller-General of Customs a statement that:

(a) the equipment can safely be used to detect prohibited goods or suspicious substances (as the case requires); and

(b) use of the equipment poses no risk, or minimal risk, to the health of a person whom the equipment is used to search; and

(c) a person does not require professional qualifications to operate the equipment.

Consultation with relevant authorities

(4) Before making a statement under subsection (3), the Comptroller-General of Customs must consult any Commonwealth authorities (if any) that have expertise or responsibilities relevant to the matters addressed by the statement.

(5) The Comptroller-General of Customs must table, before each House of the Parliament, a copy of any advice received under subsection (4) within 7 sitting days of that House after the day on which the statement is given to the Minister.

219ZAC Authorising officers to use prescribed equipment for external search or internal non-medical scan

(1) The Comptroller-General of Customs may authorise an officer of Customs for the purposes of subsection 219ZAA(3) to use prescribed equipment only if the officer has successfully completed the training, specified in writing by the Comptroller-General of Customs, in the operation of that equipment.

(2) The specification made under subsection (1) is not a legislative instrument.

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219ZAD Giving a record of invitation and consent, or a copy of order

Record of invitation to consent and consent

(1) If the detainee requests it, an officer of Customs must give the detainee, as soon as reasonably practicable:
  (a) a copy of the record of an invitation to consent:
    (i) to an external search under section 219R; or
    (ii) to the use of prescribed equipment in the conduct of an external search; or
    (iii) to an internal non-medical scan using prescribed equipment; and
  (b) if the detainee gave consent—a copy of the record of the detainee's consent.

(2) If a detainee requests it, an officer of Customs must give the detainee, as soon as reasonably practicable, a copy of the record of the detainee's consent to an internal medical search.

Copy of order for external search

(3) If an order for an external search of a detainee is made under subsection 219R(2), a copy of the order is to be given, as soon as reasonably practicable:
  (a) unless paragraph (b) applies—to the detainee; or
  (b) if the detainee is in need of protection—to the person in whose presence the external search is to be carried out.

219ZAE Records of results of external search or internal non-medical scan

(1) This section applies to any of the following (the ***search record***) produced in the course of an external search of a detainee under section 219R, or an internal non-medical scan of a detainee:
  (a) a videotape or other electronic record of an external search of the detainee;

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(b) a photograph or image of the detainee's body taken using equipment prescribed for the purposes of subsection 219R(11A) or 219SA(1);

(c) a photograph taken in the circumstances described in subsection 219RAA(5);

(d) a sample from the outer surface of the detainee's hand taken using equipment prescribed for the purposes of subsection 219R(11A).

Requirement for search record to be destroyed

(2) A search record must be destroyed as soon as practicable if:

(a) a period of 12 months has elapsed since the search record was made or produced (subject to subsection (3)); and

(b) proceedings against the detainee, relating to prohibited goods or suspicious substances, in respect of which the search record is relevant:

(i) have not been instituted; or

(ii) have been discontinued.

(3) A magistrate may extend the period of 12 months (or that period as previously extended under this subsection) referred to in paragraph (2)(a) in relation to a search record if:

(a) an officer of Customs or the Director of Public Prosecutions applies for the extension; and

(b) the magistrate is satisfied that there are special reasons for doing so.

(4) A search record must (subject to subsection (5)) be destroyed as soon as practicable if:

(a) the detainee is found to have committed a relevant offence (see subsection (7)) but no conviction is recorded; or

(b) the detainee is acquitted of a relevant offence and:

(i) no appeal is lodged against the acquittal; or

(ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn.

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Retention of search record pending destruction

(5) Despite subsection (4), a search record may be retained if:
  (a) an investigation is pending into another relevant offence (see subsection (7)); or
  (b) a proceeding is pending against the detainee for another relevant offence.

(6) The regulations must provide for the secure storage of any search record pending its ultimate destruction.

*Meaning of **relevant offence***

(7) For the purposes of this section, an offence is a ***relevant offence***, in relation to a search record, if:
  (a) the offence relates to prohibited goods or a suspicious substance; and
  (b) the search record relates to the offence.

Subdivision D—Detention generally

219ZA Detention officers

(1) The Comptroller-General of Customs may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision A.

(2) The Comptroller-General of Customs may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision B.

(3) The Comptroller-General of Customs may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision C.

219ZB Detention places

(1) A place that is:
  (a) prescribed for the purposes of this subsection; or

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(b) provided with amenities that satisfy standards prescribed for the purposes of this subsection;

is a detention place for the purposes of Subdivision B.

(2) A place that is:

(a) prescribed for the purposes of this subsection; or

(b) provided with amenities that satisfy standards prescribed for the purposes of this subsection;

is a detention place for the purposes of Subdivision C.

219ZC Detention under this Division

(1) An officer of Customs or police officer exercising powers under this Division in relation to a person must produce identification as such an officer when requested by the person to do so.

(2) An officer of Customs or police officer exercising powers under this Division in relation to a person must not use more force, or subject the person to greater indignity, than is reasonable and necessary.

(2A) Without otherwise limiting the application of subsection (2), the use of force in actually conducting an external search of a detainee will be regarded as reasonable and necessary:

(a) if an order has been made by a Justice under section 219R and the detainee does not submit to the search; or

(b) if an order has been made under that section by an authorised officer because a Justice was not reasonably available and the detainee does not submit to the search.

(3) While a person is being taken to a particular place under this Division (except under subsection 219ZE(3)) the person is regarded as being detained under this Division.

(4) While a person is being detained under this Division, the person is regarded as being in the custody of:

(a) if the person is being detained by an officer of Customs—the Comptroller-General of Customs; or

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(b) if the person is being detained by a member of the Australian Federal Police—the Commissioner of Police; or

(c) if the person is being detained by a member of the Police Force of a State or Territory—the person who holds, in relation to that Police Force, the same office as the Commissioner of Police holds in relation to the Australian Federal Police.

219ZD Detainees not fluent in English

(1) Where an officer of Customs or police officer detaining a person under this Division has reasonable cause to believe that the person is unable, because of inadequate knowledge of the English language or for any other reason, to communicate orally with reasonable fluency in the English language, the officer must take all reasonable steps to ensure that, at all times during the person's detention when communication with or by the person is to take place, a person competent to act as an interpreter is present and acts as interpreter for the purposes of the communication.

(2) Subsection (1) does not apply if the person detained and the person with whom he or she is communicating are able:

(a) to communicate in a language other than the English language with reasonable fluency; or

(b) to communicate satisfactorily by any other means.

219ZE Release from, or cessation of, detention

(1) In spite of any other provision of this Division, but subject to subsection (2) and section 219ZG, where a person is detained under this Division and:

(a) an order is made under this Division that the person be released; or

(b) an order for the detention of the person is revoked; or

(c) an order for the detention of the person has ended and subsection 219V (5) does not apply; or

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(ca) if the detention is under Subdivision A—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods on his or her body; or

(d) if the detention is under Subdivision B—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods on his or her body; or

(e) if the detention is under Subdivision C—no detention officer suspects on reasonable grounds that the person is internally concealing a suspicious substance; or

(f) an internal medical search of the person is completed;

the detention, and any search, of the person under this Division must cease immediately.

(2) Subsection (1) does not prevent a further application of this Division, or the detention of the person under any law other than this Division.

(3) If:

(a) the detainee is released at any place other than the place at which he or she was first detained; and

(b) the detainee so requests;

the detainee must immediately be returned free of charge to the place of the first detention.

Subdivision E—Medical practitioners

219ZF Conduct of internal medical search

(1) Subject to subsection (2), a medical practitioner may, in carrying out an internal medical search of a detainee under section 219Z, use any medical procedure or apparatus that the medical practitioner considers to be reasonably safe in the circumstances.

(2) The medical practitioner must not use any medical procedure involving surgical incision unless he or she considers it necessary to do so because the detainee's life is at risk.

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(3) If the medical practitioner:

(a) suspects on reasonable grounds during the internal medical search that the detainee is internally concealing a substance or thing; and

(b) lacks sufficient expertise to recover it;

he or she must, as soon as practicable, arrange for another medical practitioner having that expertise to do so.

219ZG Medical practitioner may take action to preserve detainee's life

(1) A medical practitioner may take such measures in relation to a detainee, including removal to another place, as the medical practitioner considers necessary because the detainee's life is at risk, including measures involving surgical incision or exploration.

(2) While the detainee is being so removed to a place, and while he or she is at that place:

(a) he or she may be detained under this subsection; and

(b) time is not to be taken to run under an order made under Subdivision C.

219ZH Medical practitioner to answer questions and prepare report

(1) Subject to subsection (4), at any time during the period during which a medical practitioner is involved in doing anything under this Division, an officer of Customs or police officer may ask the medical practitioner questions relating to whether an internal search of the detainee should be carried out, the manner in which such a search is being carried out or the results of such a search, and the medical practitioner must answer those questions to the best of his or her ability.

(2) As soon as practicable after completing anything done under this Division, the medical practitioner or medical practitioners involved must give to the chief officer of the person who detained the detainee a written report under subsection (3).

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(3) The report is to be in accordance with directions given by the chief officer concerned.

(4) Subsections (1), (2) and (3) are not limited by any law relating to privilege or confidentiality.

(5) A report prepared under subsection (3) and given to a chief officer under subsection (2) is, in any proceedings under this Act, prima facie evidence of the facts stated in the report.

(6) In this section:

chief officer means:

(a) in relation to an officer of Customs—the Comptroller-General of Customs; or

(b) in relation to a member of the Australian Federal Police—the Commissioner of Police; or

(c) in relation to a member of the Police Force of a State or Territory—the person who holds, in relation to that Police Force, the same office as the Commissioner of Police holds in relation to the Australian Federal Police.

219ZJ Proceedings against medical practitioners

Proceedings, other than proceedings concerning negligently causing injury, do not lie against a medical practitioner, or any person assisting or providing facilities to a medical practitioner, in respect of anything done by the medical practitioner under this Division.

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Division 1BA—Detention and search of persons for purposes of law enforcement co-operation

Subdivision A—Preliminary

219ZJA Definitions

In this Division, unless the contrary intention appears:

Commonwealth offence has the same meaning as in Part 1C of the *Crimes Act 1914*.

frisk search has the same meaning as in Division 1 of Part XII.

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

ordinary search has the same meaning as in Division 1 of Part XII.

prescribed State or Territory offence means an offence prescribed for the purposes of section 219ZJAA.

serious Commonwealth offence means an offence against a law of the Commonwealth that is punishable on conviction by imprisonment for 12 months or more.

219ZJAA Prescribed State or Territory offences

(1) The regulations may prescribe offences against the laws of a State or a Territory that are punishable on conviction by imprisonment for a term of at least 3 years.

(2) An offence against a law of a State or Territory must not be prescribed unless:

(a) the Attorney-General of that State or Territory and the Minister (***Police Minister***) responsible for the administration of that State's or Territory's police force have jointly

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requested the Minister that the offence be prescribed for the purposes of this Division; or

(b) if the Attorney-General of the State or Territory is also the Police Minister of the State or Territory—the Attorney-General has requested the Minister that the offence be prescribed for the purposes of this Division.

Subdivision B—Powers to detain

219ZJB Detention of person suspected of committing serious Commonwealth offence or prescribed State or Territory offence

(1) An officer may detain a person if:

(a) the person is in a designated place; and

(b) the officer has reasonable grounds to suspect that the person has committed, is committing or intends to commit a serious Commonwealth offence or a prescribed State or Territory offence.

(2) The officer must advise a police officer of the person's detention as soon as practicable after detaining the person.

(3) An officer who is detaining a person under this section must ensure that the person is made available, as soon as practicable, to a police officer to be dealt with according to law.

(4) If an officer who is detaining a person under this section ceases to have reasonable grounds to suspect that the person has committed, was committing or was intending to commit a serious Commonwealth offence or a prescribed State or Territory offence, the officer must release the person from detention immediately.

(5) Subject to subsection (7), if a person is detained under this section for a period of greater than 2 hours, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.

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(6) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or another person.

(7) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard national security, the security of a foreign country or the processes of law enforcement; or

(b) protect the life and safety of any person.

Note: In relation to references in this section to family member, see also section 4AAA.

219ZJC Detention of person subject to warrant or bail condition

(1) An officer may detain a person if:

(a) the person is in a designated place; and

(b) the officer has reasonable grounds to suspect that the person intends to leave the designated place; and

(c) either:

(i) there is a warrant for the arrest of the person in relation to a Commonwealth offence or a prescribed State or Territory offence; or

(ii) the person is on bail in relation to a Commonwealth offence or a prescribed State or Territory offence and subject to a bail condition (however expressed) that, if complied with, prevents the person from leaving Australia.

(2) The officer must advise a police officer of the person's detention as soon as practicable after detaining the person.

(3) An officer who is detaining a person under this section must ensure that the person is delivered, as soon as practicable, into the custody of a police officer to be dealt with according to law.

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(4) Subject to subsection (6), if a person is detained under this section for a period of greater than 45 minutes, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.

(5) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or another person.

(6) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard national security, the security of a foreign country or the processes of law enforcement; or

(b) protect the life and safety of any person.

Note: In relation to references in this section to family member, see also section 4AAA.

219ZJCA Detention of person for national security or security of a foreign country

(1) An officer may detain a person if:

(a) the person is in a designated place; and

(b) the officer is satisfied on reasonable grounds that the person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country.

(2) An officer who is detaining a person under this section must (subject to subsection (3)) ensure that the person is made available, as soon as practicable, to a police officer in person to be dealt with according to law.

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(3) An officer who is detaining a person under this section must release the person from that detention immediately if:

(a) the officer ceases to be satisfied on reasonable grounds that the person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country; or

(b) the person is made available to a police officer under subsection (2); or

(c) a police officer indicates that the police force to which the police officer belongs has no interest in the person.

(4) Subject to subsection (6), if a person is detained under this section for more than 2 hours, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.

(5) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or the other person.

(6) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard national security, the security of a foreign country or the processes of law enforcement; or

(b) protect the life and safety of any person.

Note: In relation to references in this section to family member, see also section 4AAA.

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Subdivision C—Matters affecting detention generally

219ZJD Search of person detained under this Division

(1) An officer may, in relation to a person detained under this Division:

(a) conduct a frisk search or an ordinary search of the person; and

(b) search the clothing that the person is wearing and any property under the person's immediate control, if the officer believes on reasonable grounds that it is necessary to do so;

for the purposes of:

(c) determining whether there is concealed on the person, or in the person's clothing or property, a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from detention; or

(d) in the case of a person detained under section 219ZJB—preventing the concealment, loss or destruction of evidence of, or relating to, the offence concerned; or

(e) in the case of a person detained under section 219ZJCA—preventing the concealment, loss or destruction of material of interest for national security or the security of a foreign country.

(2) A search under this section must be conducted:

(a) as soon as practicable after the person is detained; and

(b) by an officer of the same sex as the detained person.

(3) An officer who conducts a search under this section may seize:

(a) any weapon or thing mentioned in paragraph (1)(c); and

(b) anything the officer has reasonable grounds to believe is a thing:

(i) with respect to which an offence has been committed; or

(ii) that will afford evidence of the commission of an offence; or

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(iii) that was used, or intended to be used, for the purpose of committing an offence; or

(iv) that is of interest for national security or the security of a foreign country.

(4) An officer who seizes a weapon or other thing under subsection (3) must ensure that it is made available to:

(a) the police officer to whom the person is made available under subsection 219ZJB(3) or 219ZJCA(2); or

(b) the police officer into whose custody the person is delivered under subsection 219ZJC(3).

219ZJE Comptroller-General of Customs must give directions about detaining persons under this Division

The Comptroller-General of Customs must, by legislative instrument, give directions:

(a) identifying places at which an officer is permitted to detain a person under this Division (whether by their character under this Act, the amenities available at the places or any other matters); and

(b) specifying such other matters relating to the detention of persons under this Division as the Comptroller-General of Customs considers appropriate.

219ZJF Detainees to be given reasons for detention and shown identification on request

(1) An officer who detains a person under section 219ZJB or 219ZJC must inform the person, at the time the officer detains the person, of the reason for the person's detention.

(2) Subsection (1) does not apply if the person, by the person's own actions, makes it impracticable for the officer to inform the person of the reason.

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(3) An officer exercising powers under this Division in relation to a person must produce identification that he or she is an officer when requested by the person to do so.

219ZJG Use of force in relation to detention

(1) An officer exercising powers under this Division in relation to a person must not use more force, or subject the person to greater indignity, than is reasonable and necessary.

(2) Without limiting the generality of subsection (1), an officer must not, in detaining or attempting to detain a person under this Division, or preventing or attempting to prevent a detained person from escaping from detention under this Division, do an act likely to cause death or grievous bodily harm to the person, unless the officer believes on reasonable grounds that doing the act is necessary to protect life or prevent serious injury to the officer or any other person.

219ZJH Moving detained persons

(1) While a person is being taken to a particular place under this Division (except under subsection (2)), the person is regarded as being detained under this Division.

(2) If:

(a) a person detained under this Division is released at any place other than the place at which he or she was first detained; and

(b) the person so requests;

the person must immediately be returned free of charge to the place of the first detention.

219ZJI Detainees not fluent in English

Section 219ZD applies to an officer detaining a person under this Division as if the detention under this Division were detention under Division 1B of this Part.

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Note: Section 219ZD requires the officer to take reasonable steps to ensure that a competent interpreter is available for the purposes of communication.

219ZJJ Detention of minors

(1) Subject to subsection (2), an officer who under this Division detains a person who is known or believed to be a minor must:

(a) inform the minor of the right for a parent or guardian or person described in paragraph (c) to be notified of the minor's detention; and

(b) upon the request of the minor, take all reasonable steps to notify such person and inform them of:

(i) the fact that the minor has been detained; and

(ii) the place in which the minor is being held; and

(iii) the place to which the minor is to be transferred by police, if that place is known at the time of contacting the minor's parent or guardian; and

(iv) the reason for the minor's detention, unless the minor is detained under section 219ZJCA; and

(c) if a parent or guardian is not acceptable to the detained minor under this subsection, the detained minor may request that another person who is capable of representing the interests of the minor be notified.

(2) An officer who under this Division detains a person who is known or believed to be a minor may refuse to notify a parent or guardian or person described in paragraph (1)(c) of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:

(a) safeguard national security, the security of a foreign country or the processes of law enforcement; or

(b) protect the life and safety of any person.

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(3) If at the time of notifying the parent or guardian, the officer is not aware of the place referred to in subparagraph (1)(b)(iii), the officer must:

(a) contact the parent or guardian or other person described in paragraph (1)(c) immediately after that place becomes known to the officer; and

(b) inform the parent or guardian of that place.

(4) An officer who under this Division detains a person who is known or believed to be a minor must, at the time of advising a police officer of the minor's detention in accordance with subsection 219ZJB(2) or 219ZJC(2), advise the police officer of the fact that the detained person is a minor, or is believed to be a minor.

(5) For the purposes of this section, a minor is considered to be any person under the age of 18 years.

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Division 1C—Judges and Magistrates

219ZK Nature of functions of Judge or Magistrate

(1) Where this Part confers on a Judge or Magistrate the function of issuing a warrant or giving an order, the function is so conferred on the Judge or Magistrate in a personal capacity and not as a court or a member of a court.

(2) Without limiting the generality of subsection (1), a warrant or order issued or given by a Judge or Magistrate under this Part has effect only by virtue of this Act and is not to be taken by implication to be issued or given by a court.

219ZL Protection of Judge or Magistrate

(1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Federal Circuit and Family Court of Australia (Division 1) has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

(2) A Judge of the Supreme Court of a State, or a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in subsection (1), has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as if he or she were performing that function as that Supreme Court or as a member of that Supreme Court.

(3) A Magistrate performing a function of, or connected with, issuing a warrant or giving an order under this Part has the same protection and immunity as if he or she were performing that function as a Magistrates Court or as a member of a Magistrates Court.

(3AA) A Judge, or acting Judge, of the Local Court of New South Wales performing a function of, or connected with, issuing a warrant or

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giving an order under this Part has the same protection and immunity as if he or she were performing that function as that Local Court or as a Judge of that Local Court.

(3A) A Judge, or acting Judge, of the Local Court of the Northern Territory performing a function of, or connected with, issuing a warrant or giving an order under this Part has the same protection and immunity as if he or she were performing that function as that Local Court or as a Judge of that Local Court.

(4A) No civil or criminal action is to be brought against a Justice in respect of anything done, or omitted to be done, in performing the function of, or a function connected with, making an order under section 219R.

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Division 2—Protection to officers

220 Reasonable cause for seizure a bar to action

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.

221 Notice of action to be given

No proceedings shall be commenced against any officer for anything done in execution of or by reason of his or her office until one month next after notice in writing shall have been delivered to him or her or left at his or her usual place of abode by the plaintiff, or the plaintiff's 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.

222 Defect in notice not to invalidate

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 or her defence and the Court may give leave to amend such notice as it thinks just.

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223 No evidence to be produced but that contained in notice

Upon any proceeding instituted in pursuance of such notice the plaintiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in such notice nor shall the plaintiff be entitled to a verdict without proving on the trial that such notice has been duly served.

224 Officer may tender amends

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, or to the plaintiff's 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 or she shall be entitled to costs if he or she shall have brought the amount into court when entering his or her defence.

225 Commencement of proceedings against officers

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.

226 Time for commencing action

(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.

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(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 an instrument made 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 registration of the instrument under the *Legislation Act 2003*, or the day on which the period of 6 months from the date of registration of the instrument under the *Legislation Act 2003* expires, whichever is the earlier day; or

(b) where, on or before the earlier of the days referred to in the last preceding paragraph, a Customs Tariff or Customs Tariff alteration that would validate the thing so done is proposed in the Parliament—the close of the session in which the Customs Tariff or Customs Tariff alteration is so proposed, or the expiration of 12 months after the Customs Tariff or Customs Tariff alteration is so proposed, whichever first happens.

227 Security may be required

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.

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Division 3—Evidence

227AA Evidence may be used in prosecutions etc.

(1) To avoid doubt, if, when exercising powers under this Act, an officer obtains evidence of the commission of an offence against Part 9.1 of the *Criminal Code*, then that evidence may be used, or given to another body for use, in:

(a) investigating the offence; or

(b) proceedings for the prosecution for the offence.

(2) To avoid doubt, if, when exercising powers under this Act, an officer obtains evidence of the commission of an offence against Subdivision B of Division 72 of the *Criminal Code*, then that evidence may be used, or given to another body for use, in:

(a) investigating the offence; or

(b) proceedings for the prosecution for the offence.

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Part XIIA—Special provisions relating to prohibited items

227A Overview of Part

This Part deals with certain items on board a ship or an aircraft that is in Australia after arriving in Australia from a place outside Australia. The Part empowers an officer, under certain circumstances:

(a) to approve a storage place on the ship or aircraft for the purpose of safekeeping the item; or

(b) to take the item into custody;

for a period that ends when the ship or aircraft departs from Australia or otherwise ceases to be subject to this Part.

227B Definitions

In this Part:

operator means:

(a) in relation to a ship—the owner or master of the ship; and

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

prohibited item means a thing to which this Part applies because of section 227D.

227C Ships and aircraft to which this Part applies

(1) This Part applies to a ship if:

(a) the ship is in Australia after undertaking a voyage to Australia from a place outside Australia; and

(b) the ship is not a ship that is taken to have been imported into Australia under subsection 49A(7).

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(2) This Part applies to an aircraft if:

(a) the aircraft is in Australia after undertaking a flight to Australia from a place outside Australia; and

(b) the aircraft is not an aircraft that is taken to have been imported into Australia under subsection 49A(7).

(3) This Part ceases to apply to a ship when:

(a) the ship has departed from its last port in Australia for a place outside Australia; or

(b) the ship is taken to have been imported into Australia under subsection 49A(7).

(4) This Part ceases to apply to an aircraft when:

(a) the aircraft has departed from its last airport in Australia for a place outside Australia; or

(b) the aircraft is taken to have been imported into Australia under subsection 49A(7).

(5) If:

(a) this Part ceased to apply to a ship because the ship has departed from its last port in Australia as mentioned in paragraph (3)(a); but

(b) the ship returns to Australia before completing a voyage to a place outside Australia;

then, subject to paragraph (1)(b) and subsection (3), this Part applies to the ship after it has so returned as if it has just undertaken a voyage to Australia from a place outside Australia.

(6) If:

(a) this Part ceased to apply to an aircraft because the aircraft has departed from its last airport in Australia as mentioned in paragraph (4)(a); but

(b) the aircraft returns to Australia before completing a flight to a place outside Australia;

then, subject to paragraph (2)(b) and subsection (4), this Part applies to the aircraft after it has been so returned as if it has just undertaken a flight to Australia from a place outside Australia.

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227D Items to which this Part applies

This Part applies to any thing if:

(a) it is on board a ship or an aircraft to which this Part applies; and

(b) its importation is:

(i) prohibited absolutely by the *Customs (Prohibited Imports) Regulations 1956*; or

(ii) prohibited by those regulations unless a licence, permission, consent, approval or other document (however described) is granted or given, and such a licence, permission, consent, approval or other document has not been granted or given; and

(c) either:

(i) it is, or should have been, specified in a report given by the operator under section 64AAA as part of the stores of the ship or aircraft; or

(ii) it is part of the personal effects of the crew of the ship or aircraft.

227E Approved storage for prohibited items

(1) An officer may, in writing, approve a place on board a ship or an aircraft to which this Part applies as a place in which a prohibited item on board that ship or aircraft must be stored while this Part applies to the ship or aircraft.

(2) An officer must not give the approval unless the officer is satisfied that:

(a) only the operator concerned may access the place; and

(b) the place is otherwise sufficiently secure for the purposes of preventing persons from removing the item from the place.

Example: If a safe on board a ship is sought to be approved under subsection (1), the approval may not be given if a person other than the operator of the ship holds a key to the safe.

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(3) An officer may place a fastening, or a lock, mark or seal on an approved place for the purposes of preventing persons from accessing that place.

(4) If an approval under subsection (1) is not revoked at an earlier time, it continues to be in force until this Part ceases to apply to the ship or aircraft concerned.

(5) While an approval under subsection (1) is in force in relation to a prohibited item, a person must not:

(a) interfere in any way with any fastening, lock, mark or seal placed on the approved place by an officer; or

(b) remove the item from the approved place.

Penalty: 60 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

(7) Subsection (5) does not apply if the person has the written permission of an officer for the interference or removal.

227F Officer may take custody of items

(1) If:

(a) this Part applies to a prohibited item on board a ship or aircraft; and

(b) no approval under section 227E is in force in relation to a place on board that ship or aircraft as the place for storing that item;

an officer must take custody of that item.

(2) Within 48 hours after taking custody of the item, an officer must give a written notice to the operator of the ship or aircraft under this section.

(3) The notice must be in an approved form.

(4) Without limiting subsection (3), the notice must identify the prohibited item concerned.

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(5) The Comptroller-General of Customs must ensure that an item taken into custody under this section is:

(a) securely stored while it is in custody under this section; and

(b) returned to the operator of the ship or aircraft concerned:

(i) if subparagraph (ii) does not apply—when the ship is at its last port of call in Australia, or when the aircraft is at its last airport of call in Australia, and after a Certificate of Clearance referred to in section 118 has been granted in relation to the departure of that ship from that port, or the departure of the aircraft from that airport (as the case requires); or

(ii) when this Part ceases to apply to the ship or aircraft because it is taken to have been imported into Australia under subsection 49A(7).

(6) To avoid doubt, subsection (5) does not affect the power of an officer to seize or otherwise deal with the item under this Act (including provisions in this Act relating to prohibited goods) when this Part ceases to apply to the ship or aircraft concerned.

(7) After an item is returned to the operator under subsection (5) and before the ship or aircraft leaves Australia, the operator concerned must comply with any conditions specified by the Comptroller-General of Customs in relation to the storage of that item.

227G Compensation for damage etc. to items

(1) If:

(a) an activity undertaken by or on behalf of the Commonwealth in relation to a prohibited item taken into custody under this Part causes the loss or destruction of, or damage to, that item; and

(b) the loss, destruction or damage occurred wholly or partly as a result of:

(i) insufficient care being exercised in selecting the persons to undertake the activity; or

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(ii) insufficient care being exercised by the person undertaking that activity;

compensation for the loss, destruction or damage is payable to the owner of the item concerned.

(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

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Part XIII—Penal Provisions

Division 1—Forfeitures

228 Forfeited ships and aircraft

(1) The following ships, boats and aircraft shall be forfeited to the Crown:

(a) Any ship or aircraft used in smuggling, or knowingly used in the unlawful importation, exportation, or conveyance of any prohibited imports or prohibited exports.

(b) Any ship the master of which has failed to facilitate, by all reasonable means, the boarding of his or her ship, under the *Maritime Powers Act 2013*, in circumstances set out in subsection (2) or (3).

(c) Any aircraft failing to land at an airport or landing field for boarding upon its pilot being required to land the aircraft, under the *Maritime Powers Act 2013*, in circumstances set out in subsection (4), (5) or (6).

(d) Any ship or aircraft from which goods are thrown overboard staved or destroyed to prevent seizure by an officer of Customs.

(e) 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.

(f) Any ship or aircraft which on being boarded is found to be constructed, adapted, altered or fitted in any manner for the purpose of concealing goods.

(2) The circumstances are:

(a) the ship is a foreign ship; and

(b) the ship is on the landward side of the outer edge of Australia's territorial sea; and

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(c) the boarding is for the purposes of this Act or an Act prescribed by the regulations, or for the purposes of determining whether a contravention, or an attempted contravention, in Australia of section 72.13 or Division 307 of the *Criminal Code* is occurring.

(3) The circumstances are:

(a) the ship is an Australian ship; and

(b) the ship is outside the territorial sea of any foreign country; and

(c) the boarding is for the purposes of this Act or an Act prescribed by the regulations, or for the purposes of determining whether a contravention, or an attempted contravention, in Australia of section 72.13 or Division 307 of the *Criminal Code* is occurring.

(4) The circumstances are:

(a) either:

(i) the aircraft is an Australian aircraft over anywhere except a foreign country; or

(ii) the aircraft is a foreign aircraft over Australia; and

(b) the requirement to land is made:

(i) in relation to the operation of this Act; and

(ii) because the pilot of the aircraft has failed to comply with a requirement made in the exercise of aircraft identification powers.

(5) The circumstances are:

(a) either:

(i) the aircraft is an Australian aircraft over anywhere except a foreign country; or

(ii) the aircraft is a foreign aircraft over Australia; and

(b) an authorising officer reasonably suspects that the aircraft is or has been involved in a contravention, or attempted contravention, of this Act or section 72.13 or Division 307 of the *Criminal Code*.

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(6) The circumstances are:

(a) either:

(i) the aircraft is an Australian aircraft over anywhere except a foreign country; or

(ii) the aircraft is a foreign aircraft over Australia; and

(b) an authorising officer reasonably suspects that the aircraft is carrying goods satisfying either or both of the following subparagraphs:

(i) the goods are connected, whether directly or indirectly, with the carrying out of a terrorist act, whether a terrorist act has occurred, is occurring or is likely to occur;

(ii) the existence or the shipment of the goods prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.

228A Forfeited resources installations

Any overseas resources installation that becomes attached to the Australian seabed without the permission of the Comptroller-General of Customs given under subsection 5A(2) shall be forfeited to the Crown.

228B Forfeited sea installations

Any overseas sea installation that becomes installed in a coastal area without the permission of the Comptroller-General of Customs given under subsection 5B(2) shall be forfeited to the Crown.

228C Forfeited offshore electricity installations

An offshore electricity installation is forfeited to the Crown if the installation:

(a) was an overseas offshore electricity installation immediately prior to being installed in the Commonwealth offshore area; and

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(b) is installed in that area without the permission of the Comptroller-General of Customs granted under subsection 5BA(4).

229 Forfeited goods

(1) The following goods shall be forfeited to the Crown:

(a) All goods (not being objects forfeited, or liable to forfeiture, under the *Protection of Movable Cultural Heritage Act 1986*) which are smuggled, or unlawfully imported, exported, or conveyed.

(b) All prohibited imports.

(ba) All goods the importation of which has been prohibited unless a licence or permission containing conditions or requirements has been granted and those conditions or requirements have not been complied with.

(bb) Any goods sold under section 206 or 209J or sold or otherwise disposed of under section 208D or 209K 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.

(da) All restricted goods brought into Australia other than in accordance with a permission under subsection 233BABAE(2).

(e) All goods found on any ship or aircraft after arrival in any port or airport and not being specified or referred to in the cargo report made under section 64AB and not being baggage belonging to the crew or passengers and not being satisfactorily accounted for.

(f) All goods in respect of which bulk is unlawfully broken.

(g) All goods subject to customs control that are moved, altered or interfered with except as authorized by this Act.

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(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.

(na) All goods that are the subject of a notice under subsection 112BA(1) and are put on any ship or aircraft for export or are 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 or she has any dutiable goods in his or her possession, or who when questioned by an officer has not fully disclosed that such goods are in his or her possession or baggage.

(qa) If unaccompanied personal or household effects of a person are imported into Australia—all dutiable goods that are found among those effects, where the person has denied that there are any dutiable goods among the effects, or after having been questioned by an officer has not fully disclosed that there are such goods among the effects.

(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 *Road Vehicle Standards Act 2018*.

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(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*.

(4) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Product Emissions Standards Act 2017*.

229A Proceeds of drug trafficking liable to forfeiture

(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 or her possession or under his or her control by reason of:

(i) the person selling or otherwise dealing in, or agreeing to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act; or

(ii) the person importing, or agreeing to import, narcotic goods into Australia in contravention of this Act; or

(iii) the person exporting, or agreeing to export, narcotic goods from Australia in contravention of this Act; or

(iv) the person keeping or having kept, or agreeing to keep, in his or her possession narcotic goods imported into Australia in contravention of this Act; or

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(v) the person 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) the person 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 or her 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 or her with or out of moneys to which this section applied.

Note: Goods are imported or exported in contravention of this Act if they are imported or exported in breach of a prohibition under this Act: see subsection 4(4A).

(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 or her possession or under his or her control, or were paid to him or her, in the circumstances in which he or she 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 or her for the goods by means of a cheque that came into his or her possession or under his or her control as set out in paragraph (2)(a),

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the goods shall, for the purposes of subsection (2), be deemed to have come into his or her possession or under his or her control in the circumstances in which the cheque came into his or her possession or under his or her control.

(5) For the purposes of paragraph (2)(c), goods shall not be taken to have been purchased with or out of moneys to which this section applied unless the whole, or substantially the whole, of the moneys paid for the goods were moneys to which this section applied.

(6) For the purposes of section 203, moneys or goods to which this section applies shall be deemed to be forfeited goods and, upon moneys or goods to which this section applies being seized under a seizure warrant, they shall, for the purposes of sections 204 to 208E (inclusive) and Part XIV, be deemed to be forfeited goods, and those provisions apply accordingly.

(7) Where, in any proceedings for the condemnation or recovery of moneys or goods to which this section applies and which have been seized under a seizure warrant, the Court is satisfied that the relevant narcotic goods are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceedings, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

(8) Without limiting any powers that are conferred on a Court by the provisions of this Act specified in subsection (6) and notwithstanding any other provision of this Act:

(a) where moneys or goods in the possession or under the control of a person are seized under a seizure warrant, 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 or she became the owner of the moneys or goods, did not know, and

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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 a seizure warrant, 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 or her storing in the warehouse narcotic goods imported into Australia in contravention of this Act or by reason of his or her selling goods that were acquired by him or her with or out of any such moneys; or

(ii) the goods were purchased or otherwise acquired by him or her out of moneys that so came into his or her possession or under his or her 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.

230 Forfeited packages and goods

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.

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Division 2—Penalties

231 Assembly for unlawful purposes

(1) All persons to the number of 2 or more assembled with the intention of:

(a) importing prohibited imports; or

(b) smuggling; or

(c) preventing the seizure, or rescuing after seizure, of any prohibited imports or smuggled goods;

commit an offence punishable upon conviction by imprisonment for a period not exceeding 2 years.

(2) This section does not apply to, or in relation to, narcotic goods.

(2A) This section does not apply to, or in relation to, unmarked plastic explosives.

Note: Section 72.13 of the *Criminal Code* creates an offence of importing or exporting unmarked plastic explosives.

(3) An offence against this section is punishable upon summary conviction.

Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the *Criminal Code*.

232A Rescuing goods and assaulting officers

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 with the intention of preventing 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 person assisting an officer in the execution of the officer's duty;

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commits an offence and shall be liable, upon summary conviction, to a fine not exceeding 5 penalty units or to imprisonment for any period not exceeding 2 years.

233 Smuggling and unlawful importation and exportation

(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 or her possession any smuggled goods or prohibited imports or prohibited exports.

(1AA) A person who contravenes subsection (1) commits 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).

(1AB) Subsection (1AA) is an offence of strict liability, to the extent that it relates to paragraphs (1)(b), (c) and (d).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) It shall not be lawful for any person to convey or have in his or her possession without reasonable excuse (proof whereof shall lie upon him or her) any smuggled goods or prohibited imports.

(3) It shall not be lawful for any person to convey or have in his or her 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.

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(5) This section does not apply to, or in relation to, narcotic goods.

(6) The Minister must lay before each House of the Parliament, not later than the first sitting day of that House after 1 October each year, a report about any conduct by officers of Customs that, apart from subsection 233BABA(1), would constitute an offence against a law of the Commonwealth or of a State or Territory relating to the possession or conveyance, or facilitation of the conveyance, of prohibited imports, prohibited exports or smuggled goods.

233A Master not to use or allow use of ship for smuggling etc.

(1) The master of a ship or the pilot of an aircraft shall not intentionally use his or her ship or aircraft, or intentionally 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.

(1A) Subsection (1) does not apply if the goods smuggled, imported, exported or conveyed are narcotic goods.

Note: Most offences dealing with the importation and exportation of narcotic goods are located in Part 9.1 of the *Criminal Code*.

(1B) Subsection (1) does not apply if the goods smuggled, imported, exported or conveyed are unmarked plastic explosives.

Note: Section 72.13 of the *Criminal Code* creates an offence of importing or exporting unmarked plastic explosives.

(2) A person who contravenes subsection (1) commits an offence punishable upon conviction:

(b) in the case of an offence committed in relation to the smuggling of goods—as provided by subsection 233AB(1); or

(c) in any other case—as provided by subsection 233AB(2).

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233AB Penalties for offences against sections 233 and 233A

(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; or

(b) where the Court cannot determine the amount of that duty, a penalty not exceeding 1,000 penalty units.

(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) 1,000 penalty units;

whichever is the greater; or

(b) where the Court cannot determine the value of those goods—a penalty not exceeding 1,000 penalty units.

233BAA Special offence relating to tier 1 goods

(1) Subject to subsection (3), the regulations may provide that:

(a) specified performance enhancing drugs; and

(b) specified non-narcotic drugs; and

(c) other specified goods;

constitute tier 1 goods.

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(2) The regulations must not specify an item for the purposes of subsection (1) unless:

(a) its importation is prohibited, either absolutely or on condition, by the Customs (Prohibited Imports) Regulations; or

(b) its exportation is prohibited, either absolutely or on condition, by the Customs (Prohibited Exports) Regulations.

(3) If the regulations made for the purposes of subsection (1) prescribe a quantity of a drug specified for those purposes to be the critical quantity, the specified drug does not constitute tier 1 goods unless it is of a quantity that exceeds the critical quantity.

(4) A person commits an offence against this subsection if:

(a) the person intentionally imported goods; and

(b) the goods were tier 1 goods and the person was reckless as to that fact; and

(c) their importation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

(4A) Subject to subsection (4B), absolute liability applies to paragraph (4)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(4B) For the purposes of an offence against subsection (4), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (4)(c)(ii) had not been obtained at the time of the importation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(5) A person commits an offence against this subsection if:

(a) the person intentionally exported goods; and

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(b) the goods were tier 1 goods and the person was reckless as to that fact; and

(c) their exportation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

(5A) Subject to subsection (5B), absolute liability applies to paragraph (5)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(5B) For the purposes of an offence against subsection (5), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (5)(c)(ii) had not been obtained at the time of the exportation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(6) A person convicted or acquitted of an offence against subsection (4) or (5) in respect of particular conduct is not liable to any proceeding under section 233 in respect of that conduct.

233BAB Special offence relating to tier 2 goods

(1) The regulations may provide that:

(a) specified firearms, munitions and military warfare items of any kind including combat vests and body armour; and

(b) specified knives, daggers and other like goods; and

(c) specified chemical compounds; and

(d) specified anti-personnel sprays and gases; and

(e) specified fissionable or radioactive substances; and

(f) specified human body tissue; and

(g) specified human body fluids; and

(h) items of child abuse material; and

(i) counterfeit credit, debit and charge cards; and

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(j) other specified goods;

constitute tier 2 goods.

(2) The regulations must not specify an item for the purposes of subsection (1) unless:

(a) its importation is prohibited, either absolutely or on condition, by the Customs (Prohibited Imports) Regulations; or

(b) its exportation is prohibited, either absolutely or on condition, by the Customs (Prohibited Exports) Regulations.

(4) For the purposes of subsection (1), an item is taken to be an item of child abuse material if it is a document or other goods:

(a) that depicts a person, or a representation of a person, who:

(i) is, or appears to be, under 18 years of age; and

(ii) is, or appears to be, a victim of torture, cruelty or physical abuse;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(b) that describes a person who:

(i) is, or is implied to be, under 18 years of age; and

(ii) is, or is implied to be, a victim of torture, cruelty or physical abuse;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(c) that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:

(i) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

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(d) the dominant characteristic of which is the depiction, for a sexual purpose, of:

(i) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or

(ii) a representation of such a sexual organ or anal region; or

(iii) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;

in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(e) that describes a person who is, or is implied to be, under 18 years of age and who:

(i) is engaged in, or is implied to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); or

(ii) is in the presence of a person who is engaged in, or is implied to be engaged in, a sexual pose or sexual activity;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(f) that describes:

(i) a sexual organ or the anal region of a person who is, or is implied to be, under 18 years of age; or

(ii) the breasts of a female person who is, or is implied to be, under 18 years of age;

and does this in a way that reasonable persons would regard as being, in all the circumstances, offensive; or

(g) that is a doll or other object that resembles:

(i) a person who is, or appears to be, under 18 years of age; or

(ii) a part of the body of such a person;

if a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse (within the meaning of the *Criminal Code*).

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(4A) The matters to be taken into account in deciding for the purposes of subsection (4) whether reasonable persons would regard a particular document or other goods as being, in all the circumstances, offensive, include:

(a) the standards of morality, decency and propriety generally accepted by reasonable adults; and

(b) the literary, artistic or educational merit (if any) of the material; and

(c) the general character of the material (including whether it is of a medical, legal or scientific character).

(5) A person commits an offence against this subsection if:

(a) the person intentionally imported goods; and

(b) the goods were tier 2 goods and the person was reckless as to that fact; and

(c) their importation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

(5A) Subject to subsection (5B), absolute liability applies to paragraph (5)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(5B) For the purposes of an offence against subsection (5), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (5)(c)(ii) had not been obtained at the time of the importation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(6) A person commits an offence against this subsection if:

(a) the person intentionally exported goods; and

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(b) the goods were tier 2 goods and the person was reckless as to that fact; and

(c) their exportation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

(6A) Subject to subsection (6B), absolute liability applies to paragraph (6)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(6B) For the purposes of an offence against subsection (6), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (6)(c)(ii) had not been obtained at the time of the exportation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(7) A person punished for an offence against subsection (5) or (6) in respect of particular conduct cannot be punished, in respect of that conduct, for an offence against:

(a) section 233; or

(b) Division 361 of the *Criminal Code* (about international firearms trafficking).

Note: A similar provision for the opposite case to paragraph (b) is set out in section 361.6 of the *Criminal Code*.

233BABAA UN-sanctioned goods

(1) The regulations may prescribe specified goods as UN-sanctioned goods.

(2) Regulations made for the purposes of subsection (1) may provide that specified goods are only UN-sanctioned goods if:

(a) they are imported from, or exported to, a specified place; or

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(b) the origin, or the final destination, of the goods is a specified place; or

(c) other specified circumstances apply in relation to the goods.

(3) The regulations must not prescribe goods for the purposes of subsection (1) unless:

(a) either:

(i) the importation of the goods is prohibited, either absolutely or on condition, by the *Customs (Prohibited Imports) Regulations 1956*; or

(ii) the exportation of the goods is prohibited, either absolutely or on condition, by the *Customs (Prohibited Exports) Regulations 1958*; and

(b) the regulation under which that importation or exportation is prohibited gives effect to a decision that:

(i) the Security Council has made under Chapter VII of the Charter of the United Nations; and

(ii) Article 25 of the Charter requires Australia to carry out;

in so far as that decision requires Australia to apply measures not involving the use of armed force.

Note: Articles 39 and 41 of the Charter provide for the Security Council to decide what measures not involving the use of armed force are to be taken to maintain or restore international peace and security.

(4) For the purposes of paragraph (3)(b), a regulation may be taken to give effect to a decision:

(a) whether or not it is made for the sole purpose of giving effect to the decision; and

(b) whether or not it has any effect in addition to giving effect to the decision.

233BABAB Special offences for importation of UN-sanctioned goods

Offence for individuals

(1) An individual commits an offence if:

(a) the individual intentionally imported goods; and

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(b) the goods were UN-sanctioned goods and the individual was reckless as to that fact; and

(c) their importation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

(2) Subject to subsection (3), absolute liability applies to paragraph (1)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(3) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (1)(c)(ii) had not been obtained at the time of the importation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty for individuals

(4) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (5), or both.

(5) For the purposes of subsection (4), the amount is:

(a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:

(i) 3 times the value of the goods; or

(ii) 2,500 penalty units;

(b) if the Court cannot determine the value of those goods—2,500 penalty units.

Offence for bodies corporate

(6) A body corporate commits an offence if:

(a) the body corporate imported goods; and

(b) the goods were UN-sanctioned goods; and

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(c) their importation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

(7) Subsection (6) does not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection.

Note: The body corporate bears a legal burden in relation to a matter in subsection (7) (see section 13.4 of the *Criminal Code*).

(8) Strict liability applies to paragraphs (6)(a) and (b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(9) Subject to subsection (10), absolute liability applies to paragraph (6)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(10) For the purposes of an offence against subsection (6), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (6)(c)(ii) had not been obtained at the time of the importation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty for bodies corporate

(11) An offence under subsection (6) is punishable on conviction by a fine not exceeding:

(a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:

(i) 3 times the value of the goods;

(ii) 10,000 penalty units; or

(b) if the Court cannot determine the value of those goods—10,000 penalty units.

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Person not liable to other proceedings

(12) A person convicted or acquitted of an offence against subsection (1) or (6) in respect of particular conduct is not liable to proceedings under section 233 in respect of that conduct.

233BABAC Special offences for exportation of UN-sanctioned goods

Offence for individuals

(1) An individual commits an offence if:
  (a) the individual intentionally exported goods; and
  (b) the goods were UN-sanctioned goods and the individual was reckless as to that fact; and
  (c) their exportation:
    (i) was prohibited under this Act absolutely; or
    (ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.

(2) Subject to subsection (3), absolute liability applies to paragraph (1)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(3) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (1)(c)(ii) had not been obtained at the time of the exportation.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty for individuals

(4) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (5), or both.

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(5) For the purposes of subsection (4), the amount is:

(a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:

(i) 3 times the value of the goods;

(ii) 2,500 penalty units; or

(b) if the Court cannot determine the value of those goods—2,500 penalty units.

Offence for bodies corporate

(6) A body corporate commits an offence if:

(a) the body corporate exported goods; and

(b) the goods were UN-sanctioned goods; and

(c) their exportation:

(i) was prohibited under this Act absolutely; or

(ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.

(7) Subsection (6) does not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection.

Note: The body corporate bears a legal burden in relation to a matter in subsection (7) (see section 13.4 of the *Criminal Code*).

(8) Strict liability applies to paragraphs (6)(a) and (b).

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(9) Subject to subsection (10), absolute liability applies to paragraph (6)(c).

Note: For ***absolute liability***, see section 6.2 of the *Criminal Code*.

(10) For the purposes of an offence against subsection (6), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (6)(c)(ii) had not been obtained at the time of the exportation.

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Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty for bodies corporate

(11) An offence under subsection (6) is punishable on conviction by a fine not exceeding:

(a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:

(i) 3 times the value of the goods;

(ii) 10,000 penalty units; or

(b) if the Court cannot determine the value of those goods—10,000 penalty units.

Person not liable to other proceedings

(12) A person convicted or acquitted of an offence against subsection (1) or (6) in respect of particular conduct is not liable to proceedings under section 233 in respect of that conduct.

233BABAD Offences involving tobacco products

(1) A person commits an offence if:

(a) the person imports goods; and

(b) the goods are tobacco products; and

(c) the person imports the goods with the intention of defrauding the revenue.

(2) A person commits an offence if:

(a) the person conveys, or has in the person's possession, goods; and

(b) the goods are tobacco products; and

(c) the person knows that the goods were imported with intent to defraud the revenue.

(2A) A person commits an offence if:

(a) the person imports goods; and

(b) the goods are tobacco products; and

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(c) the person imports the goods reckless as to whether there would be defrauding of the revenue.

(2B) A person commits an offence if:

(a) the person conveys, or has in the person's possession, goods; and

(b) the goods are tobacco products; and

(c) the person is reckless as to whether the goods were imported with intent to defraud the revenue.

(3) In a prosecution for an offence against subsection (2) or (2B), it is not necessary to prove the identity of the person who imported the goods.

(4) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for not more than 15 years, a fine not exceeding the amount worked out under subsection (5), or both.

(4A) An offence against subsection (2A) or (2B) is punishable on conviction by imprisonment for not more than 10 years, a fine not exceeding the amount worked out under subsection (5A), or both.

(5) For the purposes of subsection (4), the amount is:

(a) if the Court can determine the amount of the duty that would have been payable on the goods if the goods had been entered for home consumption on:

(i) if the day on which the offence was committed is known to the Court—that day; or

(ii) if that day is not known to the Court—the day on which the prosecution for the offence was instituted;

30 times the amount of that duty; or

(b) otherwise—12,000 penalty units.

(5A) For the purposes of subsection (4A), the amount is:

(a) if the Court can determine the amount of the duty that would have been payable on the goods if the goods had been entered for home consumption on:

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(i) if the day on which the offence was committed is known to the Court—that day; or

(ii) if that day is not known to the Court—the day on which the prosecution for the offence was instituted;

20 times the amount of that duty; or

(b) otherwise—8,000 penalty units.

(6) A person convicted or acquitted of an offence against subsection (1), (2), (2A) or (2B) in respect of particular conduct is not liable to proceedings under section 233 in respect of that conduct.

233BABAE Offence for bringing restricted goods into Australia

(1) A person commits an offence of strict liability if:

(a) the person brings goods into Australia; and

(b) the goods are restricted goods.

Penalty: 1,000 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) Subsection (1) does not apply if the person brings the goods into Australia in accordance with a written permission given by the Minister for the purposes of this subsection.

(3) For the purposes of this Act, ***restricted goods*** are goods:

(a) that, if imported, would be prohibited imports; and

(b) that are prescribed by the regulations for the purposes of this definition.

(4) This section has effect only for purposes related to external affairs, including:

(a) for purposes related to giving effect to an international agreement to which Australia is a party; and

(b) for purposes related to addressing matters of international concern.

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233BABAF Using information held by the Commonwealth

Using information to commit offence

(1) A person commits an offence if:
  (a) the person obtains information; and
  (b) the information is restricted information; and
  (c) the person uses the information to commit an offence against a law of the Commonwealth, a State or a Territory.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence was an offence against a law of the Commonwealth, a State or a Territory.

Disclosing information to another person

(3) A person commits an offence if:
  (a) the person obtains information; and
  (b) the information is restricted information; and
  (c) the person discloses the information to another person; and
  (d) the person is not authorised or required under:
    (i) this Act; or
    (ii) the *Australian Border Force Act 2015*;
  to make that disclosure.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(4) In this section:

restricted information means information:
  (a) held in a computer owned, leased or operated by the Commonwealth for use for the purposes of the Customs Acts; and
  (b) to which access is restricted by an access control system associated with a function of the computer.

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233BABA Protection from criminal responsibility

(1) An officer of Customs who, in the course of duty, possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports, smuggled goods or restricted goods is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

(2) A person who:

(a) possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports, smuggled goods or restricted goods; and

(b) in doing so is acting in accordance with written instructions referring to this section issued by an officer of Customs acting in the course of duty;

is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

233BAC Evidence relating to approval for import or export

(1) In proceedings for an offence against subsection 233BAA(4) or (5), 233BAB(5) or (6), 233BABAB(1) or (4) or 233BABAC(1) or (4), a certificate of an authorised officer to the effect that the person charged with the offence had not obtained, as at the time of the import or export of the goods in respect of which the offence is alleged to have been committed, approval for the import or export is admissible as prima facie evidence that that approval had not been so obtained.

(2) For the purposes of this section, a document purporting to be a certificate referred to in subsection (1) is, unless the contrary is established, to be taken to be such a certificate and to have been duly given.

(3) A certificate is not to be admitted in evidence under subsection (1) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those

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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.

233BA Evidence of Analyst

(1) The Comptroller-General of Customs may appoint a person to be an analyst for the purposes of this Act or Part 9.1 of the *Criminal Code*.

(2) Subject to subsection (4), in any proceedings for an offence against section 233BAA or Part 9.1 of the *Criminal Code*, or in any proceedings for an offence against section 233BAB, 233BABAB or 233BABAC, in so far as that section relates to specified anti-personnel sprays or gases, radioactive substances, human body tissue or human body fluid, a certificate of an analyst in an approved form stating, in respect of a substance in relation to which the offence is alleged to have been committed:

(a) that the analyst signing the certificate is appointed under subsection (1); and

(b) when and from whom the substance was received; and

(c) what, if any, labels or other means of identifying the substance accompanied it when it was received; and

(d) what container or containers the substance was contained in when it was received; and

(e) a description, and the weight, of the substance received; and

(f) when the substance, or a portion of it, was analysed; and

(g) a description of the method of analysis; and

(h) the results of the analysis; and

(j) how the substance was dealt with after handling by the analyst, including details of:

(i) the quantity retained; and

(ii) the name of the person, if any, to whom any retained quantity was given; and

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(iii) measures taken to secure any retained quantity;

is admissible as prima facie evidence of the matters in the certificate and of the correctness of the result of the analysis.

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(4) A certificate shall not be admitted in evidence under subsection (2) in proceedings for an offence unless the person charged with the offence or a solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.

(5) Subject to subsection (6), where, under subsection (2), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

(6) Subsection (5) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:

(a) the prosecutor has been given at least 4 days notice of the person's intention to require the analyst to be so called; or

(b) the Court, by order, allows the person to require the analyst to be so called.

233C Offence for giving false or misleading information in relation to UN-sanctioned goods

Individuals

(1) An individual commits an offence if:

(a) an application is made in respect of UN-sanctioned goods under:

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(i) the *Customs (Prohibited Imports) Regulations 1956*; or
(ii) the *Customs (Prohibited Exports) Regulations 1958*; and

(b) the application is made in an approved form; and
(c) the individual signed the form; and
(d) information contained in, or information or a document accompanying, the form:
(i) is false or misleading; or
(ii) omits any matter or thing without which the information or document is misleading.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

Bodies corporate

(2) A body corporate commits an offence if:
(a) an application is made by or on behalf of the body corporate; and
(b) the application is in an approved form; and
(c) the application is made in respect of UN-sanctioned goods under:
(i) the *Customs (Prohibited Imports) Regulations 1956*; or
(ii) the *Customs (Prohibited Exports) Regulations 1958*; and
(d) information contained in, or information or a document accompanying, the form:
(i) is false or misleading; or
(ii) omits any matter or thing without which the information or document is misleading.

Penalty: 12,500 penalty units.

(3) Subsection (1) or (2) does not apply:
(a) as a result of subparagraph (1)(d)(i) or (2)(d)(i)—if the information or document is not false or misleading in a material particular; or

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(b) as a result of subparagraph (1)(d)(ii) or (2)(d)(ii)—if the information or document did not omit any matter or thing without which the information or document is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

234 Customs offences

(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) do any of the following:

(i) intentionally make or cause to be made a statement to an officer, reckless as to the fact that the statement is false or misleading in a material particular;

(ii) intentionally omit or cause to be omitted from a statement made to an officer any matter or thing, reckless as to the fact that without the matter or thing the statement is misleading in a material particular;

(iii) intentionally give information to another person, knowing that the information is false or misleading in a material particular and that the other person or someone else will include the information in a statement to an officer;

(iv) intentionally give information to another person, knowing that the information is misleading in a material particular because of the omission of other information that the person has and that the other person or someone else will include the information in a statement to an officer;

(h) Sell or offer for sale, any goods upon the pretence that such goods are prohibited imports or smuggled goods.

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(2) A person who contravenes subsection (1) commits 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 500 penalty units;

(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 250 penalty units; or

(d) in the case of an offence against paragraph (1)(h), by a penalty not exceeding 10 penalty units.

(2A) Where an export entry, a submanifest, an outward manifest or a withdrawal of such an entry, submanifest or manifest is taken, under section 119D, to have been communicated to the Department, then, for the purposes of paragraph (1)(d), the part of the communication constituting the transmission to the Department is treated as a statement made to the Comptroller-General of Customs.

(2B) Where an import entry, a withdrawal of such an entry, or a return for the purposes of subsection 69(8), subsection 70(7) or

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section 105C is taken, under section 71L, to have been communicated to the Department, then, for the purposes of paragraph (1)(d), the part of the communication constituting the transmission to the Department is treated as a statement made to the Comptroller-General of Customs.

(2BA) If an application for a refund, rebate or remission of duty is taken, under regulations made for the purposes of subsection 163(1AB), to have been communicated to the Department, then, for the purposes of paragraph (1)(d), the part of the communication constituting the transmission to the Department is treated as a statement made to the Comptroller-General of Customs.

(2BC) For the purposes of paragraph (1)(d), information provided to the Department under section 71 in the circumstances mentioned in section 71AAAB is taken to be a statement made to the Comptroller-General of Customs.

(2C) Nothing in subsection (2A), (2B), (2BA) or (2BC) is to be taken to affect the operation of any of the provisions of section 183.

(3) Where a person is convicted of an offence against paragraph (1)(d) in relation to a statement made, or an omission from a statement made, in respect of the amount of duty payable on particular goods, a Court may, in relation to that offence, impose a penalty not exceeding the sum of 100 penalty units and twice the amount of the duty payable on those goods.

234AA Places set aside for purposes of Act

(1) Where a place:

(a) is to be used by officers:

(i) for questioning, for the purposes of this Act or of any other law of the Commonwealth, passengers or crew disembarking from or embarking on a ship or aircraft; or

(ii) for examining, for such purposes, the personal baggage of such passengers or crew; or

(iii) as a holding place for such passengers or crew; or

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(b) is covered by a notice under subsection (3);

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 indicate (whether in words or images) that the use of:

(a) cameras or sound recorders; or

(b) mobile phones or other electronic forms of communication;

at the place by unauthorized persons is prohibited by this Act.

(3) The Comptroller-General of Customs may publish a notice in the *Gazette* specifying, as an area to which this section applies, an area of a port, or an airport, appointed under section 15.

(4) An area specified in such a notice must comprise one or more of the following areas:

(a) areas that are used by, or frequented by, passengers who have arrived in Australia until they have passed through the last point at which they or their baggage are normally subject to processing by officers;

(b) areas that are used by, or frequented by, passengers who are about to depart Australia after they have passed through the first point at which they are normally subject to processing by officers;

(c) areas that are in the vicinity of areas referred to in paragraph (a) or (b).

234A Unauthorised entry to places and on ships, aircraft or wharves

(1) A person shall not:

(a) enter into, or be in, a place in relation to which a sign is displayed under subsection 234AA(1); or

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(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 or crew 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: 60 penalty units.

(1AA) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(1A) Subsection (1) does not apply if the person:

(a) enters into or is in the place, by the authority of a Collector; or

(ab) is the holder of a security identification card (within the meaning of section 213A) who:

(i) enters into, or is in, the place for the purposes of his or her employment; and

(ii) is not subject to a direction under subsection (1B); or

(b) enters on or is in or on, the ship, aircraft, wharf or the part of a wharf, by the authority of a Collector; or

(c) is a member of a crew disembarking from, or embarking on, a ship or aircraft; or

(d) is a passenger disembarking from, or embarking on, a ship or aircraft; or

(e) is included in a class of persons whom the Comptroller-General of Customs determines, in writing, to be exempt from this section.

(1B) A Collector may, at any time, by written notice given to a person who is the holder of a security identification card (within the

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meaning of section 213A), direct the person not to enter into, or be in or on:

(a) a place in relation to which a sign is displayed under subsection 234AA(1); or

(b) any of the following:

(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 or crew 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.

(2) Subsection (1) does not prohibit a person 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 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).

234AB Unauthorised use of cameras and sound recorders

(1) An officer may direct a person, including a passenger disembarking from, or embarking on, a ship or aircraft:

(a) not to use:

(i) a camera or sound recorder; or

(ii) a mobile phone or other electronic form of communication;

at a place in relation to which a sign is displayed under subsection 234AA(2); or

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(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 or crew 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 fail to comply with a direction given to that person by an officer in accordance with subsection (1).

Penalty: 30 penalty units.

(3A) Subsection (3) does not apply if the person has a reasonable excuse.

(3B) Subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) In any proceedings for the prosecution of a person for an offence against subsection (3), evidence that a sign indicating that the use of:

(a) cameras or sound recorders; or

(b) mobile phones or other electronic forms of communication;

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.

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234ABA Officers may direct unauthorised persons to leave restricted areas

(1) An officer may direct a person to leave a place in relation to which a sign is displayed under subsection 234AA(1) if the officer reasonably believes that the person is in that place in contravention of section 234A.

(2) The officer may, either acting alone or with the assistance of one or more other officers or protective service officers, use reasonable force to remove the person from the area if the person refuses to leave when so directed.

(3) However, in removing the person, the officer (and the persons assisting) must not use more force, or subject him or her to greater indignity, than is necessary or reasonable.

(4) In this section:

protective service officer means a protective service officer within the meaning of the *Australian Federal Police Act 1979*.

236 Aiders and abettors

For the purposes of a Customs prosecution (within the meaning of section 244), 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.

237 Attempts

For the purposes of a Customs prosecution (within the meaning of section 244), any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed.

239 Penalties in addition to forfeitures

All penalties shall be in addition to any forfeiture.

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240 Commercial documents to be kept

Keeping commercial documents

(1) A person who is the owner of goods imported into Australia shall keep all the relevant commercial documents relating to the goods that came into that person's possession or control before, or come into that person's possession or control on or after, the entry of those goods for any purpose, being documents that are necessary to enable a Collector to satisfy himself or herself of the correctness of the particulars shown in the entry until:

(a) if the goods are not ultimately entered for home consumption—the goods cease to be subject to customs control; 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: 30 penalty units.

(1AA) A person who is the owner of goods imported into Australia must keep all the relevant commercial documents relating to the goods:

(a) that come into the person's possession or control before, or come into the person's possession or control on or after, a return is given to the Department under section 69, 70 or 105C in relation to those goods; and

(b) that are necessary to enable a Collector to satisfy himself or herself of the correctness of the particulars shown in the return;

until the end of the period of 5 years after the giving of the return.

Penalty: 30 penalty units.

(1A) A person who is the owner of goods exported from Australia must keep all the relevant commercial documents relating to the goods that:

(a) come into the person's possession or control at any time; and

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(b) are necessary to enable a Collector to satisfy himself or herself as to the correctness of information communicated by, or on behalf of, the person to the Department (whether in documentary or other form);

for the period of 5 years after the time when the goods were exported from Australia.

Penalty: 30 penalty units.

(1B) A person who, in Australia:

(a) causes goods to be imported into, or exported from, Australia; or

(b) receives goods that have been imported into, or are to be exported from, Australia;

must keep all the relevant commercial documents that come into the person's possession or control at any time and relate to the goods concerned or to their carriage to or from Australia, being documents that are necessary to enable a Collector to satisfy himself or herself:

(c) whether the person is complying with a Customs-related law; or

(d) as to the correctness of information communicated by, or on behalf of, the person to the Department (whether in documentary or other form);

for the period of 5 years from the time when the goods were imported into, or exported from, Australia.

Penalty: 30 penalty units.

(1C) Subsections (1), (1AA), (1A) and (1B) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Certified true copies of commercial documents

(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

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subsection, be required to be kept in accordance with subsection (1), (1AA), (1A) or (1B), is required by that law or practice to be surrendered to another person, this section shall be taken to be complied with if, at all times after the document is so surrendered and during the period that the document would have been required to be kept, a true copy of the document, certified in accordance with subsection (3), is kept in its stead.

(3) Where a person is required to surrender a commercial document referred to in subsection (1), (1AA), (1A) or (1B) 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-General of Customs or a Collector, and shall be admissible in all courts, as if it were the original document.

Place, manner and form for keeping and storing commercial documents

(4) A person who is required by this section to keep a commercial document relating to particular goods may keep the document at any place (which may be a place outside Australia) and, subject to subsection (5), may keep the document in any form or store it in any manner.

(5) A person referred to in subsection (4) must:

(a) keep the document in such a manner as will enable a Collector readily to ascertain whether the goods have been properly described for the purpose of importation or

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exportation, as the case requires, and, in the case of goods entered for home consumption, properly valued or rated for duty; and

(b) if the document is in a language other than the English language—keep the document in such a way that a translation of the document into the English language can readily be made; or

(c) if the document is a record of information kept by a mechanical, electronic or other device—keep the record in such a way that a document setting out in the English language the information recorded or stored can be readily produced.

Penalty: 30 penalty units.

(5A) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Informing authorised officer of whereabouts of commercial document

(6) An authorised officer may, by written notice given to a person who is required under this section to keep a commercial document, require the person to inform the officer within a reasonable period, and in a manner specified in the notice, of the whereabouts of the document.

(6A) If:

(a) a notice is given to a person under subsection (6); and

(b) the person fails to comply with the notice;

the person commits an offence of strict liability punishable, on conviction, by a penalty not exceeding 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Altering and defacing commercial documents

(6B) A person who is required to keep a commercial document must not alter or deface the document.

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Penalty: 30 penalty units.

(6BA) Subsection (6B) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(6C) A document is not taken to be altered or defaced for the purposes of subsection (6B) merely because a notation or marking is made on it in accordance with ordinary commercial practice.

Exceptions to requirements to keep commercial documents

(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.

240AA Authorised officer may require person to produce commercial documents

(1) An authorised officer may, by written notice given to a person who is required under section 240 to keep a commercial document, require the person to produce, either at the business premises in Australia of the person or at a place in Australia specified in the notice, and within a period specified in the notice, for inspection by an authorised officer:

(a) if the document is in writing—the document; or

(b) if the document is a record of information kept by a mechanical, electronic or other device—the information.

Note 1: A person who keeps a record of information by means of a mechanical, electronic or other device must comply with a requirement made under subsection (1) by producing the information in a document setting out the information in a form the authorised officer can understand. See section 25A of the *Acts Interpretation Act 1901*.

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Note 2: Failure to produce a commercial document following a requirement made under subsection (1) is an offence. See section 243SB.

(2) The period that may be specified in a notice given under subsection (1) must not be less than 14 days after the notice is given.

240AB Verifying communications to Department

Scope and purpose

(1) This section applies to a person who makes a communication (however described) to the Department under this Act or gives someone else information for inclusion in such a communication.

(1A) The regulations may provide that specified communications, or specified kinds of communications, are exempt from this section.

(2) The purpose of this section is to help officers of Customs to verify the content of communications made to the Department and to trace information included in communications made to the Department to its source.

Requirements to keep records

(3) If the person makes the communication to the Department, the person must keep, in accordance with this section, for the period of 5 years after the communication is made, a record that verifies the contents of the communication.

Penalty: 30 penalty units

(3A) If the person (the ***giver***) gives information to another person (the ***recipient***) for the recipient or someone else to include in a communication to the Department, the giver must keep, in accordance with this section, for 5 years after the information is given, one or more records that:

(a) either verify the information or, if the giver was given the information by someone else, verify that the giver was given

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that information and identify the person who gave it to the giver; and

(b) verify the fact that the giver gave the information to the recipient; and

(c) identify the recipient.

Penalty: 30 penalty units.

(3B) Subsections (3) and (3A) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Place, manner and form for keeping and storing records

(4) A person who is required by this section to keep a record may keep the record at any place (which may be a place outside Australia) and, subject to subsection (5), may keep the record in any form or store it in any manner.

(5) A person referred to in subsection (4) must:

(a) if the record is in a language other than the English language—keep the record in such a way that a translation of the record into the English language can readily be made; or

(b) if the record is kept by a mechanical, electronic or other device—keep the record in such a way that a document setting out in the English language the information recorded or stored can be readily produced.

Informing authorised officer of whereabouts of record

(6) An authorised officer may, by written notice given to a person who is required under this section to keep a record, require the person to inform the officer within a reasonable period, and in a manner specified in the notice, of the whereabouts of the record.

(7) If:

(a) a notice is given to a person under subsection (6); and

(b) the person fails to comply with the notice;

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the person commits an offence of strict liability punishable, on conviction, by a penalty not exceeding 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Interaction with section 240

(8) To avoid doubt, this section does not affect the operation of section 240.

Note: Section 240 requires owners of imported or exported goods, and certain persons who deal with such goods, to keep for 5 years relevant commercial documents relating to the goods.

240AC Authorised officer may require person to produce record

(1) An authorised officer may, by written notice given to a person who is required under section 240AB to keep a record, require the person to produce, either at the business premises in Australia of the person or at a place in Australia specified in the notice, and within a period specified in the notice, for inspection by an authorised officer:

(a) if the record is in writing—the record; or

(b) if the record is kept by a mechanical, electronic or other device—the information contained in the record.

Note 1: A person who keeps a record of information by means of a mechanical, electronic or other device must comply with a requirement made under subsection (1) by producing the information in a document setting out the information in a form the authorised officer can understand. See section 25A of the *Acts Interpretation Act 1901*.

Note 2: Failure to produce a record following a requirement made under subsection (1) is an offence. See section 243SB.

(2) The period that may be specified in a notice given under subsection (1) must not be less than 14 days after the notice is given.

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Division 3—Recovery of pecuniary penalties for dealings in narcotic goods

243A Interpretation

(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.

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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; or

(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; or

(c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; 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 or her possession or under his or her control, or were paid to him or her, in the circumstances in which he or she obtained possession or control of the cheque, or was paid the moneys by the cheque.

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(3) For the purposes of this Division, a person shall be taken to engage in a prescribed narcotics dealing if:

(a) he or she sells or otherwise deals in, or agrees to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act; or

(b) he or she imports, or agrees to import, narcotic goods into Australia in contravention of this Act; or

(c) he or she exports, or agrees to export, narcotic goods from Australia in contravention of this Act; or

(d) he or she keeps, or agrees to keep, in his or her possession narcotic goods imported into Australia in contravention of this Act; or

(e) he or she 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 or she 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.

Note: Goods are imported or exported in contravention of this Act if they are imported or exported in breach of a prohibition under this Act: see subsection 4(4A).

(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.

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(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 or she 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.

243AB Effective control of property

(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.

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(3) For the purposes of paragraph (2)(e), family relationships are taken to include (without limitation) relationships between persons covered by section 4AAA.

243B Pecuniary penalties

(1) Subject to subsection (7), the Minister, the Commissioner of Police, the Comptroller-General of Customs 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 her; or

(b) prescribed narcotics dealings engaged in by him or her 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 or her 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.

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(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.

243C Assessment of pecuniary penalty

(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 or her 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

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(ii) another person at the request or by the direction of the defendant;

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

(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 or she engaged in that dealing, or before, during and after that period, as the case may be;

(f) the defendant's income and expenditure before, during and after he or she engaged in that dealing, or before, during and after that period, as the case may be.

(3) Where evidence is given in a proceeding under section 243B that the value of the defendant's property during or after the defendant engaged in a particular prescribed narcotics dealing, or during, or after the end of, a particular period during which he or she engaged in prescribed narcotics dealings, exceeded the value of the defendant's property before he or she 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

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by reason of his or her having engaged in that dealing or in prescribed narcotics dealings during that period as being not less than the amount of the greatest excess.

(4) Where, after evidence has been given in a proceeding under section 243B that the value of the defendant's property during or after the defendant engaged in a particular prescribed narcotics dealing, or during, or after the end of, a particular period, exceeded the value of the defendant's property before he or she 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 or her 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 or her 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 or her 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 or her testimony is prima facie evidence of the matters testified to.

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(6) In calculating, for the purposes of a proceeding under section 243B, the value of benefits derived by the defendant by reason of his or her 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.

243CA Court may lift corporate veil etc.

(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-General of Customs 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.

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(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-General of Customs 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.

243D Presumption of illegality of importation

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.

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243E Court may make restraining order against property

(1) Where the Minister, the Commissioner of Police, the Comptroller-General of Customs 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-General of Customs or the Director of Public Prosecutions may make application to the Court, *ex parte*, for an order under paragraph (2)(c) against one or more of the following:

(a) specified property of the defendant;

(b) all the property of the defendant (including property acquired after the making of the order);

(d) all the property of the defendant (including property acquired after the making of the order) other than specified property;

(e) specified property of a person other than the defendant.

(1A) The application under subsection (1) may be made:

(a) where the Court makes the order under section 243B—at any time before the liability of the defendant in respect of the pecuniary penalty has been discharged; or

(b) in any other case—at any time before the proceeding under section 243B is finally disposed of.

(2) Where:

(a) an application under subsection (1) is supported by:

(i) an affidavit of a police officer or an officer of Customs stating that he or she 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

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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 or she 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

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(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-General of Customs 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.

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(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.

243F Court may make further orders

(1AA) In this section:

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defendant has the same meaning as in section 243E.

(1) Where the Court makes, or has made, a restraining order (in this section called the ***original order***) against property of a person (in this section called the ***owner***), the Court may, at the time it makes the original order or at any subsequent time, make such orders in relation to that property as the Court considers just and, without limiting the power so conferred on the Court, the Court may, at any time or from time to time, make an order:

(a) varying the original order in respect of the property to which it relates or any provision included in the original order by virtue of paragraph 243E(2)(d);

(b) regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the original order;

(c) determining any question relating to the property to which the original order relates, including any question relating to the liabilities of the owner, and the exercise of the powers, or the performance of the duties, of the Official Trustee, with respect to the property to which the original order relates;

(d) directing:

(i) the owner; or

(ii) if the owner is not the defendant—the defendant; or

(iii) if the owner or the defendant is a body corporate—a director of the body corporate specified by the Court;

to give to the Minister, the Commissioner of Police, the Comptroller-General of Customs, the Director of Public Prosecutions or the Official Trustee, within a period specified in the order, a statement verified by the oath of the person making the statement, setting out such particulars of the property, or dealings with the property, of the owner or defendant as the Court thinks proper;

(e) for the examination on oath before the Court or Registrar of the Court of any person, including:

(i) the owner; or

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(ii) the defendant;

about the affairs (including the nature and location of any property) of:

(iii) anyone else who is either the owner or the defendant, or both; and

(iv) if the person to be examined is either the owner or defendant, or both—that person;

(ea) directing the owner or another person to do any act or thing necessary or convenient to be done to enable the Official Trustee to take custody and control of the property in accordance with the original order; or

(f) with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the original order.

(2) An application for an order under subsection (1) may be made:

(a) by the Official Trustee;

(b) by the Minister, the Commissioner of Police, the Comptroller-General of Customs 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.

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(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-General of Customs, 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-General of Customs, 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

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(f) a proceeding for the recovery of a pecuniary penalty, for the purpose only of facilitating the assessment of the amount of the pecuniary penalty.

(4) In this section, unless the contrary intention appears:

(a) references to the original order shall be read as including references to the original order as varied under this section; and

(b) references to the Registrar of the Court shall be read as including references to a Deputy Registrar of the Court, a District Registrar of the Court and a Deputy District Registrar of the Court.

(5) In proceedings dealing with an application for an order under subsection (1), a witness is not required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

243G Official Trustee to discharge pecuniary penalty

(1) Where:

(a) the Court makes an order under section 243B that a person pay a pecuniary penalty in relation to a particular prescribed narcotics dealing or in relation to prescribed narcotics dealings during a particular period; and

(b) at the time when the order is made, property is subject to a restraining order made, in reliance on the prescribed narcotics dealing or prescribed narcotics dealings, against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA(2) is made;

the Court may include in the order under section 243B a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

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(2) Where:

(a) the Court makes an order under section 243B for a person to pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) a restraining order is subsequently made against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA(2) is made;

in reliance on the prescribed narcotics dealing or prescribed narcotics dealings;

the Court may include in the restraining order a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(2A) If:

(a) the Court has made an order under section 243B that a person pay a pecuniary penalty in relation to a prescribed narcotics dealing or prescribed narcotics dealings during a particular period; and

(b) a restraining order is in force against:

(i) property of the person; or

(ii) property of another person in relation to which an order under subsection 243CA(2) is in force;

the Court may, on application by the Minister, the Commissioner of Police, the Comptroller-General of Customs or the Director of Public Prosecutions, direct the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of the property.

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(3) For the purposes of enabling the Official Trustee to comply with a direction given by the Court under subsection (1), (2) or (2A), the Court may, in the order in which the direction is given or by a subsequent order:

(a) direct the Official Trustee to sell or otherwise dispose of such of the property that is subject to the restraining order as the Court specifies; and

(b) appoint an officer of the Court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument.

(4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest or right in the property.

(5) Where the Official Trustee is given a direction under subsection (1), (2) or (2A) in relation to property, the Official Trustee shall not:

(a) if the property is money—apply the money in accordance with subsection (6) until the end of the appeal period; and

(b) if the property is not money—sell or otherwise dispose of the property until the end of the appeal period.

(6) Where the Official Trustee is given a direction under subsection (1), (2) or (2A) in relation to property, the Official Trustee shall, as soon as practicable after the end of the appeal period:

(a) if the property is money:

(i) apply the money in payment of the costs, charges, expenses and remuneration, of the kind referred to in subsection 243P(1), incurred or payable in connection with the restraining order and payable to the Official Trustee under the regulations; and

(ii) subject to subsection (7), credit an amount equal to the remainder of the money to the Confiscated Assets

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Account as required by section 296 of the *Proceeds of Crime Act 2002*; 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), credit an amount equal to the remainder of those proceeds to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002*.

(7) Where the amounts to which subparagraph (6)(a)(ii) or (b)(iii) applies exceeds the penalty amount, the Official Trustee must:

(a) credit to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002* 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 credits, in accordance with a direction under this section, an amount to the Confiscated Assets Account as required by section 296 of the *Proceeds of Crime Act 2002* 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

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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.

243H Revocation of order under section 243E

(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 or her in the relevant proceeding; or

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(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.

243J Pecuniary penalty a charge on property

(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; or

(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; or

(c) upon payment by the person of any pecuniary penalty that he or she has been ordered to pay in the relevant proceeding; or

(d) upon the person becoming a bankrupt; or

(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

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(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.

243K Contravention of restraining orders

(1) A person who intentionally contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits 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

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(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-General of Customs 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.

243L Sale of property before bankruptcy

(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-General of Customs 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

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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.

243M Duties of the Official Trustee after receiving notice of presentation of creditor's petition etc.

(1) Where, after the Official Trustee has been directed under subsection 243G(1) or (2) to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the presentation of a creditor's petition against the person is given to the Official Trustee, the Official Trustee:

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay any moneys in pursuance of the direction to do so contained in the first-mentioned order;

until the petition has been dealt with by a bankruptcy court or has lapsed.

(2) Where, after the Official Trustee has been directed under subsection 243G(1) or (2) to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the reference to a bankruptcy court of a debtor's petition against the person is given to the Official Trustee, the Official Trustee:

(a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and

(b) shall not pay any moneys in pursuance of the direction to do so contained in the first-mentioned order;

until a bankruptcy court has dealt with the petition.

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(3) Where a person who is liable to pay a pecuniary penalty becomes a bankrupt (whether on a creditor's petition or otherwise), any property of the person in the possession, or under the control, of the Official Trustee in accordance with an order made under this Division shall be deemed to be in the possession, or under the control, of the Official Trustee as, or on behalf of, the trustee of the estate of the bankrupt, and not otherwise.

(4) In this section, ***bankruptcy court*** means a court having jurisdiction in bankruptcy under the *Bankruptcy Act 1966*.

243N Protection of Official Trustee from personal liability in certain cases

(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

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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.

243NA Indemnification of Official Trustee

(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

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(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.

243NB Indemnification of Official Receivers etc.

(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.

243P Costs etc. payable to Official Trustee

(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.

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(2) An amount equal to each amount of remuneration that the Official Trustee receives under the regulations shall be paid to the Commonwealth.

(3) Where there are no regulations in relation to a matter referred to in subsection (1):

(a) the regulations referred to in section 288 of the *Proceeds of Crime Act 2002* 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 288 of the *Proceeds of Crime Act 2002*.

243Q Notices

(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.

243R Reduction of pecuniary penalty

(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 her, or of prescribed narcotics

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dealings engaged in by him or her 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; and

(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 or her during a particular period, property of the person to which section 229A applies by virtue of that dealing, or of such a dealing during that period, shall not be seized as forfeited goods.

(3) The Court may make an order, in respect of property to which section 229A applies, being property that has been seized as forfeited goods, determining the value, at the time when it was seized, of that property for the purposes of this section.

243S Jurisdiction of the Court

Jurisdiction is conferred on the Court to hear and determine applications under this Division.

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Division 4—Provisions relating to certain strict liability offences

243SA Failure to answer questions

(1) A person must not fail to answer a question that an officer, pursuant to a power conferred on the officer by this Act (other than section 106J or 195A or subsection 214AH(2)), requires the person to answer.

Penalty: 30 penalty units.

(2) A person must not fail to answer a question that a monitoring officer, pursuant to subsection 214AH(2), requires the person to answer, if:

(a) the person is the occupier of the relevant premises, or a representative of the occupier whom the occupier has nominated to a monitoring officer to answer questions under that subsection; or

(b) the person is not covered by paragraph (a) and no other person of the kind mentioned in that paragraph is present at the premises and available to answer questions put by the monitoring officer.

Penalty: 30 penalty units.

(3) If:

(a) an officer requires a person to answer a question under section 106J or 195A; and

(b) the officer informs the person of the officer's authority to ask the question; and

(c) the officer informs the person that it may be an offence not to answer the question;

the person must not fail to answer the question.

Penalty: 30 penalty units.

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(4) Subsections (1), (2) and (3) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

243SB Failure to produce documents or records

(1) A person must not fail to produce a document or record that an officer, pursuant to a power conferred on the officer by this Act other than a power conferred by section 71AAAO, 71DA, 71DL, 77Y, 87C, 114A or 118, requires the person to produce.

Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

243SC Preservation of the privilege against self-incrimination

(1) Subject to subsection (2), a person who would, apart from this subsection, be required to:

(a) answer a question under section 243SA; or

(b) produce a document or record under section 243SB;

need not comply with the requirement if so complying would:

(c) tend to incriminate the person; or

(d) result in further attempts to obtain evidence that would tend to incriminate the person.

(2) Subsection (1) does not apply, and the person must comply with the requirement, if the person has waived his or her rights under that subsection.

243T False or misleading statements resulting in loss of duty

(1) A person commits an offence if:

(a) the person:

(i) makes, or causes to be made, to an officer a statement (other than a statement in a cargo report or an outturn

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report) that is false or misleading in a material particular; or

(ii) omits, or causes to be omitted, from a statement (other than a statement in a cargo report or an outturn report) made to an officer any matter or thing without which the statement is false or misleading in a material particular; and

(b) either of the following applies:

(i) the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;

(ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil).

(2) An offence against subsection (1) is an offence of strict liability.

(3) An offence against subsection (1) is punishable on conviction by a fine not exceeding the greater of:

(a) 60 penalty units; and

(b) the amount of the excess.

(3A) For the purposes of this section, a person is taken to cause to be made a statement (other than a statement in a cargo report or outturn report) that is false or misleading in a material particular if:

(a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement (other than a statement in a cargo report or outturn report) by the other person or someone else to an officer; and

(b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause such a statement to be made.

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(3B) For the purposes of this section, a person is taken to cause to be made an omission (a ***punishable omission***) from a statement (other than a statement in a cargo report or outturn report) of a matter or thing without which the statement is false or misleading in a material particular, if:

(a) the person gives to another person, for inclusion in a statement (other than a statement in a cargo report or an outturn report) by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and

(b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause a punishable omission to be made.

(4) Subsection (1) does not apply if:

(a) a person (other than an officer) voluntarily gives written notice (an ***error notice***) to an officer doing duty in relation to the matter to which the statement relates, indicating that:

(i) the statement is false or misleading in a material particular; or

(ii) the statement is false or misleading in a material particular because of the omission of a matter or thing; and

(b) between the making of the statement and the person giving the error notice, a notice under section 214AD had not been given to:

(i) a person who made the statement or caused it to be made (the ***defendant***); or

(ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading (the ***defendant***); and

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(c) if subparagraph (1)(b)(i) would apply apart from this subsection—the duty properly payable on the goods is paid in full before either of the following happens:
  (i) an infringement notice is given to the defendant for an offence against subsection (1);
  (ii) proceedings are commenced against the defendant for an offence against subsection (1); and

(d) if subparagraph (1)(b)(ii) would apply apart from this subsection and an amount of refund or drawback exceeding the amount (if any) properly payable has been paid before the time either of the following happens:
  (i) an infringement notice is given to the defendant for an offence against subsection (1);
  (ii) proceedings are commenced against the defendant for an offence against subsection (1);

the excess has been repaid before that time.

(4A) For the purposes of paragraph (4)(a), the error notice is taken not to be given voluntarily if it is given after:
(a) an officer exercises a power under a Customs-related law to verify information in the statement; or
(b) an infringement notice is served under Subdivision A of Division 5 on the defendant for an offence against subsection (1); or
(c) proceedings are commenced against the defendant for an offence against subsection (1).

(5) Subsection (1) does not apply to a statement made by a person to an officer if:
(a) the statement specifies that the person is uncertain about information included in the statement, and considers that, as a result of including that information, the statement might be false or misleading in a material particular; and
(b) the statement identifies the information whose inclusion might make the statement false or misleading in a material particular; and

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(c) the statement sets out the reasons why the person is uncertain about the identified information.

(6) Subsection (1) does not apply to a statement made by a person to an officer if:

(a) the statement specifies that the person is uncertain whether, as a result of omitting information from the statement, the statement might be false or misleading in a material particular; and

(b) the statement identifies the omission of information that might make the statement false or misleading in a material particular; and

(c) the statement sets out the reasons for the person's uncertainty about the effect of omitting the information.

243U False or misleading statements not resulting in loss of duty

(1) A person commits an offence if:

(a) the person:

(i) makes, or causes to be made, to an officer a statement (other than a statement in a cargo report or an outturn report) that is false or misleading in a material particular; or

(ii) omits, or causes to be omitted, from a statement (other than a statement in a cargo report or an outturn report) made to an officer any matter or thing without which the statement is false or misleading in a material particular; and

(b) neither of the following applies:

(i) the amount of duty properly payable on particular goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;

(ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false

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or misleading exceeds the amount of refund or drawback properly payable (which may be nil).

(2) An offence against subsection (1) is an offence of strict liability.

(3) The penalty for a conviction for an offence against subsection (1) is an amount not exceeding 60 penalty units for each statement that is found by the court to be false or misleading.

(3A) For the purposes of this section, a person is taken to cause to be made a statement (other than a statement in a cargo report or outturn report) that is false or misleading in a material particular if:

(a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement (other than a statement in a cargo report or outturn report) by the other person or someone else to an officer; and

(b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause such a statement to be made.

(3B) For the purposes of this section, a person is taken to cause to be made an omission (a ***punishable omission***) from a statement (other than a statement in a cargo report or outturn report) of a matter or thing without which the statement is false or misleading in a material particular, if:

(a) the person gives to another person, for inclusion in a statement (other than a statement in a cargo report or an outturn report) by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and

(b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause a punishable omission to be made.

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(4) Subsection (1) does not apply to a statement if:

(a) a person (other than an officer) voluntarily gives written notice (an ***error notice***) to an officer doing duty in relation to the matter to which the statement relates, indicating that:

(i) the statement is false or misleading in a material particular; or

(ii) the statement is false or misleading in a material particular because of the omission of a matter or thing; and

(b) between the making of the statement and the person giving the error notice, a notice under section 214AD had not been given to either of the following:

(i) a person who made the statement or caused it to be made;

(ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading.

(4A) For the purposes of paragraph (4)(a), the error notice is taken not to be given voluntarily if it is given after:

(a) an officer exercises a power under a Customs-related law to verify information in the statement; or

(b) an infringement notice for an offence against subsection (1) is given to:

(i) a person who made the statement or caused it to be made; or

(ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading; or

(c) proceedings are commenced against a person described in subparagraph (b)(i) or (ii) of this subsection for an offence against subsection (1).

(5) In this section:

statement does not include:

(a) a statement made under Part XVA or XVB; or

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(b) a statement that a person who is or was a passenger on, or a member of the crew of, a ship or aircraft made in relation to his or her accompanied personal or household effects that were carried on the ship or aircraft.

243V False or misleading statements in cargo reports or outturn reports

(1) A person commits an offence if the person:

(a) makes, or causes to be made, to an officer a statement, in a cargo report or an outturn report, that is false or misleading in a material particular; or

(b) omits, or causes to be omitted, from a statement, in a cargo report or an outturn report, made to an officer any matter or thing without which the statement is false or misleading in a material particular.

(2) An offence against subsection (1) is an offence of strict liability.

(3) The penalty for a conviction for an offence against subsection (1) is an amount not exceeding 60 penalty units.

(4) For the purposes of subsection (1), a person is taken to cause to be made a statement described in paragraph (1)(a) if:

(a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement, in a cargo report or an outturn report, by the other person or someone else to an officer; and

(b) the other person or someone else makes a statement including the information to an officer, in a cargo report or an outturn report.

This subsection does not limit the ways in which a person may cause to be made a statement described in paragraph (1)(a).

(5) For the purposes of subsection (1), a person is taken to cause an omission described in paragraph (1)(b) to be made if:

(a) the person gives to another person, for inclusion in a statement, in a cargo report or an outturn report, by the other

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person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and

(b) the other person or someone else makes a statement including the information to an officer, in a cargo report or an outturn report.

This subsection does not limit the ways in which a person may cause an omission described in paragraph (1)(b) to be made.

243W Electronic communications to Department to be treated as statements to Comptroller-General of Customs

For the purposes of this Division, any electronic communication to the Department is taken to be a statement made to the Comptroller-General of Customs.

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Division 5—Infringement notices

243X Infringement notices—general

(1) A regulation may make provision enabling a person who is alleged to have committed an offence of strict liability or of absolute liability against this Act to pay to the Commonwealth a penalty specified in a notice (an ***infringement notice***) as an alternative to prosecution.

(2) The penalty must not exceed either:

(a) one-quarter of the maximum fine that a court could impose on the person as a penalty for that offence; or

(b) subject to subsection (3), whichever of the following applies:

(i) 15 penalty units if the person is an individual;

(ii) 75 penalty units if the person is a body corporate.

Note: Because of subsection 4B(3) of the *Crimes Act 1914*, the maximum penalty that may be specified in accordance with paragraph (a) in an infringement notice given to a body corporate may be 5 times greater than the maximum penalty that may be specified in accordance with that paragraph in an infringement notice given to an individual.

(3) Paragraph (2)(b) does not apply if:

(a) the penalty for the offence may be determined wholly or partly by reference to:

(i) an amount of duty that may be, or would have been, payable; or

(ii) the value of particular goods; and

(b) it is possible to determine that amount or that value.

243Y Infringement notices—forfeiture of goods that are prohibited imports if infringement notice paid

(1) Goods are taken to be condemned as forfeited to the Crown if:

(a) the goods are prohibited imports of a kind prescribed by a regulation for the purposes of this section; and

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(b) a person pays a penalty to the Commonwealth under an infringement notice as an alternative to prosecution for an offence for a contravention of paragraph 233(1)(b) (importing prohibited imports) in relation to the goods.

(2) In addition:
(a) the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods; and
(b) the title cannot be called into question.

(3) The goods must be dealt with and disposed of in accordance with the directions of the Comptroller-General of Customs.

(4) Subsections (1) and (2) cease to apply if the infringement notice is withdrawn.

243Z Infringement notices—right of compensation in certain circumstances for goods disposed of or destroyed

(1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown under subsection 243Y(1), a person may apply to a court of competent jurisdiction for compensation under this section.

(2) A right to compensation exists if:
(a) the goods were not prohibited imports; and
(b) the goods were not used or otherwise involved in the commission of an offence; and
(c) the person establishes, to the satisfaction of the court, that he or she is the rightful owner of the goods.

(3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to the market value of the goods at the time of their disposal or destruction.

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Part XIV—Customs prosecutions

244 Meaning of *Customs prosecution*

Customs prosecutions are proceedings:

(a) for the recovery of penalties under this Act, other than pecuniary penalties referred to in section 243B; or

(b) for the condemnation of ships, aircraft or goods seized as forfeited.

245 Institution of prosecutions

(1) Customs prosecutions may be instituted by the Comptroller-General of Customs by action, information or other appropriate proceeding:

(a) in the Supreme Court of a State;

(b) in the Supreme Court of the Australian Capital Territory;

(c) in the Supreme Court of the Northern Territory;

(d) in a County Court or District Court of a State;

(e) in a Local Court, being a Local Court of full jurisdiction, of South Australia or of the Northern Territory; or

(f) in a court of summary jurisdiction of a State, of the Australian Capital Territory or of the Northern Territory.

(2) Where a Customs prosecution for a pecuniary penalty that, but for this section, would exceed 400 penalty units is instituted in a Court referred to in paragraph (1)(d) or (e), the amount of that penalty that exceeds 400 penalty units shall be taken to have been abandoned.

(4) Where a Customs prosecution for a pecuniary penalty that, but for this subsection, would exceed 200 penalty units is instituted in a court referred to in paragraph (1)(f), the amount of that penalty that exceeds 200 penalty units shall be taken to have been abandoned.

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247 Prosecutions in accordance with practice rules

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.

248 State Court practice

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.

249 Commencement of prosecutions

Customs prosecutions may be instituted at any time within 5 years after the cause thereof.

250 Information to be valid if in words of Act

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.

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250A Property in goods subject to customs control

Where in any proceedings on behalf of the Commonwealth in relation to any goods subject to customs control 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 or her name.

251 No objection for informality

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.

252 Conviction not to be quashed

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.

253 Protection to witnesses

No witness on behalf of the Minister, Comptroller-General of Customs or Collector in any Customs prosecution shall be compelled to disclose the fact that he or she 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 the

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officer confidentially in his or her official capacity or containing confidential information.

254 Defendant competent witness

(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.

255 Averment of prosecutor sufficient

(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.

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256 Proof of proclamation etc.

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-General of Customs 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.

257 Conduct by directors, employees or agents

(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, employee or agent of the body corporate, being a director, employee 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, employee 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, employee 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, employee 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 an employee or agent of the person, being an employee or

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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 an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee 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 employee 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.

259 Collector may levy on goods in his or her possession

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 customs control.

261 Imprisonment not to release penalty

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 Commonwealth to collect the amount in any manner provided by this Act other than by imprisonment of the person convicted.

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263 Parties may recover costs

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.

264 Application of penalties

(1) All penalties and forfeitures recovered under any Customs Act shall be applied to such purposes and in such proportions as the Comptroller-General of Customs 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.

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Part XV—Tenders for rights to enter goods for home consumption at concessional rates

265 Interpretation

(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.

266 Tender schemes

(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

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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.

267 Undertakings relating to tenders

(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-General of Customs, that, if that tender is accepted and:

(a) the *Customs Tariff Act 1995* is so altered or proposed to be so altered that rates of duty determined in accordance with that tender are set out in items, or proposed items, of a Customs Tariff that are expressed to apply to goods as prescribed by by-law; and

(b) the Comptroller-General of Customs 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;

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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.

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268 Transfers of rights to enter goods for home consumption at concessional rates of duty

(1) A scheme may provide for the transfer, with the approval of the Comptroller-General of Customs, 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-General of Customs 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-General of Customs, 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

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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.

269 Revocation or variation of undertaking

A person who has given an undertaking in accordance with section 267 or 268 may, with the approval of the Comptroller-General of Customs, revoke or vary that undertaking.

269A Recovery of penalties

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.

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Part XVA—Tariff concession orders

Division 1—Preliminary

269B Interpretation

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

capital equipment means goods, which if imported into Australia, would be goods to which Chapters 84, 85, 86, 87, 89 or 90 of Schedule 3 to the *Customs Tariff Act 1995* would apply.

Customs Tariff Act 1995 includes that Act as proposed to be altered by a Customs Tariff alteration proposed, or intended to be proposed, in the Parliament.

gazettal day, in relation to a TCO application, means:

(a) unless paragraph (b) applies—the day on which the Comptroller-General of Customs publishes a notice in respect of the application in the *Gazette* under subsection 269K(1); or

(b) if, in accordance with section 269N, the Comptroller-General of Customs publishes a notice in respect of the application in the *Gazette* under subsection 269K(1) in substitution for an earlier notice—the day on which the Comptroller-General of Customs publishes that substituted notice.

goods produced in Australia has the meaning given by section 269D.

last day for submission means:

(a) in relation to an original TCO application:

(i) so far as concerns a person invited by the Comptroller-General of Customs under section 269M to lodge a submission in respect of the TCO application—the day fixed in the notice inviting that submission; and

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(ii) so far as concerns any other person—the day occurring 50 days after the gazettal day; and

(b) in relation to an amended TCO application:

(i) so far as concerns a person invited under paragraph 269L(4B)(a) to lodge a further submission in respect of the amended TCO application—the day occurring 14 days after the notification containing that invitation; and

(ii) so far as concerns any other person—the day occurring 14 days after publication of a notice under paragraph 269L(4B)(b) inviting submissions in relation to the amended application.

lodged, in relation to a TCO application, includes taken to be lodged because of the operation of section 269J.

ordinary course of business has the meaning given by section 269E.

prescribed item means an item in Schedule 4 to the *Customs Tariff Act 1995* that is expressed to apply to goods that a TCO declares are goods to which the item applies.

repair, in relation to goods, includes renovate.

substitutable goods, in respect of goods the subject of a TCO application or of a TCO, means goods produced in Australia that are put, or are capable of being put, to a use that corresponds with a use (including a design use) to which the goods the subject of the application or of the TCO can be put.

TCO means a tariff concession order made under section 269P or 269Q or taken to be made under section 269P or 269Q because of the operation of section 269SC.

TCO application means:

(a) an application for a TCO under section 269F; or

(b) an application for a TCO under section 269F as amended under section 269L; or

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(c) a proposal for the issue of a TCO that is to be taken under section 269J to be a TCO application.

(2) Despite the definition of ***days*** in section 4, Sundays and public holidays are counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection derogates from the operation of section 36 of the *Acts Interpretation Act 1901*.

(3) In determining whether goods produced in Australia are put, or are capable of being put, to a use corresponding to a use to which goods the subject of a TCO, or of an application for a TCO, can be put, it is irrelevant whether or not the first-mentioned goods compete with the second-mentioned goods in any market.

269C Interpretation—core criteria

For the purposes of this Part, a TCO application is taken to meet the core criteria if, on the day on which the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business.

269D Interpretation—goods produced in Australia

(1) For the purposes of this Part, goods, other than unmanufactured raw products, are taken to be produced in Australia if the goods are wholly or partly manufactured in Australia.

(2) For the purposes of this Part, goods are to be taken to have been partly manufactured in Australia if at least one substantial process in the manufacture of the goods was carried out in Australia.

(3) Without limiting the meaning of the expression ***substantial process in the manufacture of the goods,*** any of the following operations or any combination of those operations does not constitute such a process:

(a) operations to preserve goods during transportation or storage;

(b) operations to improve the packing or labelling or marketable quality of goods;

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(c) operations to prepare goods for shipment;
(d) simple assembly operations;
(e) operations to mix goods where the resulting product does not have different properties from those of the goods that have been mixed.

269E Interpretation—the ordinary course of business

(1) For the purposes of this Part, other than section 269Q, goods (other than made-to-order capital equipment) that are substitutable goods in relation to goods the subject of a TCO application are taken to be produced in Australia in the ordinary course of business if:
(a) they have been produced in Australia in the 2 years before the application was lodged; or
(b) they have been produced, and are held in stock, in Australia; or
(c) they are produced in Australia on an intermittent basis and have been so produced in the 5 years before the application was lodged;
and a producer in Australia is prepared to accept an order to supply them.

(2) For the purposes of this Part, substitutable goods, in respect of goods the subject of a TCO application, are taken to have been produced in Australia in the ordinary course of business if:
(a) a producer in Australia could produce substitutable goods, in respect of goods the subject of the TCO application, with existing facilities; and
(b) the substitutable goods the producer could produce would be made-to-order capital equipment; and
(c) in the 5 years before the application was lodged, the producer has made goods requiring the same labour skills, technology and design expertise as the substitutable goods the producer could produce; and
(d) the producer is prepared to accept an order to supply substitutable goods in respect of goods the subject of the TCO application.

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(3) In this section:

made-to-order capital equipment means a particular item of capital equipment:

(a) that is made in Australia on a one-off basis to meet a specific order rather than being the subject of regular or intermittent production; and

(b) that is not produced in quantities indicative of a production run.

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Division 2—Making and processing TCO applications

269F Making a TCO application

(1) A person may apply to the Comptroller-General of Customs for a tariff concession order in respect of goods.

(2) An application must:
  (a) be in writing; and
  (b) be in an approved form; and
  (c) contain such information as the form requires; and
  (d) be signed in the manner indicated in the form.

(3) Without limiting the generality of paragraph (2)(c), a TCO application must contain:
  (a) a full description of the goods to which the application relates; and
  (b) a statement of the tariff classification that, in the opinion of the applicant, applies to the goods; and
  (c) if the applicant is not proposing to make use of the TCO to import the goods to which the application relates into Australia on the applicant's own behalf—the identity of the importer for whom the applicant is acting; and
  (d) particulars of all the inquiries made by the applicant (including inquiries made of prescribed organisations) to assist in establishing that there were reasonable grounds for believing that, on the day on which the application was lodged, there were no producers in Australia of substitutable goods.

(4) A TCO application may be lodged:
  (a) by leaving it at a place that has been allocated for lodgement of TCO applications by notice published on the Department's website; or
  (b) by posting it by prepaid post to a postal address specified in the approved form; or

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(c) by sending it by fax to a fax number specified in the approved form;

and the application is taken to have been lodged when the application, or a fax of the application, is first received by an officer of Customs.

(5) The day on which an application is taken to have been lodged must be recorded on the application.

269FA The applicant's obligation

It is the responsibility of an applicant for a TCO to establish, to the satisfaction of the Comptroller-General of Customs, that, on the basis of:

(a) all information that the applicant has, or can reasonably be expected to have; and

(b) all inquiries that the applicant has made, or can reasonably be expected to make;

there are reasonable grounds for asserting that the application meets the core criteria.

269G Withdrawing a TCO application

(1) A person who has lodged a TCO application under section 269F may withdraw the application at any time before a decision is made under section 269P or 269Q in relation to that application.

(2) A withdrawal of a TCO application:

(a) must be in writing; and

(b) must be lodged with the Comptroller-General of Customs in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

(c) must have the day of its lodgement recorded.

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(3) If a notice informing of the lodgement of a TCO application is published in the *Gazette* before that application is withdrawn, the Comptroller-General of Customs must publish in the *Gazette*, as soon as practicable after the withdrawal is lodged, a notice:

(a) stating that the TCO application has been withdrawn; and

(b) describing the goods to which the TCO application related; and

(c) specifying the *Gazette* number and date of the previous notice relating to the TCO application; and

(d) specifying the date of withdrawal of the TCO application.

269H Screening the application

(1) Not later than 28 days after a TCO application is lodged, the Comptroller-General of Customs must:

(a) if he or she is satisfied:

(i) that the application complies with section 269F; and

(ii) that, having regard to the information disclosed in the application and to the particulars of the inquiries made by the applicant, there are reasonable grounds for believing that the applicant has discharged the responsibility referred to in section 269FA; and

(b) if he or she is not aware of any producer in Australia of substitutable goods;

by notice in writing given to the applicant, inform the applicant that the application is accepted as a valid application; and

(c) if he or she is not so satisfied; or

(d) if he or she is aware of such a producer;

by notice in writing given to the applicant, inform the applicant that the application is rejected and of the reasons for the rejection.

(2) If the Comptroller-General of Customs has not, within that period, accepted or rejected the application, this Part has effect as if the Comptroller-General of Customs had, immediately before the end of that period, informed the applicant, by notice in writing, that the application is accepted as a valid application.

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269HA Comptroller-General of Customs may reject a TCO application in relation to goods referred to in section 269SJ

(1) If, at any time during the period starting from the receipt of a TCO application and ending with the making of a TCO, the Comptroller-General of Customs becomes satisfied that the goods to which the application relates are goods in respect of which, under subsection 269SJ(1), the Comptroller-General of Customs is prevented from making a TCO, the Comptroller-General of Customs must:

(a) reject the application; and

(b) by notice in writing given to the applicant, inform the applicant that the application is rejected and of the reason for the rejection.

(2) If, at any time after the publication of a notice in the *Gazette* under subsection 269K(1), the Comptroller-General of Customs rejects the application to which the notice relates under subsection (1), the Comptroller-General of Customs must, as soon as practicable after rejecting the application, publish a notice in the *Gazette* stating that the application has been rejected and giving the reason for the rejection.

269J Applications taken to be lodged in certain circumstances

(1) If the Comptroller-General of Customs decides that it is desirable to consider making a TCO despite the absence of a TCO application, the Comptroller-General of Customs may declare, in writing, that he or she has so decided.

(2) A declaration under subsection (1) must include a proposal for the issue of the TCO in respect of the goods referred to in the declaration.

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(3) If the Comptroller-General of Customs makes a declaration under this section, this Part has effect as if:

(a) the proposal contained in the declaration were a TCO application lodged under section 269F on the day on which the declaration is made; and

(b) the application had been accepted under section 269H as a valid application on that day.

269K Processing a valid application

(1) As soon as practicable after accepting a TCO application as a valid application, the Comptroller-General of Customs must publish a notice in the *Gazette*:

(a) stating that the application has been lodged; and

(aa) identifying the applicant; and

(ab) if the applicant is not proposing to make use of the TCO to import the goods to which the application relates into Australia on the applicant's own behalf—identifying the importer for whom the applicant is acting; and

(b) providing a description of the goods to which the application relates including a reference to the Customs tariff classification that, in the opinion of the Comptroller-General of Customs, applies to the goods; and

(c) inviting any persons who consider that there are reasons why the TCO should not be made to lodge a submission with the Comptroller-General of Customs not later than 50 days after the gazettal day.

(2) A submission must:

(a) be in writing; and

(b) be in an approved form; and

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

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

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(3) A submission:

(a) must be lodged with the Comptroller-General of Customs in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

(b) must have the day of its lodgement recorded.

(4) If a person lodges a submission later than 50 days after the gazettal day in respect of a TCO application without being invited by the Comptroller-General of Customs to do so under section 269M, the Comptroller-General of Customs must not take the submission into account in determining whether to make a TCO.

269L Amendment of TCO applications

(1) If a person lodges a submission in respect of a TCO application within 50 days after the gazettal day, the Comptroller-General of Customs must, within 14 days after the end of that 50 day period, give the applicant for the TCO a notice in writing setting out:

(a) the name and address of each person who has lodged a submission within that period; and

(b) a short statement of the grounds on which each submission is based.

(2) The applicant may, within 28 days of receiving a notice under subsection (1) and having regard to the grounds on which each submission was made, notify the Comptroller-General of Customs, in writing, that he or she proposes to amend the application by altering the description of the goods the subject of the application, and set out in that notice the proposed amendment.

(3) The applicant must not, under subsection (2), propose an amendment of an application:

(a) that would cause the goods to which the application relates to be covered by a different Customs tariff classification to the one notified by the Comptroller-General of Customs in the *Gazette* under section 269K; or

(b) that would do otherwise than narrow the description of the goods as set out in the application.

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(4) As soon as practicable after, but not more than 7 days after, a proposed amendment of a TCO application was notified to the Comptroller-General of Customs, the Comptroller-General of Customs must consider the proposed amendment and:

(a) if the Comptroller-General of Customs is satisfied that the proposed amendment does not contravene subsection (3)—the Comptroller-General of Customs must inform the applicant that he or she is so satisfied and that subsection (4B) applies accordingly; or

(b) if the Comptroller-General of Customs is not so satisfied—the Comptroller-General of Customs must inform the applicant that he or she is not so satisfied and of the reasons for not being so satisfied.

(4A) If the Comptroller-General of Customs is not satisfied that a proposed amendment of a TCO does not contravene subsection (3), the Comptroller-General of Customs must continue to consider the application as it was originally made.

(4B) If the Comptroller-General of Customs is satisfied that the proposed amendment does not contravene the requirements of subsection (3), the Comptroller-General of Customs must, within 14 days after becoming so satisfied:

(a) notify the proposed amendment to each person who lodged a submission referred to in subsection (1) and, subject to the operation of subsections (5) and (6), invite that person, if he or she considers there are reasons not dealt with in the original submission why the TCO as proposed to be amended should not be made, to lodge a further submission within 14 days after being so notified; and

(b) publish a notice in the *Gazette* setting out the amended description in relation to the application and inviting persons who consider that there are reasons why the TCO as proposed to be amended should not be made to lodge a submission with the Comptroller-General of Customs no later than 14 days after the publication of that notice.

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(4C) The notification and subsequent publication of an amendment of a TCO application does not affect the gazettal day in relation to the application or any time limits calculated by reference to that gazettal day.

(5) If a person who lodged a submission referred to in subsection (1) notifies the Comptroller-General of Customs, in writing, within 14 days after being notified of a proposed amendment, that he or she no longer objects to the TCO application, the submission is taken to have been withdrawn.

(6) If a person who lodged a submission referred to in subsection (1) does not so notify the Comptroller-General of Customs, he or she is taken to wish to proceed with the submission as if it were a submission made in respect of the amended application.

269M Comptroller-General of Customs may invite submissions or seek other information, documents or material

(1) If the Comptroller-General of Customs considers that, in relation to a particular TCO application, a person may have reason to oppose the making of the TCO to which the application relates, he or she may, by notice in writing, invite the person to lodge a written submission with the Comptroller-General of Customs within a period specified in the notice ending not later than 150 days after the gazettal day.

(2) A submission must:
(a) be in writing; and
(b) be in an approved form; and
(c) contain such information as the form requires; and
(d) be signed in the manner indicated in the form.

(3) A submission:
(a) must be lodged with the Comptroller-General of Customs in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and
(b) must have the day of its lodgement recorded.

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(4) If the Comptroller-General of Customs considers that, in relation to a particular TCO application, any person (including the applicant or a person who has lodged a submission with the Comptroller-General of Customs) may be able to supply information or produce a document or material relevant to the consideration of the application, the Comptroller-General of Customs may, by notice in writing, request the supply of the information in writing or the production of the document or material within a period specified in the notice and ending not later than 150 days after the gazettal day.

(5) If a person refuses or fails to lodge a submission under subsection (1) or to supply information or produce a document or material under subsection (4) within the period allowed but subsequently lodges that submission, supplies the information or produces the document or material, the Comptroller-General of Customs must not take that submission, information, document or material into account in determining whether to make a TCO.

(6) At any time during the period of 150 days starting on the gazettal day, the Comptroller-General of Customs may, for the purpose of dealing with a TCO application, and despite Part 6 of the *Australian Border Force Act 2015*, give a copy of all, or of a part, of the application to a prescribed organisation with a view to obtaining the advice of the organisation in relation to the question whether there are producers in Australia of substitutable goods.

269N Reprocessing of TCO applications

(1) If, after gazettal day in respect of a TCO application but before a decision is made on the application, the Comptroller-General of Customs is satisfied that:

(a) because of an amendment of a Customs Tariff; or

(b) having regard to a decision of a court or of the Administrative Review Tribunal; or

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(c) having regard to written advice on the matter given by an officer of Customs;

the tariff classification that was stated in the notice published in the *Gazette* under section 269K to apply to the goods the subject of the application has not, with effect from the gazettal day or a later day, applied to the goods, the Comptroller-General of Customs must take action to reprocess the application.

(2) If the Comptroller-General of Customs is satisfied that, in publishing a notice in the *Gazette* under section 269K in relation to a TCO application, there has been a transcription error in the description of the goods the subject of the application including the tariff classification that is stated to apply to the goods, the Comptroller-General of Customs must take action to reprocess the application.

(3) Where the Comptroller-General of Customs is required to take action under subsection (1) or (2), he or she must, as soon as practicable after becoming so required, notify:

(a) the applicant; and

(b) all persons from whom submissions in relation to the application have been received; and

(c) all persons from whom submissions in relation to the application have been sought;

that, for the reasons specified in subsection (1) or (2), it is necessary to reprocess the application and that a new notice of the application will be published in the *Gazette* for that purpose.

(4) As soon as practicable after giving a notice under subsection (3), the Comptroller-General of Customs must publish in the *Gazette* a new notice under subsection 269K(1) in relation to the TCO application in substitution for the notice previously published.

(5) A person who had lodged a submission in relation to the original notice published under section 269K in respect of a TCO application may notify the Comptroller-General of Customs in writing, not later than 50 days after the day of publication of the substituted notice under that section, that he or she wishes to

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proceed with the submission, or wishes to proceed with it subject to stated modifications, as if it had been provided in response to the substituted notice and, where the Comptroller-General of Customs is so notified, the submission is to be treated as if it had been so provided on the day of that notification.

(6) If a TCO is made in respect of a TCO application that is reprocessed in accordance with this section, the day on which the TCO is to be taken to come into force is unaffected by the decision to reprocess that application.

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Division 3—Making and operation of TCOs

269P The making of a standard TCO

(1) If a TCO application in respect of goods, other than goods sent out of Australia for repair, has been accepted as a valid application under section 269H, the Comptroller-General of Customs must decide, not later than 150 days after the gazettal day, whether or not he or she is satisfied, having regard to:

(a) the application; and

(b) all submissions lodged with the Comptroller-General of Customs before the last day for submissions; and

(c) all information supplied and documents and material produced to the Comptroller-General of Customs in accordance with a notice under subsection 269M(4); and

(d) any inquiries made by the Comptroller-General of Customs;

that the application meets the core criteria.

(2) If the Comptroller-General of Customs fails to make a decision under subsection (1) in respect of a TCO application within 150 days after the gazettal day, the Comptroller-General of Customs is taken, for the purposes of subsection (1), at the end of that period, to have made a decision that he or she is not satisfied that the application meets the core criteria.

(3) If the Comptroller-General of Customs is satisfied that the application meets the core criteria, he or she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.

(4) The TCO must include:

(a) a description of the goods the subject of the order including a reference to the Customs tariff classification that, in the opinion of the Comptroller-General of Customs, applies to the goods; and

(b) a statement of the day on which the TCO is to be taken to have come into force; and

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(c) if subsection 269SA(1) applies in relation to the TCO—a statement of the day on which it ceases to be in force.

269Q The making of a TCO for goods requiring repair

(1) If a TCO application in respect of goods sent out of Australia for repair has been accepted as a valid application under section 269H, the Comptroller-General of Customs must decide, not later than 150 days after the gazettal day, whether or not he or she is satisfied, having regard to:

(a) the application; and

(b) all submissions lodged with the Comptroller-General of Customs before the last day for submissions; and

(c) all information supplied and documents and material produced to the Comptroller-General of Customs in accordance with a notice under subsection 269M(4);

that there is no one in Australia capable of repairing those goods in the ordinary course of business.

(2) If the Comptroller-General of Customs fails to make a decision under subsection (1) in respect of a TCO application within 150 days after the gazettal day, the Comptroller-General of Customs is taken, for the purposes of subsection (1), at the end of that period, to have made a decision that he or she is not satisfied of the matters referred to in that subsection in relation to the application.

(3) If the Comptroller-General of Customs is satisfied of the matters referred to in subsection (1) in relation to the application, he or she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.

(4) The TCO must include:

(a) a description of the goods the subject of the order including a reference to the Customs tariff classification that, in the opinion of the Comptroller-General of Customs, applies to the goods; and

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(b) a statement of the day on which the TCO is to be taken to have come into force.

(5) For the purposes of this section, a person is taken to be capable of repairing goods in the ordinary course of business if, in the ordinary course of business, the person is prepared to accept orders to repair those goods.

269R Notification of TCO decisions

(1) As soon as practicable after the Comptroller-General of Customs makes a decision under subsection 269P(1) or 269Q(1), the Comptroller-General of Customs must:

(a) by notice in writing, inform the applicant of the decision; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision.

(2) If the decision has led to the making of a TCO, the notice given to the applicant and published in the *Gazette* must include full particulars of the TCO.

(3) A failure to comply with subsection (1) or (2) does not affect the validity of the TCO concerned.

269S Operation of TCOs

(1) Subject to the operation of subsection 269SA(2), a TCO is to be taken to have come into force on:

(a) unless paragraph (b) applies—the day on which the application for the TCO was lodged; or

(b) if there was more than one application for the TCO—the day on which the earliest application for the TCO was lodged.

(2) Subject to section 269SG, a TCO applies in relation to the goods the subject of the TCO that were or are first entered for home consumption on or after the day on which the TCO is taken to have come into force.

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(3) Subject to the operation of subsection 269SA(1), a TCO continues in force until it is revoked under section 269SC or 269SD.

269SA Consequence of commencement or cessation of production before TCO decision

(1) If the Comptroller-General of Customs is satisfied, in relation to a TCO application:

(a) that the application meets the core criteria; and

(b) that on a day (the ***production start-up day***) occurring later than the day on which the application was lodged but before the making of the decision on the application, substitutable goods in relation to the goods the subject of the application commenced to be produced in Australia; and

(c) that if the production start-up day had occurred on the day on which the application was lodged, the Comptroller-General of Customs would not have been satisfied that the application met the core criteria;

the TCO that the Comptroller-General of Customs makes continues in force only until the production start-up day.

(2) If the Comptroller-General of Customs is satisfied, in relation to a TCO application:

(a) that the application does not meet the core criteria; and

(b) that on a day (the ***production close-down day***) occurring later than the day on which the application was lodged but before the making of the decision on the application, substitutable goods in relation to the goods the subject of the application ceased to be produced in Australia; and

(c) that if the production close-down day had occurred on the day on which the application was lodged the Comptroller-General of Customs would have been satisfied that the application met the core criteria;

the Comptroller-General of Customs must make a TCO in accordance with section 269P, but the TCO is in force only from the production close-down day.

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Division 4—Revocation of TCOs

269SB Request for revocation of TCOs

(1) If:

(a) a TCO is in force on a particular day; and

(b) a person claiming to be a producer in Australia of substitutable goods in relation to the goods covered by the order is of the view that if:

(i) the TCO were not in force on that particular day; and

(ii) that particular day were the day on which the TCO application was lodged;

the TCO would not have been made;

the person may request the Comptroller-General of Customs to revoke the order.

(2) A request must:

(a) be in writing; and

(b) be in an approved form; and

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

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

(3) A request for revocation may be lodged:

(a) by leaving it at a place that has been allocated for the lodgement of TCO applications by notice published on the Department's website; or

(b) by posting it by prepaid post to a postal address specified in the approved form; or

(c) by sending it by fax to a fax number specified in the approved form;

and the request is taken to have been lodged when the request, or a fax of the request, is first received by an officer of Customs.

(4) The day on which the request is to be taken to be lodged, must be recorded on the request.

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269SC Processing requests for revocation of TCOs

(1) Not later than 60 days after lodgement of a request for revocation of a TCO, and after having regard to the request and to any other information, document or material given to the Comptroller-General of Customs under section 269SF, the Comptroller-General of Customs must decide whether or not he or she is satisfied:

(a) that, on the day of lodgement of the request, the person requesting the revocation of the TCO is a producer in Australia of goods that are substitutable goods in relation to the goods the subject of the order; and

(b) that, if the TCO were not in force on that day but that day were the day on which the application for that TCO was lodged, the Comptroller-General of Customs would not have made the TCO.

(1A) As soon as practicable after receiving a request for revocation of a TCO, the Comptroller-General of Customs must publish a *Gazette* notice stating:

(a) that the request has been lodged; and

(b) the date that the request was lodged; and

(c) the full particulars of the TCO to which the request relates.

(2) If the Comptroller-General of Customs fails to make a decision in respect of a request for the revocation of a TCO within 60 days after lodgement of the request, the Comptroller-General of Customs is taken, for the purposes of subsection (1), at the end of that period, to have decided that he or she is not satisfied of the matters referred to in that subsection in relation to the request.

(3) If the Comptroller-General of Customs is satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO, the Comptroller-General of Customs must make an order revoking the TCO.

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(4) If the Comptroller-General of Customs is satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO but is also satisfied that if:

(a) the TCO were not in force on the day of lodgement of the request; and

(b) that day were the day of lodgment of an application for another TCO (the ***narrower TCO***) in respect only of goods covered by the TCO that are not produced in Australia by the person making the request;

the Comptroller-General of Customs would have made such a narrower TCO, he or she must:

(c) revoke the TCO; and

(d) make, in its place, such a narrower TCO.

(5) If the Comptroller-General of Customs is not satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO, the Comptroller-General of Customs must refuse the request.

(6) An order under subsection (3) or (4) revoking a TCO comes into force on the day on which the request to revoke the TCO was lodged.

(7) If a narrower TCO is made in place of another TCO that is revoked in subsection (4), that narrower TCO comes into force, for the purposes of this Part, from the date of effect of the revocation of the other TCO, as if it had been made under section 269P or 269Q.

(8) Subsections 269SC(6) and (7) have effect despite section 12 of the *Legislation Act 2003.*

269SD Revocation at the initiative of Comptroller-General of Customs

(1AA) If:

(a) a TCO is in force on a particular day; and

(b) the Comptroller-General of Customs believes that if:

(i) the TCO were not in force on that day; and

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(ii) that day were the day on which the application for the TCO was lodged;

the Comptroller-General of Customs would not have made the TCO;

the Comptroller-General of Customs may, not later than 14 days after that day, publish a notice in the *Gazette*:

(c) declaring his or her intention, subject to subsection (1AB), to make an order revoking the TCO with effect from that particular day (the ***intended revocation day***); and

(d) inviting any person who might be affected by the revocation of that TCO to give a written submission to the Comptroller-General of Customs within 28 days of the notice concerning the proposed revocation.

(1AB) Within 60 days after the date of publication of the notice referred to in subsection (1AA), the Comptroller-General of Customs must, after consideration of the matters raised in any submissions made in response to the invitation and of any other relevant matters:

(a) decide whether or not he or she is satisfied of the matters referred to in paragraph (1AA)(b); and

(b) if the Comptroller-General of Customs is so satisfied—make an order revoking the TCO with effect from the intended revocation day.

(1) If the Comptroller-General of Customs is satisfied that a TCO is no longer required because the general tariff rate in respect of the goods the subject of the order has been reduced to "Free", the Comptroller-General of Customs may make an order revoking the TCO with effect from the day the tariff rate was so reduced.

(1A) If the Comptroller-General of Customs is satisfied on any day that a TCO is no longer required because, in the 2 years preceding that day, the TCO has not been quoted in an import entry to secure a concessional rate of duty, the Comptroller-General of Customs may make an order revoking the TCO with effect from that day.

(2) If the Comptroller-General of Customs is satisfied that:

(a) because of an amendment of a Customs tariff; or

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(b) having regard to a decision of a court or of the Administrative Review Tribunal; or

(c) having regard to written advice on the matter given by an officer of Customs;

the tariff classification that is stated in a TCO to apply to the goods the subject of the TCO has not, with effect from a particular day, applied to those goods, the Comptroller-General of Customs must:

(d) make an order revoking the TCO with effect from that day; and

(e) make a new TCO in respect of the goods with effect from the revocation.

(2A) If, because of an amendment of a Customs Tariff, the Comptroller-General of Customs is satisfied that the tariff classification that is stated in a TCO to apply to the goods the subject of the TCO will not apply to those goods from a particular day, the Comptroller-General of Customs may:

(a) make an order revoking the TCO with effect from that day; and

(b) make a new TCO in respect of the goods with effect from that day.

(3) If the Comptroller-General of Customs is satisfied that, in making a TCO, there has been a transcription error in the description of goods the subject of the TCO including the tariff classification that is stated in the TCO to apply to the goods, the Comptroller-General of Customs may:

(a) make an order revoking the TCO with effect from the day the TCO came into force; and

(b) make a new TCO in respect of goods that corrects the error with effect from the revocation.

(4) The particular day referred to in subsection (2) may be the day on which the TCO that is revoked came into force or a later day.

(5) If the Comptroller-General of Customs is satisfied that a TCO contains a description of the goods the subject of the order in terms

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of their intended end use, the Comptroller-General of Customs may make an order revoking the TCO with effect from the revocation.

(6) This section has effect despite section 12 of the *Legislation Act 2003*.

269SE Notification of revocation decisions

(1) As soon as practicable after the Comptroller-General of Customs makes a decision under subsection 269SC(1), the Comptroller-General of Customs must:

(a) by notice in writing, inform the applicant of the decision; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision.

(2) As soon as practicable after the Comptroller-General of Customs makes a decision to make an order under subsection 269SD(1AB), (1) or (1A), (2), (2A) or (5), the Comptroller-General of Customs must, by notice published in the *Gazette*, inform all interested persons of the decision.

(3) If the decision referred to in subsection (1) or (2) has led to the making of an order revoking a TCO or both to the making of an order revoking a TCO and the making of a new TCO, the notice of that decision given to the applicant and published in the *Gazette* must include full particulars of the order or orders.

(4) A failure to comply with subsection (1), (2) or (3) does not affect the validity of the decision concerned or of any order or orders to which it has led.

269SF Comptroller-General of Customs may seek information, documents or material relating to revocation

(1) If the Comptroller-General of Customs considers that, in relation to a request for revocation of a TCO, any person (including the person who made the request) may be able to supply information or produce a document or material relevant to the consideration of the request, the Comptroller-General of Customs may, by notice in

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writing, request the supply of the information or the production of the document or material within a period specified in the notice and ending not later than 60 days after receiving the request.

(2) Any information provided in satisfaction of a request under subsection (1) must be provided in writing.

(3) If a person refuses or fails to supply information or produce a document or material under subsection (1) within the period allowed but subsequently supplies the information or produces the document or material, the Comptroller-General of Customs must not take that information, document or material into account in determining whether to revoke a TCO.

269SG Effect of revocation on goods in transit and capital equipment on order

(1) Subject to subsection (2), if a TCO is revoked under subsection 269SC(3) or (4) or 269SD(1AB) or (1A), the TCO ceases to apply in relation to goods entered for home consumption on or after the day on which the revocation comes into effect.

(2) Despite the revocation of a TCO under subsection 269SC(3) or (4) or 269SD(1AB) or (1A) in respect of goods, the TCO continues to apply in relation to:

(a) goods that:

(i) were imported into Australia on or before the day on which the revocation came into effect; and

(ii) are entered for home consumption, before, on, or within 28 days after, that day; and

(b) goods that:

(i) were in transit to Australia on that day; and

(ii) are entered for home consumption before, on, or within 28 days after, the day on which they were imported into Australia.

(3) For the purposes of subparagraph (2)(b)(i), goods shall be taken to be in transit to Australia if, and only if, they have left for direct

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shipment to Australia from a place of manufacture, or a warehouse, in the country from which they are being exported.

(4) Where an officer of Customs is satisfied that, after a TCO in relation to made-to-order capital equipment comes into force but before its revocation under subsection 269SC(3) or (4) or 269SD(1AB) or (1A), a firm order had been placed for the purchase of any such equipment, the TCO continues to apply in relation to the importation into Australia of that capital equipment.

(5) In this section:

made-to-order capital equipment means a particular item of capital equipment:

(a) that is made on a one-off basis to meet a specific order rather than being the subject of regular or intermittent production; and

(b) that is not produced in quantities indicative of a production run.

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Division 5—Miscellaneous

269SH Internal review

(1) Not later than 28 days after gazettal of a decision (the ***original decision***) on a TCO application or on a request for revocation of a TCO, any affected person within the meaning of subsection (13) who objects to the making of the decision may apply to the Comptroller-General of Customs for its reconsideration.

(2) An application for reconsideration must:
  (a) be in writing; and
  (b) include the grounds on which the person objects to the decision (whether or not those grounds had previously been considered).

(3) An application for reconsideration:
  (a) must be lodged with the Comptroller-General of Customs in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and
  (b) must have the day of its lodgement recorded.

(3A) As soon as practicable after receiving a request for reconsideration of a decision that leads to the making of a TCO or that refuses to revoke a TCO, the Comptroller-General of Customs must publish a *Gazette* notice stating:
  (a) that the request has been lodged; and
  (b) the date that the request was lodged; and
  (c) the full particulars of the TCO to which the request relates.

(4) Where application is made for reconsideration of a decision made on a TCO application, the Comptroller-General of Customs, having regard to:
  (a) the TCO application; and
  (b) the submissions, information, documents and materials which the Comptroller-General of Customs was entitled to take into account in considering the TCO application; and

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(c) any new matter produced to the Comptroller-General of Customs by the applicant for reconsideration which, under subsection (7), the Comptroller-General of Customs is not prevented from taking into account for that purpose;

must decide, not later than 90 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute any other decision that the Comptroller-General of Customs might have made.

(5) Where application is made for reconsideration of a decision on a request for revocation, the Comptroller-General of Customs, having regard to:

(a) the request for revocation; and

(b) the information, documents and materials which the Comptroller-General of Customs was entitled to take into account in considering the request; and

(c) any new matter produced to the Comptroller-General of Customs by the applicant for reconsideration which, under subsection (7), the Comptroller-General of Customs is not prevented from taking into account for that purpose;

must decide, not later than 60 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute any other decision that the Comptroller-General of Customs might have made.

(6) If the Comptroller-General of Customs fails to make a decision under subsection (4) or (5) within the period referred to in that subsection, the Comptroller-General of Customs is taken, for the purposes of the reconsideration, at the end of that period, to have made a decision to affirm the original decision.

(7) For the purposes of subsections (4) and (5), the Comptroller-General of Customs must not take into account any new material that is not produced to him or her by the applicant for reconsideration of an original decision within the period of 28 days after notification of the original decision in the *Gazette*.

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(8) Where the Comptroller-General of Customs, on reconsidering an original decision, decides to substitute for that decision any decision that he or she might have made, the substituted decision is to be taken to have been made when the original decision was made.

(9) If the substituted decision involves the making of a TCO, or of an order revoking a TCO, that TCO or revocation order comes into force on the day on which, if the original decision had involved making the TCO or order revoking a TCO, that TCO or order would have come into force.

(10) As soon as practicable after the Comptroller-General of Customs makes a decision under subsection (4) or (5) on an application for reconsideration, the Comptroller-General of Customs must:

(a) by notice in writing inform the applicant for reconsideration of the decision made on the reconsideration; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision made on that reconsideration.

(11) If the decision on an application for reconsideration has led to the making of an order or orders, the notice of the decision given to the applicant for reconsideration and published in the *Gazette* must include full particulars of the order or orders.

(12) A failure to comply with subsection (10) does not affect the validity of any decision on a reconsideration or of any order or orders to which it has led.

(13) In subsection (1):

affected person means:

(a) in relation to a decision on a TCO application:

(i) the applicant for the TCO; or

(ii) any person who lodged a submission before the last day for submissions in relation to the TCO application; or

(iii) any person who, in the opinion of the Comptroller-General of Customs, was not reasonably

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able to lodge a submission in relation to the TCO application within 50 days of the gazettal day; and

(b) in relation to a decision on a request for revocation:

(i) the person requesting the revocation; or

(ii) any other person whose interests are affected by the decision made on the request.

269SHA Administrative Review Tribunal Review of reconsideration decisions

(1) For the purpose of an application to the Administrative Review Tribunal under section 273GA for review of a decision under subsection 269SH(4) or (5) (a ***reconsideration decision***), application may be made by any person who is an affected person in relation to that decision within the meaning of subsection 269SH(13).

(2) If an affected person applies to the Tribunal for review of a reconsideration decision, the Comptroller-General of Customs must, as soon as practicable after being notified of the application or of the first such application, publish in the *Gazette*:

(a) particulars of the decision (including any relevant TCO number or TCO application number) in respect of which such an application for review has been made; and

(b) the name of the person who made such an application; and

(c) sufficient particulars to identify the review proceedings before the Tribunal.

(3) Any person who had not applied under section 273GA for review of a reconsideration decision but whose interests are affected by the decision (whether or not that person is an affected person within the meaning of subsection 269SH(13)) may apply under the *Administrative Review Tribunal Act 2024* to be made a party to the proceedings within 60 days of the publication under subsection (2) or within such further period as the Tribunal allows.

(4) The Tribunal must not grant a person applying to be joined as a party to proceedings for review of a reconsideration decision an

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extension of the period of 60 days referred to in subsection (3) unless it is satisfied that the person was not reasonably able to apply within the period.

(5) Any document on which a party to proceedings for review of a reconsideration decision before the Administrative Review Tribunal intends to rely must, subject to the provisions of the *Administrative Review Tribunal Act 2024*:

(a) be filed with the Tribunal; and

(b) be served on the other parties to the proceeding;

not less than 28 days before the date set for hearing, unless the Tribunal makes an order permitting the document to be filed and served within a lesser period or to be introduced at the hearing without being so filed or served.

(6) In deciding whether to make such an order, the Tribunal must have regard to whether there is any reasonable cause for the document not being made available at least 28 days before the date of the hearing.

269SJ TCOs not to apply to goods described by reference to their end use or certain goods

(1) The Comptroller-General of Customs must not make a TCO in respect of goods:

(aa) described in terms other than generic terms; or

(a) described in terms of their intended end use; or

(b) declared by the regulations to be goods to which a TCO should not extend.

(1A) Without limiting the meaning of the reference in paragraph (1)(aa) to goods described in generic terms, goods are taken not to be so described if their description, either directly or by implication, indicates that they are goods of a particular brand or model, or that a particular part number applies to the goods.

(2) If a regulation is made for the purposes of paragraph (1)(b) in respect of goods to which a TCO applies, that TCO must be taken,

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to the extent that it covers those goods, to have been revoked by the Comptroller-General of Customs on the day those regulations came into effect.

(3) Where a TCO is taken to have been revoked under subsection (2) to the extent that it covers goods the subject of a regulation made for the purposes of paragraph (1)(b), the Comptroller-General of Customs must, as soon as practicable after the making of the regulation, by notice published in the *Gazette*, inform interested persons:

(a) of the fact that the regulation has been made; and

(b) of its effect on the TCO; and

(c) of the day on which the TCO is taken to have been so revoked.

269SK TCOs not to contravene international agreements

If the Comptroller-General of Customs is satisfied that, in accordance with the obligations of Australia under an agreement (including a treaty or convention) between Australia and another country or other countries, the rate of duty attaching to the importation of goods (whether or not the produce of a particular country) is not to be less than a particular minimum rate, the Comptroller-General of Customs must not make a TCO that would result in a contravention of those obligations.

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Customs Act 1901

No. 6, 1901

Compilation No. 192

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This compilation is in 5 volumes

Volume 1:	Parts I to VI sections 1 to 126C
Volume 2:	Parts IVA to XI sections 126D to 183UAA
Volume 3:	Parts XII to XVA sections 183UA to 269SK
Volume 4:	**Parts XVB to XVII** **sections 269SM to 279** **Schedule**
Volume 5:	Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This compilation

This is a compilation of the *Customs Act 1901* that shows the text of the law as amended and in force on 27 August 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part XVB—Special provisions relating to anti-dumping duties

269SM Overview of Part

(1) This Part deals with the taking of anti-dumping measures in respect of goods whose importation into Australia involves a dumping or countervailable subsidisation of those goods that injures, or threatens to injure, Australian industry. Those measures might consist of the publication of a dumping duty notice or a countervailing duty notice or the acceptance of an undertaking on conditions that make it unnecessary to publish such a notice.

(2) If a notice is published, that notice creates a liability under the Dumping Duty Act, in relation to any goods to which the notice extends, to pay a special duty of customs on their importation into Australia and, pending assessment of that special duty, to pay interim duty.

(2A) Division 1A deals with the establishment of the Anti-Dumping Commission and the Commissioner.

(3) Divisions 1, 2 and 3 deal with the preliminary and procedural matters leading to a Ministerial decision to publish or not to publish a dumping duty notice or a countervailing duty notice or to accept an undertaking instead of publishing such a notice.

(4) Division 4 allows a person who has been required to pay interim duty to seek an assessment of duty payable under the Dumping Duty Act and reconciles interim duty paid by that person with duty as so assessed.

(5) Division 5 deals with the rights of persons, periodically, on the basis of changed circumstances, to seek review by the Minister of decisions to publish dumping duty notices or countervailing duty notices or to accept undertakings.

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(5A) Division 5A deals with the rights of persons to ask the Commissioner to conduct an anti-circumvention inquiry in relation to certain dumping duty notices or countervailing duty notices.

(6) Division 6 deals with the rights of new exporters to seek an early review by the Minister of decisions to publish dumping duty notices or countervailing duty notices.

(7) Division 6A ensures that interested parties are informed of the impending expiration of anti-dumping measures and allows them to seek continuation of those measures.

(8) Division 7 deals with procedural and evidentiary matters that are relevant both to applications for the taking of anti-dumping measures and for the various review procedures after such measures are taken.

(9) Divisions 8 and 9 establish an independent panel, the Review Panel, and provide for the Panel to review a range of Ministerial decisions (including decisions to publish or not to publish dumping duty notices or countervailing duty notices) and also a range of decisions made by the Commissioner.

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Division 1A—Anti-Dumping Commission and Commissioner

Subdivision A—Preliminary

269SMA What this Division is about

- This Division establishes the Anti-Dumping Commission within the Department.
- There is to be a Commissioner of the Anti-Dumping Commission. The Commissioner has functions and powers under this Part.
- The Commissioner is to be assisted by APS employees in the Department.

Subdivision B—Anti-Dumping Commission

269SMB Establishment

(1) The Anti-Dumping Commission that was established by this section (as in force before the transfer day) continues in existence, by force of this section, within the Department.

(2) In this section:

transfer day means the day Schedule 1 to the *Customs Amendment (Anti-Dumping Commission Transfer) Act 2013* commenced.

269SMC Constitution of the Anti-Dumping Commission

The Anti-Dumping Commission consists of:

(a) the Commissioner; and

(b) the staff assisting the Commissioner as mentioned in subsection 269SMQ(1).

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269SMD Function of the Anti-Dumping Commission

The Anti-Dumping Commission's function is to assist the Commissioner in the performance of his or her functions or the exercise of his or her powers.

269SME Anti-Dumping Commission has privileges and immunities of the Crown

The Anti-Dumping Commission has the privileges and immunities of the Crown in right of the Commonwealth.

Subdivision C—Commissioner

269SMF Establishment

(1) There is to be a Commissioner of the Anti-Dumping Commission.

(2) The Commissioner has the powers and functions conferred or imposed on him or her by this Act or any other law.

269SMG Powers of Commissioner

The Commissioner has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

269SMH Appointment

(1) The Commissioner is to be appointed by the Minister by written instrument.

(2) The Commissioner may be appointed on a full-time or part-time basis.

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269SMI Term of appointment

The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

269SMJ Acting Commissioner

The Minister may appoint an individual to act as the Commissioner:

(a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

269SMK Terms and conditions of appointment

(1) The Commissioner holds office on such terms and conditions as are determined in writing by the Minister.

(2) The office of Commissioner is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

269SML Disclosure of interests

(1) A disclosure by the Commissioner under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.

(2) Subsection (1) applies in addition to any rules made for the purposes of that section.

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(3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Commissioner is taken not to have complied with section 29 of that Act if the Commissioner does not comply with subsection (1) of this section.

269SMM Outside employment

Full-time Commissioner

(1) If the Commissioner is appointed on a full-time basis, he or she must not engage in paid employment outside the duties of his or her office without the Minister's approval.

Part-time Commissioner

(2) If the Commissioner is appointed on a part-time basis, he or she must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

269SMN Resignation

(1) The Commissioner may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

269SMO Termination of appointment

(1) The Minister may terminate the appointment of the Commissioner:
  (a) for misbehaviour; or
  (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.

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(2) The Minister may terminate the appointment of the Commissioner if:

(a) the Commissioner:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the Commissioner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or

(d) the Commissioner is appointed on a full-time basis and engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see subsection 269SMM(1)); or

(e) the Commissioner is appointed on a part-time basis and engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 269SMM(2)).

Subdivision D—Staff assisting the Commissioner

269SMQ Staff

(1) The staff assisting the Commissioner are to be APS employees in the Department and made available for the purpose by the Secretary of the Department.

(2) When performing services for the Commissioner under this section, a person is subject to the directions of the Commissioner.

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Subdivision E—Delegation

269SMR Delegation

(1) The Commissioner may, by writing, delegate any of the Commissioner's functions or powers under this Part to a Commission staff member.

(2) In performing functions or exercising powers under a delegation, the delegate must comply with any written directions of the Commissioner.

Subdivision F—Form and manner of applications

269SMS Form and manner of applications

(1) The Commissioner may, by writing, approve a form for the purposes of a provision of this Part.

(2) The Commissioner may, by writing, approve the manner of lodging an application under a provision of this Part.

(3) The Commissioner may, by writing, approve the manner of withdrawing, under subsection 269TB(3), an application lodged under subsection 269TB(1) or (2).

Subdivision G—Disclosure of information

269SMT Disclosure of information

(1) The Commissioner, or a Commission staff member, may disclose information (including personal information) obtained under this Part or the Dumping Duty Act, or an instrument under this Part or the Dumping Duty Act, to an officer of Customs for the purposes of a Customs Act.

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Interaction with the Privacy Act 1988

(2) For the purposes of the *Privacy Act 1988*, the disclosure of personal information under subsection (1) is taken to be a disclosure that is authorised by this Act.

Definition

(3) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

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Division 1—Definitions and role of Minister

269SN What this Division is about

This Division deals with preliminary matters. The Division principally:

- sets out essential definitions and interpretations;
- provides the basis for determining various factors (such as normal value, export price and non-injurious price) necessary to decide whether dumping or countervailable subsidisation has occurred;
- sets out the criteria for the use of those factors in so deciding;
- provides the basis for determining whether dumping or subsidisation is causing material injury to Australian industry;
- identifies circumstances in which the Part does not apply;
- empowers the Minister to direct the Commissioner in relation to the Commissioner's powers and duties.

269T Definitions

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

affected party, in relation to an application under Division 5 for review of anti-dumping measures imposed on particular goods, means:

(a) a person who is directly concerned with the exportation to Australia of the goods to which the measures relate or who has been directly concerned with the exportation to Australia of like goods; or

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(b) a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods; or

(c) a person representing, or representing a portion of, the Australian industry producing like goods; or

(d) the Government of a country from which like goods have been exported to Australia.

Agreement on Subsidies and Countervailing Measures means the Agreement by that name:

(a) set out in Annex 1A to the World Trade Organization Agreement; and

(b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia.

agricultural operations means:

(a) the cultivation or gathering in of crops; or

(b) the rearing of live-stock; or

(c) the conduct of forestry operations;

and includes:

(d) viticulture, horticulture or apiculture; or

(e) hunting or trapping carried on for the purpose of a business.

allowable exemption or remission, in relation to exported goods, means:

(a) the exemption of those goods from duties or taxes borne by like goods destined for domestic consumption; or

(b) the remission of such duties or taxes otherwise payable in respect of those goods;

in accordance with the provisions of Article XVI of the General Agreement on Tariffs and Trade 1994 and the provisions of Annexes I, II and III of the Agreement on Subsidies and Countervailing Measures.

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anti-dumping measures, in respect of goods, means:

(a) the publication of a dumping duty notice or a countervailing duty notice or both; or

(b) the acceptance of an undertaking under section 269TG or 269TJ or of undertakings under both of these sections;

in relation to such goods.

application, in relation to a dumping duty notice or a countervailing duty notice, means an application for the publication of such a notice.

circumvention activity has the meaning given by section 269ZDBB.

Commissioner means the Commissioner of the Anti-Dumping Commission continued in existence under section 269SMB.

Commission staff member means a member of the staff assisting the Commissioner as mentioned in subsection 269SMQ(1).

compliance period means a period prescribed in, or worked out in accordance with, an instrument under subsection (1A).

cooperative exporter, in relation to:

(a) an investigation under this Part in relation to whether a dumping duty notice should be published; or

(b) a review under Division 5 in relation to the publication of a dumping duty notice; or

(c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

(d) the exporter's exports were examined as part of the investigation, review or inquiry; and

(e) the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

countervailable subsidy means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy.

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countervailing duty means duty, other than interim countervailing duty:

(a) that is payable on goods under section 10 of the Dumping Duty Act because of a declaration under subsection 269TJ(1) or (2) of this Act; or

(b) that is payable on goods under section 11 of the Dumping Duty Act.

countervailing duty notice means a notice published by the Minister under subsection 269TJ(1) or (2) or 269TK(1) or (2).

country of export, in relation to goods exported to Australia, means a country outside Australia from which those goods are exported to Australia, whether or not it is the country where those goods are produced or manufactured.

country of origin, in relation to goods exported to Australia, means a country, whether the country of export or not, where those goods are produced or manufactured.

determination means a determination in writing.

direction means a direction in writing.

dumped goods means any goods exported to Australia that the Minister has determined, under section 269TACB, have been dumped.

dumping duty means duty, other than interim dumping duty, that is payable on goods under section 8 or 9 of the Dumping Duty Act.

Dumping Duty Act means the *Customs Tariff (Anti-Dumping) Act 1975*.

dumping duty notice means a notice published by the Minister under subsection 269TG(1) or (2) or 269TH(1) or (2).

economy in transition has the meaning given by subsection (5C).

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fish means freshwater or salt-water fish, and includes turtles, dugong, crustacea, molluscs or any other living resources of the sea or of the sea-bed.

fishing operations means:

(a) the taking, catching or capturing of fish; or

(b) the farming of fish; or

(c) pearling operations.

forestry operations means the felling, in a forest or plantation, of standing timber.

General Agreement on Tariffs and Trade 1994 means the Agreement by that name:

(a) whose parts are described in Annex 1A to the World Trade Organization Agreement; and

(b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia.

importation period, in relation to goods that have been the subject of a dumping duty notice or a countervailing duty notice means:

(a) in respect of goods covered by a retrospective notice—the period beginning on the day of entry for home consumption of the first consignment of goods to which the retrospective notice applied and ending immediately before the day of publication of the notice; and

(b) in respect of goods covered by a prospective notice:

(i) the period of 6 months beginning on the day of publication of the prospective notice; and

(ii) each successive period of 6 months.

importer, in relation to goods exported to Australia, means:

(a) if paragraph (b), (d) or (f) 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

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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; or

(f) if the goods are taken from parts beyond the seas to an Australian offshore electricity installation or are goods on board an overseas offshore electricity installation at the time when it is installed in the Commonwealth offshore area—the beneficial owner of the goods at the time when they are imported into Australia; or

(g) if the goods are an overseas offshore electricity installation that becomes installed in the Commonwealth offshore area—the beneficial owner of the installation at the time when it is imported into Australia.

interested party, in relation to:

(a) an application made to the Commissioner 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; or

(b) an application under subsection 269ZA(1), or a request under subsection 269ZA(3), for review of anti-dumping measures taken in respect of goods; or

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(c) an application under subsection 269ZDBC(1), or a request under subsection 269ZDBC(2), for the conduct of an anti-circumvention inquiry in relation to a notice published under subsection 269TG(2) or 269TJ(2) in respect of goods; or

(d) an application under section 269ZHB for a continuation of anti-dumping measures taken in respect of goods;

means:

(e) in the case of an application—the applicant; and

(f) a person or body representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods; and

(g) 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 request or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and

(h) any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or request or of like goods that have been, or are likely to be, exported to Australia; and

(i) a trade organisation a majority of whose members are, or are likely to be, directly concerned with the production or manufacture of the goods the subject of the application or request or of like goods, with their importation or exportation into Australia or with both of those activities; and

(j) the government of the country of export or country of origin:

(i) of goods the subject of the application or request that have been, or are likely to be, exported to Australia; or

(ii) of like goods that have been, or are likely to be, exported to Australia; and

(k) a trade union representing one or more persons employed in the Australian industry producing, or likely to produce, like goods; and

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(l) a person who uses the goods the subject of the application or request, or like goods, in the production or manufacture of other goods in Australia.

interim countervailing duty means:

(a) interim countervailing duty imposed under section 10 of the Dumping Duty Act; or

(b) interim third country countervailing duty imposed under section 11 of that Act.

interim dumping duty means:

(a) interim dumping duty imposed under section 8 of the Dumping Duty Act; or

(b) interim third country dumping duty imposed under section 9 of that Act.

interim duty means interim dumping duty or interim countervailing duty.

investigation period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under subsection 269TC(4) to be the investigation period in relation to the application.

like goods, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

member country means a country that is, in its own right, a member of the World Trade Organization established by the World Trade Organization Agreement.

negative preliminary decision means a decision of the kind referred to in paragraph 269X(6)(b) or (c).

new exporter, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice or like

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goods, means an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

positive preliminary decision means a decision of the kind referred to in paragraph 269X(6)(a).

preliminary affirmative determination means a determination made under section 269TD.

production cost, in relation to processed agricultural goods, means the sum of the direct labour costs, the direct material costs and the factory overhead costs incurred in relation to those goods.

prospective notice means a notice issued under subsection 269TG(2), 269TH(2), 269TJ(2) or 269TK(2).

public notice, in relation to a decision, determination or other matter, means notice of the decision, determination or other matter published in accordance with section 269ZI.

public record means the public record maintained under section 269ZJ.

raw agricultural goods means goods directly obtained by the undertaking of any agricultural operation or any fishing operation.

residual exporter, in relation to:

(a) an investigation under this Part in relation to whether a dumping duty notice should be published; or

(b) a review under Division 5 in relation to the publication of a dumping duty notice; or

(c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

(d) the exporter's exports were not examined as part of the investigation, review or inquiry; and

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(e) the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

retrospective notice means a notice issued under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1).

Review Panel means the Review Panel established under section 269ZL.

revocation declaration, in relation to particular anti-dumping measures, means:

(a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice—a declaration by the Minister that the notice is taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods; or

(b) to the extent that the measures involved the acceptance by the Minister of an undertaking under section 269TG or 269TJ—a declaration by the Minister that the person who gave the undertaking is released from it and that the investigation giving rise to the undertaking is terminated.

revocation recommendation, in relation to particular anti-dumping measures, means any of the following:

(a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice—a recommendation by the Commissioner in a report under section 269ZDA that the notice be taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods;

(b) to the extent that the measures involved the acceptance by the Minister of an undertaking under section 269TG or 269TJ—a recommendation by the Commissioner in a report under section 269ZDA that the Minister indicate to the person who gave the undertaking that the person is released from it and that the investigation giving rise to the undertaking is terminated.

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revocation review notice, in relation to a review of anti-dumping measures, means any of the following:

(a) a notice relating to the review that is published under subsection 269ZC(4), (5) or (6) and includes information under paragraph 269ZC(7)(bb);

(b) a notice relating to the review that is published under subsection 269ZCC(4) or (7) and includes information under paragraph 269ZCC(8)(c).

small-medium enterprise means an enterprise of a kind prescribed in an instrument under subsection (1B).

subsidy, in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

(ii) by a public body of that country or a public body of which that government is a member; or

(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

(iv) a direct transfer of funds from that government or body; or

(v) the acceptance of liabilities, whether actual or potential, by that government or body; or

(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or

(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or

(viii) the purchase by that government or body of goods or services; or

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(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

Note 1: See also subsection (2AA).

Note 2: Section 269TACC deals with whether a financial contribution or income or price support confers a benefit.

third country, in relation to goods that have been or may be exported to Australia means a country other than Australia or the country of export, or the country of origin, of those goods.

uncooperative exporter, in relation to:

(a) an investigation under this Part in relation to whether a dumping duty notice should be published; or

(b) a review under Division 5 in relation to the publication of a dumping duty notice; or

(c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

(d) the Commissioner was satisfied that the exporter did not give the Commissioner information the Commissioner considered to be relevant to the investigation, review or inquiry within a period the Commissioner considered to be reasonable; or

(e) the Commissioner was satisfied that the exporter significantly impeded the investigation, review or inquiry.

World Trade Organization Agreement means the Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.

(1A) The Minister may make a legislative instrument for the purposes of the definition of ***compliance period*** in subsection (1).

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(1B) The Minister may, by legislative instrument, prescribe kinds of enterprises for the purposes of the definition of ***small-medium enterprise*** in subsection (1).

(2) For the purposes of this Part, goods, other than unmanufactured raw products, are not to be taken to have been produced in Australia unless the goods were wholly or partly manufactured in Australia.

(2A) A reference in this Part to the amount of the export price of goods, to the amount of the normal value of goods, to the amount of the subsidy received in respect of goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency.

(2AA) Without limiting the definition of ***subsidy*** in subsection (1), a financial contribution or income or price support may confer a benefit in relation to goods exported to Australia if that contribution or support is made in relation to goods or services used in relation to the production, manufacture or export of the goods exported to Australia.

(2AD) The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.

(2AE) However, subsection (2AD) does not permit any determination under this Part that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.

Note: Section 269TACB requires a determination of whether dumping has occurred by reference to goods exported to Australia during the investigation period.

(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.

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(3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

(4) For the purposes of this Part, if, in relation to goods of a particular kind, there is a person or there are persons who produce like goods in Australia:

(a) there is an Australian industry in respect of those like goods; and

(b) subject to subsection (4A), the industry consists of that person or those persons.

(4A) Where, in relation to goods of a particular kind first referred to in subsection (4), the like goods referred to in that subsection are close processed agricultural goods, then, despite subsection (4), the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.

(4B) For the purposes of subsection (4A), processed agricultural goods derived from raw agricultural goods are not to be taken to be close processed agricultural goods unless the Minister is satisfied that:

(a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods; and

(b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods; and

(c) either:

(i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or

(ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be, constituted by the cost to the producer of those goods of the raw agricultural goods.

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(4C) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the production cost of processed agricultural goods to be ascertained for the purpose of subsection (4B), the production cost of those goods is such amount as is determined by the Minister having regard to all relevant information.

(4D) In this Act, a reference to variable factors relevant to the determination of duty payable under the Dumping Duty Act on particular goods the subject of a dumping duty notice or a countervailing duty notice is a reference:

(a) if the goods are the subject of a dumping duty notice:

(i) to the normal value of the goods; and

(ii) to the export price of the goods; and

(iii) to the non-injurious price of the goods; and

(b) if the goods are the subject of a countervailing duty notice:

(i) to the amount of countervailable subsidy received in respect of the goods; and

(ii) to the export price of the goods; and

(iii) to the non-injurious price of the goods.

(4E) In this Act, a reference to variable factors relevant to the review under Division 5 of anti-dumping measures, or to the conduct of an anti-circumvention inquiry in relation to a notice published under subsection 269TG(2) or 269TJ(2), in respect of goods is a reference:

(a) if the goods are the subject of a dumping duty notice—to the normal value, export price and non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; and

(b) if the goods are the subject of a countervailing duty notice:

(i) to the amount of countervailable subsidy received in respect of the goods; and

(ia) to the export price of the goods; and

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(ii) to the non-injurious price of the goods;

as ascertained, or last ascertained, by the Minister for the purpose of the notice; and

(c) if the goods are the subject of an undertaking accepted under section 269TG—to the normal value of the goods, and the non-injurious price of the goods, as indicated by the Minister to the exporter in negotiations relating to the acceptability of the undertaking; and

(d) if the goods are the subject of an undertaking accepted under section 269TJ—to the countervailable subsidy received in respect of the goods, and the non-injurious price of the goods, as indicated by the Minister to the exporter or to the country of export in negotiations relating to the acceptability of the undertaking.

(5) A reference in this Act to goods the subject of an application under section 269TB is a reference to goods referred in the application:

(a) that have been imported into Australia;

(b) that are likely to be so imported; or

(c) that may be so imported, being like goods to goods to which paragraph (a) or (b) applies.

(5A) For the purposes of this Part, the weighted average of prices, values, costs or amounts in relation to goods over a particular period is to be worked out in accordance with the following formula:

$$\frac{P_1 Q_1 + P_2 Q_2 + \ldots + P_n Q_n}{Q_1 + Q_2 + \ldots + Q_n}$$

where:

P_1, P_2 ... P_n means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.

Q_1, Q_2 ... Q_n means the number of units of the goods involved in each of the respective transactions.

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(5B) In working out the number of units of goods involved in a transaction, any units of goods that are, for the purposes of paragraph 269TAB(1)(b) or (c), subsection 269TAB(3), paragraph 269TAC(2)(c) or (4)(e) or subsection 269TAC(6), treated as being involved in a particular transaction are taken to be actually involved in the transaction.

(5C) A country has an ***economy in transition*** at a time if:

(a) before the time, the Government of the country had a monopoly, or a substantial monopoly, of the trade of that country and determined, or substantially influenced, the domestic price of goods in that country; and

(b) at the time, that Government does not:

(i) have a monopoly, or a substantial monopoly, of the trade of that country; or

(ii) determine, or substantially influence, the domestic price of goods in that country.

(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*.

269TAAA Anti-dumping measures not to apply to New Zealand originating goods

This Part, so far as it relates to duty that may become payable under section 8 or 9 of the Dumping Duty Act, does not apply to goods that are New Zealand originating goods under Division 1E of Part VIII of this Act.

269TAAB Member countries, developing countries and special developing countries

(1) The Minister may certify that a particular country is, or was, during a specified period or on a specified day:

(a) a member country of the World Trade Organization; or

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(b) a developing country, whether a member country or not; or
(c) a special developing country within the meaning of subsection (2).

(2) For the purposes of subsection (1), a country is, or was, during a specified period or on a specified day, a special developing country if:
(a) it is or was, during that period or on that day, a developing country; and
(b) it is or was, during that period or on that day:
(i) a least developed country, whether a member country or not; or
(ii) a member country that has eliminated and not restored export subsidies; or
(iii) a member country referred to in paragraph (b) of Annex VII of the Agreement on Subsidies and Countervailing Measures having a gross national product of less than $US1,000 per annum per head of population.

(3) For all purposes of this Part and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except so far as the contrary is established.

269TAAC Definition—countervailable subsidy

(1) For the purposes of this Part, a subsidy is a ***countervailable subsidy*** if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

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(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if:

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) eligibility for the subsidy is automatic; and

(c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and

(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) The Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

(5) In making a determination under subsection (4), the Minister must take account of:

(a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and

(b) the length of time during which the subsidy program has been in operation.

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269TAACA Determination of countervailable subsidy if non-cooperation by relevant entities

(1) If:

(a) one of the following applies:

(i) there is an investigation under this Part in relation to whether a countervailing duty notice should be published;

(ii) there is a review under Division 5 in relation to the publication of a countervailing duty notice;

(iii) there is an inquiry under Division 6A in relation to the continuation of a countervailing duty notice; and

(b) the Commissioner is satisfied that an entity covered by subsection (2):

(i) has not given the Commissioner information the Commissioner considers to be relevant to the investigation, review or inquiry within a period the Commissioner considers to be reasonable; or

(ii) has significantly impeded the investigation, review or inquiry;

then, in relation to the investigation, review or inquiry, in determining whether a countervailable subsidy has been received in respect of particular goods, or in determining the amount of a countervailable subsidy in respect of particular goods, the Commissioner or the Minister:

(c) may act on the basis of all the facts available to the Commissioner or the Minister (as the case may be); and

(d) may make such assumptions as the Commissioner or the Minister (as the case may be) considers reasonable.

(2) For the purposes of paragraph (1)(b), the entities are as follows:

(a) any person who is or is likely to be directly concerned with the importation or exportation into Australia of goods to which the investigation, review or inquiry relates or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods;

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(b) the government of the country of export or country of origin:
(i) of goods to which the investigation, review or inquiry relates that have been, or are likely to be, exported to Australia; or
(ii) of like goods that have been, or are likely to be, exported to Australia.

269TAAD Ordinary course of trade

(1) If the Minister is satisfied, in relation to goods exported to Australia:
(a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:
(i) for home consumption in the country of export; or
(ii) for exportation to a third country;
at a price that is less than the cost of such goods; and
(b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;
the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.

(2) For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.

(3) Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.

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(4) The cost of goods is worked out by adding:
  (a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and
  (b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.

(5) Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.

269TAA Arms length transactions

(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 appears to be 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, subsequent to the purchase or sale, 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.

(1A) For the purposes of paragraph (1)(c), the Minister must not hold the opinion referred to in that paragraph because of a reimbursement in respect of the purchase or sale if the Minister is of the opinion that the purchase or sale will remain an arms length transaction in spite of the payment of that reimbursement, having regard to any or all of the following matters:
  (a) any agreement, or established trading practices, in relation to the seller and the buyer, in respect of the reimbursement;
  (b) the period for which such an agreement or practice has been in force;

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(c) whether or not the amount of the reimbursement is quantifiable at the time of the purchase or sale.

(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 members of the same family; or

(ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

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(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.

Note: In relation to the reference to member of a family in subparagraph (4)(a)(i), see also section 4AAA.

269TAB Export price

(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

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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.

(2A) If an export price of goods exported to Australia is being ascertained for the purposes of conducting a review of anti-dumping measures under Division 5, the price may, despite subsection (1), be determined by the Minister in accordance with subsection (2B) if:

(a) the price is being ascertained in relation to an exporter of those goods (whether the review is of the measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally); and

(b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low

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volume of exports of those goods to Australia by that exporter having regard to the following:

(i) previous volumes of exports of those goods to Australia by that exporter;

(ii) patterns of trade for like goods;

(iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

Note: If there is an absence of exports of those goods to Australia by that exporter, the Minister may deem such exports to have taken place for the purposes of ascertaining an export price: see subsection (2C).

(2B) For the purposes of subsection (2A), the export price of those goods is the price determined by the Minister to be the export price, having regard to any of the following:

(a) the export price for the goods exported to Australia by the exporter established in accordance with subsection (1) of this section for a decision of a kind mentioned in subsection (2D);

(b) the price paid or payable for like goods sold by the exporter in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country;

(c) the export price for like goods exported to Australia from the country of export by another exporter or exporters established in accordance with subsection (1) of this section for a decision mentioned in subsection (2D).

(2C) For the purposes of conducting the review of anti-dumping measures under Division 5, if there is an absence of exports of those goods to Australia by the exporter, the Minister may deem such exports to have occurred for the purposes of applying subsections (2A) and (2B) of this section.

(2D) For the purposes of paragraphs (2B)(a) and (c), the decisions are the following:

(a) deciding to publish a notice under any of the following provisions:

(i) subsection 269TG(1) or (2) (dumping duties);

(ii) subsection 269TJ(1) or (2) (countervailing duties);

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(iii) subsection 269ZDB(1) (reviews of anti-dumping measures);
(iv) subsection 269ZDBH(1) (anti-circumvention inquiries);
(v) subsection 269ZG(3) (accelerated review);
(vi) subsection 269ZHG(1) (continuation of anti-dumping measures);

(b) any other decision under this Act of a kind prescribed by the regulations.

(2E) For the purposes of paragraph (2B)(c), the decision must be a decision made during the period:

(a) beginning 2 years before the day the Commissioner published notice of the review under subsection 269ZC(4), (5) or (6); and
(b) ending on the day notice of the review is published under subsection 269ZDB(1).

(2F) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2B)(b), the Minister may have regard to the following matters:

(a) whether the volume of trade from the country of export to the third country is similar to the volume of trade from the country of export to Australia;
(b) whether the nature of the trade in goods concerned between the country of export and the third country is similar to the nature of trade between the country of export and Australia.

(2G) If the export price of goods exported to Australia has been ascertained under subsection (2B), the export price may be subject to such adjustments that the Minister determines are necessary to reflect what the export price would have been had there not been an absence or low volume of exports, including:

(a) adjustments due to exports (on which the export price is based) relating to earlier times; or

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(b) adjustments due to exports (on which the export price is based) relating to not identical goods.

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

(6) For the purposes of paragraphs (1)(a) and (2B)(b), the reference in those paragraphs to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.

269TAC Normal value of goods

(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable 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.

(1A) For the purposes of subsection (1), the reference in that subsection to the price paid or payable for like goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of the sales.

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(2) Subject to this section, where the Minister:

(a) is satisfied that:

(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or

(ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

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—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or

(d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the

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Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.

(3) The price determined under paragraph (2)(d) is a price that the Minister determines, having regard to the quantity of like goods sold as described in paragraph (2)(d) at that price, is representative of the price paid in such sales.

(3A) The Minister is not required to consider working out the normal value of goods under paragraph (2)(d) before working out the normal value of goods under paragraph (2)(c).

(4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:

(a) has a monopoly, or substantial monopoly, of the trade of the country; and

(b) determines or substantially influences the domestic price of goods in that country;

the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

(c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;

(d) a value equal to the price determined by the Minister to be the price of like goods produced or manufactured in a country determined by the Minister and sold in the ordinary course of trade in arms length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;

(e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and

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sold for home consumption in the ordinary course of trade in that country:

(i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;

(ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;

(f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.

(5) The price determined under paragraph (4)(d) is a price that the Minister determines, because of the quantity of like goods sold as described in paragraph (4)(d) at that price, is representative of the price paid in such sales.

(5A) Amounts determined:

(a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and

(b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);

must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b).

(5B) The amount determined to be the profit on the sale of goods under subparagraph (2)(c)(ii) or (4)(e)(ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.

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(5C) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2)(d) or (4)(d), the Minister may have regard to the following matters:

(a) whether the volume of trade from the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the volume of trade from the country of export to Australia; and

(b) whether the nature of the trade in goods concerned between the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the nature of trade between the country of export and Australia.

(5D) The normal value of goods (the ***exported goods***) is the amount determined by the Minister, having regard to all relevant information, if the exported goods are exported to Australia and the Minister is satisfied that the country of export has an economy in transition and that at least one of the following paragraphs applies:

(a) both of the following conditions exist:

(i) the exporter of the exported goods sells like goods in the country of export;

(ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;

(b) both of the following conditions exist:

(i) the exporter of the exported goods does not sell like goods in the country of export but others do;

(ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;

(c) the exporter of the exported goods does not answer questions in a questionnaire given to the exporter by the Commissioner under subsection 269TC(8) within the period described in that subsection or subsection 269TC(9) for answering questions;

(d) the answers given within the period mentioned in subsection 269TC(8), or the further period mentioned in subsection 269TC(9), by the exporter of the exported goods to a questionnaire given to the exporter under

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subsection 269TC(8) do not provide a reasonable basis for determining that paragraphs (a) and (b) of this subsection do not apply.

Note: Subsection 269TC(8) deals with the Commissioner giving an exporter of goods to Australia a questionnaire about evidence of whether or not paragraphs (a) and (b) of this subsection apply, with a specified period of at least 30 days for the exporter to answer the questions. Under subsection 269TC(9) the Commissioner may allow the exporter a further period for answering the questions.

(5E) To be satisfied that the conditions in paragraph (5D)(a) or (b) exist, the Minister must have regard to the matters (if any) prescribed by the regulations.

(5F) Without limiting the generality of subsection (5D), for the purpose of working out, under that subsection, the amount that is to be the normal value of goods exported to Australia, the Minister may determine that amount in a manner that would be open to the Minister under paragraph (4)(c), (d), (e) or (f) if subsection (4) were applicable.

(5J) For the purposes of fulfilling Australia's international obligations under an international agreement, regulations may be made to disapply subsection (5D) to a country.

(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 (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

(7) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(7A) The application of subsection (5D) to goods that are exported to Australia from a particular country does not preclude the application of other provisions of this section (other than subsections (4) and (5)) to other goods that are exported to Australia from that country.

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(8) Where the normal value of goods exported to Australia is the price paid or payable 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 or payable for like goods is to be taken to be such a price 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.

(14) If:

(a) application is made for a dumping duty notice; and

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(b) goods the subject of the application are exported to Australia; but

(c) the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter;

the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2)(a), to be a low volume unless the Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under section 269TACB.

269TACAA Sampling

(1) If:

(a) one of the following applies:

(i) there is an investigation under this Part in relation to whether a dumping duty notice or countervailing duty notice should be published;

(ii) there is a review under Division 5 in relation to the publication of a dumping duty notice or countervailing duty notice;

(iii) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice or countervailing duty notice; and

(b) the number of exporters from a particular country of export in relation to the investigation, review or inquiry is so large that it is not practicable to examine the exports of all of those exporters;

then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters:

(c) who constitute a statistically valid sample of those exporters; or

(d) who are responsible for the largest volume of exports to Australia that can reasonably be examined.

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(2) If information is submitted by an exporter not initially selected under subsection (1) for the purposes of an investigation, review or inquiry, the investigation, review or inquiry must extend to that exporter unless to so extend it would prevent its timely completion.

269TACAB Dumping duty notice—export prices and normal values for different categories of exporters

Uncooperative exporters

(1) If one of the following applies:

(a) there is an investigation under this Part in relation to whether a dumping duty notice should be published;

(b) there is a review under Division 5 in relation to the publication of a dumping duty notice;

(c) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

then:

(d) if the export price of goods for an uncooperative exporter is to be worked out in relation to the investigation, review or inquiry—that export price is to be worked out under subsection 269TAB(3); and

(e) if the normal value of goods for an uncooperative exporter is to be worked out in relation to the investigation, review or inquiry—that normal value is to be worked out under subsection 269TAC(6).

Residual exporters

(2) If:

(a) one of the following applies:

(i) there is an investigation under this Part in relation to whether a dumping duty notice should be published;

(ii) there is a review under Division 5 in relation to the publication of a dumping duty notice;

(iii) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice; and

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(b) the investigation, review or inquiry is carried out on the basis of information obtained from an examination of a selected number of exporters as mentioned in subsection 269TACAA(1);

then:

(c) if the export price of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry—that export price must not be less than the weighted average of export prices for like goods of cooperative exporters from the same country of export; and

(d) if the normal value of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry—that normal value must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country of export.

(3) To the extent that subsection (2) applies in relation to an investigation, the weighted average of export prices, and the weighted average of normal values, of the cooperative exporters must not include any export price or normal value if, in a comparison under section 269TACB involving that export price or normal value, the Minister has determined:

(a) that there is no dumping; or

(b) that the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%.

269TACA Non-injurious price

The non-injurious price of goods exported to Australia is the minimum price necessary:

(a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(1)(b) or (2)(b); or

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(b) if the goods are the subject of, or of an application for, a third country dumping duty notice under subsection 269TH(1) or (2)—to prevent the injury, or a recurrence of the injury, referred to in paragraph 269TH(1)(b) or (2)(b); or

(c) if the goods are the subject of, or of an application for, a countervailing duty notice under subsection 269TJ(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TJ(1)(b) or (2)(b); or

(d) if the goods are the subject of, or of an application for, a third country countervailing duty notice under subsection 269TK(1) or (2)—to prevent the injury, or a recurrence of the injury, referred to in paragraph 269TK(1)(b) or (2)(b).

269TACB Working out whether dumping has occurred and levels of dumping

(1) If:

(a) application is made for a dumping duty notice; and

(b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and

(c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;

the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.

(2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):

(a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or

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(aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or

(b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or

(c) use:

(i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and

(ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other part or each of these other parts were the whole of the investigation period.

(2A) If paragraph (2)(aa) or (c) applies:

(a) each part of the investigation period referred to in the paragraph must not be less than 1 month; and

(b) the parts of the investigation period as referred to in paragraph (2)(aa), or as referred to in subparagraphs (2)(c)(i) and (ii), must together comprise the whole of the investigation period.

(3) If the Minister is satisfied:

(a) that the export prices differ significantly among different purchasers, regions or periods; and

(b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;

the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.

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(4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:

(a) the goods exported to Australia during that period are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods and that period is the difference between those weighted averages.

(4A) To avoid doubt, a reference to a period in subsection (4) includes a reference to a part of the investigation period.

(5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:

(a) the goods exported to Australia in that transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods and that transaction is the difference between that export price and that normal value.

(6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:

(a) the goods exported to Australia in each such transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.

(10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of

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similar units of goods, whether determined by weight, volume or otherwise.

269TACC Working out whether a financial contribution or income or price support confers a benefit

(1) Subject to subsections (2) and (3), the question whether a financial contribution or income or price support confers a benefit is to be determined by the Minister having regard to all relevant information.

(2) A direct financial payment received from any of the following is taken to confer a benefit:
  (a) a government of a country;
  (b) a public body of a country;
  (c) a public body of which a government of a country is a member;
  (d) a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

Guidelines for financial contributions

(3) In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:
  (a) the provision of equity capital from a government or body referred to in subsection (2) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;
  (b) the making of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the loan requires the enterprise receiving the loan to repay a lesser amount than would be required for a comparable commercial loan which the enterprise could actually obtain;
  (c) the guarantee of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the enterprise receiving the guarantee is required to repay on the

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loan a lesser amount than would be required for a comparable commercial loan without that guarantee;

(d) the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;

(e) the purchase of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the purchase is made for more than adequate remuneration.

(4) For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

269TACD Amount of countervailable subsidy

(1) If the Minister is satisfied that a countervailable subsidy has been received in respect of goods, the amount of the subsidy is an amount determined by the Minister in writing.

(2) After the amount of the countervailable subsidy received in respect of goods has been worked out, the Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit.

269TAE Material injury to industry

(1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:

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(aa) if the determination is being made for the purposes of section 269TG—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and

(ab) if the determination is being made for the purposes of section 269TJ—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

(i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

(ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

(i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

(ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

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(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) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and

(h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

(2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:

(aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and

(ab) if the determination is being made for the purposes of section 269TK—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

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(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

(i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

(ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

(i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and

(ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

(f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and

(g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.

(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or

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hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

(a) the volume and prices of imported like goods that are not dumped; or

(b) the volume and prices of importations of like goods that are not subsidised; or

(c) contractions in demand or changes in patterns of consumption; or

(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry;

and any such injury or hindrance must not be attributed to the exportation of those goods.

(2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.

(2B) In determining:

(a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or

(b) for the purposes of subsection (2), whether or not material injury is threatened to an industry in a third country;

because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.

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(2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:

(a) each of those exportations is the subject of an investigation; and

(b) either:

(i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or

(ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and

(c) if the determination is being made for the purposes of section 269TG or 269TH—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and

(d) if the determination is being made for the purposes of section 269TG or 269TH—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and

(da) if the determination is being made for the purposes of section 269TJ or 269TK:

(i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and

(ii) the volume of each of those exportations is not negligible; and

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(e) it is appropriate to consider the cumulative effect of those exportations, having regard to:
(i) the conditions of competition between those goods; and
(ii) the conditions of competition between those goods and like goods that are domestically produced.

(3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:
(a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and
(b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and
(c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:
(i) for which there are sales or forward orders; or
(ii) which are held as stocks; and
(d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and
(e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and
(f) the level of return on investment in the industry; and
(g) cash flow in the industry; and
(h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
(ha) the terms and conditions of employment (including the number of hours worked) of persons employed in the industry in relation to the production or manufacture of goods of that kind, or like goods; and

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(j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and

(k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and

(m) investment in the industry.

269TAF Currency conversion

(1) If, for the purposes of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsection (2), is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best establishes the material terms of the sale of the exported goods.

(2) If, in relation to goods exported to Australia, a forward rate of exchange is used, the Minister may, in a conversion of currencies under subsection (1), make use of that rate of exchange.

(3) If:

(a) the comparison referred to in subsection (1) requires the conversion of currencies; and

(b) the rate of exchange between those currencies has undergone a short-term fluctuation;

the Minister may, for the purpose of that comparison, disregard that fluctuation.

(4) If:

(a) the comparison referred to in subsection (1) requires the conversion of currencies; and

(b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement;

the Minister may, by notice published on the Anti-Dumping Commission's website, declare that this subsection applies with effect from a day specified in the notice and, if the Minister does

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so, the Minister may use the rate of exchange in force on that day for the purposes of that comparison during the period of 60 days starting on that day.

(5) Nothing in subsection (4) prevents the Minister specifying a day in a notice that is earlier than the day of publication of the notice if the day specified:
  (a) is a day after the start of the sustained movement; and
  (b) is not a day occurring within 60 days after the day specified in a prior notice.

(6) Nothing in subsection (4) prevents the Minister publishing more than one notice if a sustained movement in the rate of exchange continues for more than 60 days.

(7) The Commissioner may, if he or she considers it desirable so to do for the avoidance of doubt, specify, by notice published on the Anti-Dumping Commission's website, a means of establishing a rate that is taken to be, or to have been, the rate of exchange between the Australian currency and another currency or between other currencies:
  (a) on a day, or during a period, preceding the day of publication of the notice; or
  (b) from and including the day of publication of the notice, or an earlier day specified in the notice, until the revocation of the notice.

(8) The rate of exchange established between currencies in a notice under subsection (7) is, for the purpose of working out the amount of duty or interim duty payable on any goods exported on the day or during the period to which the rate so specified applies, the rate of exchange that applies for the purposes of this section in respect of the currencies specified in the notice.

269TAG Minister may take anti-dumping measures on own initiative

(1) Nothing in this Part implies that the Minister cannot initiate an investigation into the need to take anti-dumping measures in

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respect of goods although no application has been made under section 269TB for the taking of such measures in respect of such goods.

(2) An investigation under subsection (1) must be carried out in accordance with the Minister's written requirements instead of the requirements set out in this Part.

(3) The Minister may, subject to subsection (4), take anti-dumping measures as a result of the investigation as if the investigation had been carried out under this Part.

(4) The Minister must not take such anti-dumping measures unless the Minister:

(a) has determined any matters which the Minister would be required to determine; and

(b) is satisfied of any matters of which the Minister would be required to be satisfied;

in order to take those measures if the investigation had been carried out in accordance with the requirements of the other provisions of this Part.

(5) The Minister must ensure that:

(a) his or her instructions under subsection (2) for the conduct of an investigation referred to in subsection (1); and

(b) his or her actions in taking any anti-dumping measures as a result of such an investigation;

are consistent with Australia's international obligations under the World Trade Organization Agreement.

(6) The anti-dumping measures taken and any matters determined to permit the taking of those measures are to be treated, for all purposes of this Act and the Dumping Duty Act, as measures taken, and matters determined, under the relevant provisions of this Part.

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269TAH Minister may delegate functions and powers to Commissioner or Commission staff members

(1) The Minister may, by signed instrument, delegate to the following any of the functions and powers of the Minister under this Part or the Dumping Duty Act:
  (a) the Commissioner;
  (b) a Commission staff member.

(2) However, subsection (1) does not apply to a function or power under:
  (a) subsection 269TG(1) or (2), 269TH(1) or (2), 269TJ(1) or (2) or 269TK(1) or (2) of this Act; or
  (b) subsection 8(5), 9(5), 10(3B) or 11(4) of the Dumping Duty Act.

269TA Minister may give directions to Commissioner in relation to powers and duties under this Part

(1) The Minister may, by legislative instrument, give to the Commissioner such directions in connection with carrying out or giving effect to the Commissioner's powers and duties under this Part as the Minister thinks fit, and the Commissioner 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 Commissioner 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 Commissioner's powers.

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Division 2—Consideration of anti-dumping matters by the Commissioner

269TBA What this Division is about

This Division:

- sets out the requirements for making applications for the publication of dumping duty notices and countervailing duty notices;
- sets out the procedures to be followed, and the matters to be considered, by the Commissioner in conducting investigations in relation to goods covered by such applications, for the purpose of making a report to the Minister;
- empowers the Commonwealth, in certain cases, to take securities in respect of interim duty that may become payable, in order to prevent injury to Australian industry while such investigations continue;
- sets out the circumstances in which the Commissioner must terminate such investigations.

269TB Application for action under Dumping Duty Act

(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

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(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 Commissioner, request that the Minister publish that notice in respect of the goods in the consignment.

(2) Where:

(a) a consignment of goods produced or manufactured in a country other than Australia:

(i) has been imported into Australia;

(ii) is likely to be imported into Australia; or

(iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies; and

(b) there is, in a third country, an industry that produces or manufactures like goods for export to Australia; and

(c) the Government of that third country believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

the Government of that third country may, by application in writing lodged with the Commissioner, request that the Minister publish that notice in respect of the goods in the consignment.

(2A) During the period after receiving an application for a dumping duty notice and before giving public notice under subsection 269TC(4) of a decision not to reject the application, the Commissioner must notify the government of the country, or of each country, whose exporters are nominated in the application.

(2B) During the period after receiving an application for a countervailing duty notice and before giving public notice under subsection 269TC(4) of a decision not to reject the application, the Commissioner must notify:

(a) the government of the country, or of each country, whose exporters are nominated in the application; and

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(b) the government of any other country from which countervailable subsidies are alleged to have been received.

(2C) A notification by the Commissioner under subsection (2B) must include an invitation to consult with the Commissioner in relation to whether:

(a) any countervailable subsidies exist; and

(b) any such subsidies, if found to exist, are causing or are likely to cause material injury of a kind referred to in paragraph 269TJ(1)(b) or 269TK(1)(b);

with the aim of arriving at a mutually agreed solution.

(3) An applicant may, at any time before the Minister decides:

(a) to publish a dumping duty notice or a countervailing duty notice in respect of an exporter to whom the application extends; or

(b) to accept an undertaking from an exporter to whom the application extends or from a country to whose exporters the application extends;

by notice in writing lodged with the Commissioner, withdraw the application so far as it extends to that exporter, or to exporters exporting from that country, as the case requires.

(4) An application under subsection (1) or (2) or a notice under subsection (3) withdrawing such an application must:

(a) be in writing; and

(b) be in a form approved by the Commissioner for the purposes of this section; and

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

(d) be signed in the manner indicated in the form; and

(e) in the case of an application under subsection (1)—be supported by a sufficient part of the Australian industry; and

(f) be lodged in the manner approved under section 269SMS.

(5) The application, or the notice withdrawing an application, is taken to have been received by the Commissioner when the application

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or notice is first received by a Commission staff member doing duty in relation to dumping applications.

(6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the Australian industry if the Commissioner is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:

(a) account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and

(b) account for not less than 25% of the total production or manufacture of like goods in Australia.

269TC Consideration of application

(1) The Commissioner shall, within 20 days after receiving an application under subsection 269TB(1) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:

(a) that the application complies with subsection 269TB(4); or

(b) that there is, or is likely to be established, an Australian industry in respect of like goods; or

(c) that there appear to be reasonable grounds:

(i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or

(ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(2) The Commissioner shall, within 20 days after receiving an application by the Government of a country under subsection 269TB(2) in respect of goods, examine the application

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and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:

(a) that the application complies with subsection 269TB(4); or

(b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or

(c) that there appear to be reasonable grounds:

(i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or

(ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

(2A) If an applicant, after lodging an application under section 269TB, decides to give the Commissioner further information in support of that application without having been requested to do so:

(a) the information must be lodged with the Commissioner, in writing, in the manner in which applications under that section must be lodged; and

(b) the information is taken to have been received by the Commissioner when the information is first received by a Commission staff member doing duty in relation to dumping applications; and

(c) this Part has effect as if:

(i) the application had included that further information; and

(ii) the application had only been lodged when that further information was lodged; and

(iii) the application had only been received when that further information was received.

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(3) Where, in accordance with subsection (1) or (2), the Commissioner rejects an application, the notice informing the applicant of that rejection:

(a) shall state the reasons why the Commissioner 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, within 30 days of the receipt of the notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

(4) If the Commissioner decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the Commissioner must give public notice of the decision:

(a) setting out particulars of goods the subject of the application; and

(b) setting out the identity of the applicant; and

(ba) setting out the countries of export known to be involved; and

(bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and

(bc) setting a date, which should be the date or estimated date of publication of the notice, as the date of initiation of the investigation; and

(bd) indicating the basis on which dumping or countervailable subsidisation is alleged to have occurred; and

(be) summarising the factors on which the allegation of injury or hindrance to the establishment of an industry is based; and

(bf) indicating that a report will be made to the Minister:

(i) within 155 days after the date of initiation of the investigation; or

(ii) within such longer period as the Minister allows under section 269ZHI;

on the basis of the examination of exportations to Australia of goods the subject of the application during a period

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specified in the notice as the investigation period in relation to the application; and

(c) inviting interested parties to lodge with the Commissioner, within 37 days after the date of initiation of the investigation, submissions concerning the publication of the notice sought in the application; and

(d) stating that if the Commissioner, in accordance with section 269TD, makes a preliminary affirmative determination in relation to the application, he or she may apply provisional measures, including the taking of securities under section 42, in respect of interim duty that may become payable on the importation of the goods the subject of the application; and

(e) stating that:

(i) within 110 days after the date of initiation of the investigation; or

(ii) such longer period as the Minister allows under section 269ZHI;

the Commissioner, in accordance with section 269TDAA, will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation to the Minister; and

(f) inviting interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and

(g) indicating the address at which, or the manner in which, submissions under paragraph (c) or (f) can be lodged; and

(h) stating that if the Minister decides to publish or not to publish a dumping duty notice or a countervailing duty notice after considering the report referred to in paragraph (bf), certain persons will have the right to seek review of that decision in accordance with Division 9.

(5) Information required to be included in the notice under subsection (4) may be included in a separate report to which the notice makes reference.

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(5A) The Commissioner cannot vary the length of the investigation period.

(6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with the Commissioner, if the Commissioner is satisfied, by representation in writing by an interested party:

(a) that a longer period is reasonably required for the party to make a submission; and

(b) that allowing a longer period will be practicable in the circumstances;

the Commissioner may notify the party, in writing, that a specified further period will be allowed for the party to lodge a submission.

(7) As soon as practicable after the Commissioner decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the Commissioner must ensure that a copy of the application, or of so much of the application as is not claimed to be confidential or to constitute information whose publication would adversely affect a person's business or commercial interests, is made available:

(a) unless paragraph (b) applies—to all persons known to be exporters of goods the subject of the application and to the government of each country of export; or

(b) if the number of persons known to be exporters of goods the subject of the application is so large that it is not practicable to provide a copy of the application, or of so much of the application as is not the subject of such a claim, to each of them—to the government of each country of export and to each relevant trade association.

(8) If the Commissioner is satisfied that a country whose exporters are nominated in an application for a dumping duty notice or a countervailing duty notice has an economy in transition, the Commissioner must, as soon as practicable after deciding not to reject the application:

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(a) give each nominated exporter from such a country a questionnaire about evidence of whether or not paragraphs 269TAC(5D)(a) and (b) apply; and

(b) inform each such exporter that the exporter has a specified period of not less than 30 days for answering questions in the questionnaire; and

(c) inform each such exporter that the investigation of the application will proceed on the basis that subsection 269TAC(5D) applies to the normal value of the exporter's goods that are the subject of the application if:

(i) the exporter does not give the answers to the Commissioner within the period; or

(ii) the exporter gives the answers to the Commissioner within the period but they do not provide a reasonable basis for determining that paragraphs 269TAC(5D)(a) and (b) do not apply.

Note: Paragraph 269TAC(5D)(a) or (b) applies if a government of the country of export significantly affects the selling price in that country of like goods to the goods that are the subject of the application.

(9) Despite the fact that, under subsection (8), the Commissioner has informed an exporter given a questionnaire that the exporter has a particular period to answer the questions in the questionnaire, if the Commissioner is satisfied, by representation in writing by the exporter:

(a) that a longer period is reasonably required for the exporter to answer the questions; and

(b) that allowing a longer period will be practicable in the circumstances;

the Commissioner may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.

(10) If, during an investigation in respect of goods the subject of an application under section 269TB, the Commissioner becomes aware of an issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect

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of the goods, the Commissioner may examine that issue as part of the investigation.

269TD Preliminary affirmative determinations

(1) At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice, or a countervailing duty notice, in respect of goods the subject of an application under section 269TB, the Commissioner may, if he or she is satisfied:

(a) that there appears to be sufficient grounds for the publication of such a notice; or

(b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;

make a determination (a ***preliminary affirmative determination***) to that effect.

(2) Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the Commissioner:

(a) must have regard to:

(i) the application concerned; and

(ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and

(b) may have regard to any other matters that the Commissioner considers relevant.

(3) The Commissioner is not obliged to have regard to any submission that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely consideration of the question whether or not to make a preliminary affirmative determination.

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(4) If the Commissioner makes a preliminary affirmative determination:

(a) the Commissioner must give public notice of that determination; and

(b) the Commonwealth may, at the time that determination is made or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

(5) If the Commonwealth decides to require and take securities under subsection (4), the Commissioner must give public notice of that decision.

269TDAA Statement of essential facts in relation to investigation of application under section 269TB

(1) The Commissioner must, within 110 days after the date of initiation of an investigation arising from an application under section 269TB or such longer period as the Minister allows under section 269ZHI, place on the public record a statement of the facts (the ***statement of essential facts***) on which the Commissioner proposes to base a recommendation to the Minister in relation to that application.

(2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:

(a) must have regard to:

(i) the application concerned; and

(ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and

(b) may have regard to any other matters that the Commissioner considers relevant.

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(3) The Commissioner is not obliged to have regard to a submission received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

269TDA Termination of investigations

Commissioner must terminate if all dumping margins are negligible

(1) If:

(a) application is made for a dumping duty notice; and

(b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:

(i) there has been no dumping by the exporter of any of those goods; or

(ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;

the Commissioner must terminate the investigation so far as it relates to the exporter.

Commissioner must terminate if countervailable subsidisation is negligible

(2) If:

(a) application is made for a countervailing duty notice; and

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(b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:

(i) no countervailable subsidy has been received in respect of any of those goods; or

(ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

the Commissioner must terminate the investigation so far as it relates to the exporter.

Commissioner must terminate if negligible volumes of dumping are found

(3) If:

(a) application is made for a dumping duty notice; and

(b) in an investigation for the purposes of the application the Commissioner is satisfied that the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and

(ii) that have been, or may be, dumped;

is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

What is a negligible volume of dumped goods?

(4) For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:

(a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and

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(b) subsection (5) does not apply in relation to those first-mentioned goods.

Aggregation of volumes of dumped goods

(5) For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:

(a) the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a percentage of the total Australian import volume, is less than 3%; and

(b) the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and

(c) the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.

Negligible dumping margins to count in determining volume

(6) The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:

(a) in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and

(b) in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.

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Commissioner must terminate if negligible volumes of countervailable subsidisation are found

(7) If:

(a) application is made for a countervailing duty notice; and

(b) in an investigation for the purposes of the application, the Commissioner is satisfied that the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia from a particular country of export during a reasonable examination period; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

What is a negligible volume of subsidised goods?

(8) For the purposes of subsection (7), the total volume of goods the subject of the application for a countervailing duty notice that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been received is taken to be a negligible volume if:

(a) that country of export is not a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 3%; or

(b) that country of export is a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 4%;

and subsections (9), (10) and (11) do not apply in relation to those first-mentioned goods.

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Aggregation of volumes of subsidised goods from countries other than developing countries

(9) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received, if:

(a) the country of export is not a developing country; and

(b) the volume of such goods:

(i) that have been, or may be, exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 3%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another country that is not a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is also less than 3%; and

(d) the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is more than 7%.

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Aggregation of volumes of subsidised goods from developing countries

(10) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:

(a) the country of export is a developing country; and

(b) the volume of such goods:

(i) that have been, or may be, exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another country that is a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is also less than 4%; and

(d) the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been, or may be received;

when expressed as a percentage of the total Australian import volume, is more than 9%.

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Aggregation of volumes of subsidised goods from member countries that are developing countries

(11) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:

(a) the country of export is a member country and a developing country; and

(b) the volume of such goods;

(i) that have been, or may be exported to Australia over that period from that country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(c) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from another member country that is a developing country; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is less than 4%; and

(d) the volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and

(ii) in respect of which a countervailable subsidy has been, or may be, received;

when expressed as a percentage of the total Australian import volume, is more than 9%.

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Negligible countervailable subsidies to count in determining volume

(12) The fact that the level of countervailable subsidy that has been, or may be, received in respect of goods that have been, exported, or may be exported, to Australia from a country of export is a negligible level under subsection (16) does not prevent exports from that country being taken into account:

(a) in working out the total volume of goods that have been, or may be, exported from a country of export and in respect of which a countervailable subsidy has been, or may be, payable; and

(b) in aggregating, for the purposes of subsection (9), (10) or (11), volumes of goods that have been, or may be, exported to Australia from that country and other countries and in respect of which a countervailing subsidy has been, or may be, received.

Commissioner must terminate dumping investigation if export causes negligible injury etc.

(13) Subject to subsection (13A), if:

(a) application is made for a dumping duty notice; and

(b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that export is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

(13A) If, in relation to the investigation referred to in subsection (13), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or

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more countries of export, then the following apply in relation to those countries:

(a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by those exports is negligible—subsection (13) does not apply in relation to those countries;

(b) if the Commissioner is satisfied that such injury or hindrance that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (13) applies to that country.

Commissioner must terminate countervailable subsidy investigation if export causes negligible injury

(14) Subject to subsection (14A), if:

(a) application is made for a countervailing duty notice; and

(b) in an investigation, for the purpose of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country that has been, or may be, caused by that export is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

(14A) If, in relation to the investigation referred to in subsection (14), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:

(a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country that has

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been, or may be, caused by those exports is negligible—subsection (14) does not apply in relation to those countries;

(b) if the Commissioner is satisfied that such injury that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (14) applies to that country.

Cumulative assessment of injury or hindrance

(14B) For the purpose of subsection (13A) or (14A), the Commissioner must consider the cumulative effect of exportations of goods to Australia from 2 or more countries of export if the Commissioner is satisfied that:

(a) each of those exportations is the subject of an investigation; and

(b) either:

(i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or

(ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and

(c) for the purposes of subsection (13A)—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and

(d) for the purposes of subsection (13A)—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be

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negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and

(e) for the purposes of subsection (14A):
  (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
  (ii) the volume of each of those exportations is not negligible; and

(f) it is appropriate to consider the cumulative effect of those exportations, having regard to:
  (i) the conditions of competition between those goods; and
  (ii) the conditions of competition between those goods and like goods that are domestically produced.

Commissioner must give public notice of termination decisions

(15) If the Commissioner decides to terminate an investigation so far as it relates to a particular exporter or country of export, the Commissioner must:
  (a) give public notice of that decision; and
  (b) ensure that:
    (i) in the case of an exporter, a copy of the notice is sent to the applicant, the exporter and the government of the country of export; or
    (ii) in the case of a country of export, a copy of the notice is sent to the applicant and the government of that country; and
  (c) inform the applicant of the applicant's right, within 30 days after the first publication of the public notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

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Negligible countervailable subsidisation

(16) For the purposes of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:

(a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or

(b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or

(c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.

Definition—reasonable examination period

(17) In this section:

reasonable examination period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period comprising:

(a) the whole or a substantial part of the investigation period; or

(b) any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application.

total Australian import volume, in relation to a volume of goods the subject of an application for a dumping duty notice or a countervailing duty notice that have been, or may be, exported to Australia from a particular country during a period, means the total volume of all goods the subject of the application and like goods that have been, or may be, exported to Australia from all countries during that period.

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269TE Commissioner to have regard to same considerations as Minister

(1) In this section:

decision means:

(a) a decision of the Commissioner under section 269TC or 269TD; or

(b) a decision contained in a report by the Commissioner under section 269ZZL.

recommendation means:

(a) a recommendation included in a report prepared by the Commissioner under section 269TEA, 269ZDA, 269ZDBG, 269ZG or 269ZHF; or

(b) a recommendation by the Commissioner to the Minister under section 269TEB or 269X.

(2) If the Commissioner is required, in making a recommendation or decision, to determine any matter ordinarily required to be determined by the Minister under this Act or the Dumping Duty Act, the Commissioner must determine the matter:

(a) in like manner as if he or she were the Minister; and

(b) having regard to the considerations to which the Minister would be required to have regard if the Minister were determining the matter.

(3) Subsection (2) applies in respect of goods that have not been imported into Australia at the time of the Commissioner's determination of a matter in respect of those goods as if:

(a) the Commissioner's determination of the matter were being made after an importation of those goods into Australia; and

(b) the importation had occurred at the time of the anticipated importation of those goods into Australia.

(4) Nothing in this section implies that the determination of a matter by the Commissioner affects the power of the Minister to make a

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final determination in respect of that matter for the purposes of the Dumping Duty Act.

269TEA Report to Minister concerning publication of notices under this Part

(1) If:

(a) application has been made under section 269TB for publication of a dumping duty notice or a countervailing duty notice; and

(b) the Commissioner has initiated an investigation in respect of the application under section 269TC;

the Commissioner must, after holding such an investigation and within 155 days after the date of initiation of the investigation or such longer period as the Minister allows under section 269ZHI, give the Minister a report in respect of the goods the subject of the application that:

(c) recommends whether any such notice should be published and the extent of any duties that are, or should be, payable under the Dumping Duty Act because of that notice; and

(d) recommends, in particular, whether the Minister ought to be satisfied as to the matters in respect of which the Minister is required to be satisfied before such a notice can be published; and

(e) recommends, where applicable, whether the Minister ought to give notice to the exporter under subsection 269TG(3D) or to the government of the country of export or to the exporter under subsection 269TJ(2A).

(2) The Commissioner's report must, to the extent that it is practicable to do so, also extend to any like goods not covered by the application but imported into Australia during the period starting on the date of initiation of the investigation and ending 20 days after the statement of essential facts in respect of the investigation is placed on the public record.

(3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the Commissioner's report in relation to

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an application under section 269TB for publication of a dumping duty notice or a countervailing duty notice, the Commissioner:

(a) must have regard to:

(i) the application; and

(ii) any submission concerning the publication of that notice to which the Commissioner has had regard for the purpose of formulating the statement of essential facts; and

(iii) the statement of essential facts; and

(iv) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record; and

(b) may have regard to any other matters that the Commissioner considers to be relevant.

(4) The Commissioner is not obliged to have regard to any submission made in response to the statement of essential facts that is received by the Commissioner after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

(5) The report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report that:

(a) sets out the material findings of fact on which that recommendation is based; and

(b) provides particulars of the evidence relied on to support those findings.

269TEB Commissioner recommendations concerning undertakings offered after preliminary affirmative determination

(1) A person who:

(a) if application has been made for publication of a dumping duty notice in respect of goods—is an exporter of such goods; or

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(b) if application has been made for publication of a countervailing duty notice in respect of goods—is the government of the country of export, or is an exporter, of such goods;

may, at any time after the making of a preliminary affirmative determination in respect of the application, indicate in writing to the Commissioner the terms in which the government or exporter would be prepared to give an undertaking to the Minister.

(2) The Commissioner must consider whether he or she is satisfied that those terms are adequate to remove the injury, or the threat of injury, to which the application is addressed so far as the government or exporter offering the undertaking is concerned and, by notice in writing:

(a) if the Commissioner is so satisfied—recommend to the Minister that he or she accept the undertaking; or

(b) if the Commissioner is not so satisfied—indicate to the government or exporter the reasons why he or she is not so satisfied.

(3) A government or an exporter may, having regard to those reasons, indicate to the Commissioner that the government or exporter is prepared to give an undertaking to the Minister in revised terms.

(4) If an undertaking in revised terms is proposed to the Commissioner, the Commissioner must:

(a) if he or she is not satisfied that the undertaking as so revised is adequate to remove the injury, or the threat of injury, to which the application is addressed—inform the government or exporter to that effect; and

(b) if he or she is so satisfied—recommend to the Minister that the Minister accept the undertaking as revised.

(5) If the Minister accepts the undertaking proposed by a government, investigation of the application is suspended so far as it relates to goods exported from that country.

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(6) If the Minister accepts the undertaking proposed by an exporter, investigation of the application is suspended so far as it relates to goods exported by that exporter.

(7) If:

(a) investigation of an application is suspended:

(i) so far as it relates to goods exported from a particular country; or

(ii) so far as it relates to goods exported by a particular exporter;

on the Minister's acceptance of an undertaking proposed by the government of that country or by that exporter; and

(b) that government or exporter breaches that undertaking;

the Minister may take such steps as he or she considers necessary to facilitate the resumption of the investigation in so far as it relates to goods exported from that country or by that exporter.

(8) Without limiting the generality of subsection (7), the Minister may, in writing, require the Commissioner to resume the investigation so far as it relates to goods exported from the country, or by the exporter, who breached the undertaking subject to such conditions as to the conduct of the investigation as the Minister considers appropriate.

(9) In determining the steps to be taken in order to facilitate the resumption of an investigation, and, where the Minister requires that the Commissioner resume the investigation, to determine the conditions on which the resumed investigation is to be conducted, the Minister must have regard to:

(a) the procedures that had been completed when the undertaking was accepted; and

(b) the length of time that has elapsed since the acceptance of the undertaking.

(10) The Commissioner is not obliged to consider the terms of any proposed undertaking provided by a government or an exporter if to do so would prevent the timely making of a recommendation by the Commissioner to the Minister under section 269TEA.

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(11) If the Commissioner does not recommend the acceptance of an undertaking under this section, the Commissioner may nonetheless recommend to the Minister that he or she seek an undertaking from the government or exporter who proposed the undertaking and set out the terms of the undertaking that he or she recommends the Minister seek.

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Division 3—Consideration of anti-dumping matters by the Minister

269TF What this Division is about

This Division sets out the role of the Minister in considering an anti-dumping matter. The Minister will normally be acting after receipt of a report from the Commissioner. In particular, the Division:

- empowers the Minister to publish dumping duty notices or countervailing duty notices;
- empowers the Minister to accept undertakings rather than publish such notices;
- outlines the matters of which the Minister must be satisfied before publishing such notices or accepting such undertakings;
- indicates the period during which such notices or undertakings remain in force;
- sets out the circumstances in which such notices can extend to goods already exported.

269TG Dumping duties

(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

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(b) because of that:

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 8 of the Dumping Duty Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by public notice, declare that section 8 of that Act applies:

(c) to the goods in respect of which the Minister is so satisfied; and

(d) to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.

(2) Where the Minister is satisfied, as to goods of any kind, that:

(a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

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(3) Where:

(a) a notice under subsection (1) declares particular goods to be goods to which section 8 of the Dumping Duty Act applies; or

(b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

the notice must, subject to subsection (3A), include a statement of the respective amounts that the Minister ascertained, at the time of publication of the notice:

(c) was or would be the normal value of the goods to which the declaration relates; and

(d) was or would be the export price of those goods; and

(e) was or would be the non-injurious price of those goods.

(3A) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:

(a) in accordance with subsection 269ZI(9) the Minister is not required to include in the notice a statement of that value or price; but

(b) upon request the Commissioner may notify that value or price to persons who, in the Commissioner's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

(3D) If the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister so as to decide whether or not to publish a dumping duty notice under this section in relation to the goods in the consignment or to like goods, the Minister may give notice, in writing, to the exporter stating that:

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(a) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with subsection (4) to the Minister; and

(b) an undertaking, in the terms set out in the notice, would be satisfactory to the Minister.

(4) Whether or not a notice has been given to an exporter, the Minister may defer the decision to publish or not to publish a dumping duty notice covering that exporter, for so long as the Minister considers appropriate, if the exporter offers, and the Minister accepts, an undertaking that the exporter will so conduct future trade to Australia in like goods as to avoid:

(a) causing or threatening material injury to an Australian industry producing like goods; or

(b) materially hindering the establishment of such an Australian industry.

(5) In giving a notice, and in considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase to which the undertaking relates is limited to an amount such that the total price of the goods is not more than the non-injurious price of the goods.

(5A) However, subsection (5) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods in the consignment:

(a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subparagraph 269TAC(2)(a)(ii);

(b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

(6) The Minister:

(a) may give a notice to an exporter under subsection (3D) whether or not the giving of such a notice has been

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recommended by the Commissioner in a report under section 269TEA; and

(b) may accept an undertaking whether or not the acceptance of such an undertaking has been recommended by the Commissioner in a recommendation under section 269TEB; and

(c) must not give a notice to an exporter under subsection (3D), or accept an undertaking from an exporter, before a preliminary affirmative determination, or an equivalent determination in an investigation conducted under section 269TAG, has been made that extends to that exporter; and

(d) must give public notice of any undertaking so accepted.

(7) The acceptance by the Minister of an undertaking may be subject to conditions that include, but are not limited to, conditions relating to:

(a) giving the Minister, on an agreed basis, information that is relevant to the fulfilment of the undertaking; and

(b) providing the Minister with appropriate access to such information.

(8) The acceptance by the Minister of an undertaking from an exporter does not prevent the exporter requesting the Minister to determine whether, had the undertaking not been accepted, the Minister would have published a dumping duty notice or would have decided not to publish such a notice.

(9) The Minister must, if an exporter makes such a request, and may, on his or her own initiative, determine whether he or she would have published a dumping duty notice or would have decided not to publish such a notice if the undertaking had not been accepted.

(10) Subsection (9) does not imply that the Minister is required to make a determination under that subsection before the Minister has received a report of the Commissioner in relation to the matter.

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(11) If the Minister determines under subsection (9) that he or she would have decided not to publish a dumping duty notice, the undertaking automatically lapses.

269TH Third country dumping duties

(1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

(a) the amount of the export price of the goods is less than the amount of the normal value of the goods; and

(b) because of that:

(i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 9 of the Dumping Duty Act—material injury to an industry in a third country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country to do so, may, by public notice, declare that section 9 of that Act applies:

(c) to the goods in respect of which the Minister is so satisfied; and

(d) to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.

(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

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the amount of the export price of like goods so produced or manufactured that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) because of that, material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened;

the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods so manufactured or produced that have been exported to Australia), declare that section 9 of the Dumping Duty Act applies to like goods so produced or manufactured that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

(3) Where:

(a) a notice under subsection (1) declares particular goods to be goods to which section 9 of the Dumping Duty Act applies; or

(b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

the notice must, subject to subsection (4), include a statement of the respective amounts that the Minister ascertained at the time of publication of the notice:

(c) was or would be the normal value of the goods to which the declaration relates; and

(d) was or would be the export price of those goods; and

(e) was or would be the non-injurious price of those goods.

(4) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:

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(a) in accordance with subsection 269ZI(9), the Minister is not required to include in the notice a statement of that value or price; but

(b) upon request the Commissioner may notify that value or price to persons who, in the Commissioner's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

269TJ Countervailing duties

(1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

(a) a countervailable subsidy has been received in respect of the goods; and

(b) because of that:

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened or the establishment of an Australian industry producing like goods has been or may be materially hindered; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 10 of the Dumping Duty Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by public notice, declare that section 10 of that Act applies:

(c) to the goods in respect of which the Minister is so satisfied; and

(d) to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.

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(2) Where the Minister is satisfied, as to goods of any kind that:

(a) a countervailable subsidy:

(i) has been received in respect of goods the subject of the application that have already been exported to Australia; and

(ii) may be received in respect of like goods that may be exported to Australia in the future; and

(b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is being threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

(2A) If the export of a consignment of goods to Australia has been under consideration by the Minister so as to decide whether or not to publish a countervailing duty notice under this section in relation to the goods in the consignment or to like goods, the Minister may give notice, in writing, to the government of the country of export or to the exporter stating that:

(a) the Minister is of the opinion that it would be appropriate for the government or the exporter to give an undertaking in accordance with subsection (3) to the Minister; and

(b) an undertaking, in the terms set out in the notice, would be satisfactory to the Minister.

(3) Whether or not a notice has been given to a government or to an exporter in respect of goods in the consignment or like goods, the Minister may defer the decision to publish or not to publish a countervailing duty notice covering those goods if the Minister is given and accepts an undertaking to which subsection (3A) applies.

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(3A) This subsection applies:

(a) to an undertaking given by a government—if it is an undertaking that the government will, in relation to any export trade to Australia in like goods, review any countervailable subsidy delivered by that government and make any changes found to be necessary to avoid:

(i) causing or threatening material injury to an Australian industry producing like goods; or

(ii) materially hindering the establishment of such an Australian industry; and

(b) to an undertaking by an exporter—if it is an undertaking that the exporter will so conduct future trade to Australia in like goods as to avoid:

(i) causing or threatening material injury to an Australian industry producing like goods; or

(ii) materially hindering the establishment of such an Australian industry.

(3B) In giving a notice, and in considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase arising from the undertaking is limited to an amount such that the total price of the goods is not more than the non-injurious price of the goods.

(3BA) However, subsection (3B) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods in the consignment:

(a) the country of export has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period;

(b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

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(3C) The Minister:

(a) may give a notice under subsection (2A) whether or not the giving of such a notice has been recommended by the Commissioner in a recommendation under section 269TEA; and

(b) may accept an undertaking whether or not the acceptance of such an undertaking has been recommended by the Commissioner in a recommendation under section 269TEB; and

(c) must not:

(i) give a notice to a government or exporter under subsection (2A); or

(ii) accept an undertaking from a government or an exporter;

in respect of particular goods or like goods unless a preliminary affirmative determination, or an equivalent determination in an investigation conducted under section 269TAG, has been made to the effect that there are grounds for publication of a countervailing duty notice in respect of those like goods; and

(d) must not accept an undertaking from an exporter unless the government of the country of export consents to the giving of the undertaking; and

(e) must give public notice of any undertaking so accepted.

(3D) The acceptance by the Minister of an undertaking may be subject to conditions that include, but are not limited to, conditions relating to:

(a) giving the Minister, on an agreed basis, information that is relevant to the fulfilment of the undertaking; and

(b) providing the Minister with appropriate access to such information.

(3E) The acceptance by the Minister of an undertaking from an exporter does not prevent the exporter requesting the Minister to determine whether, had the undertaking not been accepted, the Minister

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would have published a countervailing duty notice or would have decided not to publish such a notice.

(3F) The Minister must, if an exporter makes such a request, and may, on his or her own initiative, determine whether he or she would have published a countervailing duty notice or would have decided not to publish such a notice if the undertaking had not been accepted.

(3G) Subsection (3F) does not imply that the Minister is required to make a determination under that subsection before the Minister has received a report from the Commissioner in relation to the matter.

(3H) If the Minister determines under subsection (3F) that he or she would have decided not to publish a countervailing duty notice, the undertaking automatically lapses.

(11) If a notice under subsection (1) or (2) declares particular goods to be goods to which section 10 of the Dumping Duty Act applies, the notice must, subject to subsection (12), include a statement setting out:

(a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and

(b) the amount that the Minister has ascertained, at that time, was or would be the non-injurious price of the goods.

(12) If any person who has provided information to assist the Minister to ascertain:

(a) the amount of any countervailable subsidy received in respect of goods to which a declaration under subsection (1) or (2) relates; or

(b) the non-injurious price of any goods to which a declaration under subsection (1) or (2) relates;

claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:

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(c) in accordance with subsection 269ZI(9), the Minister is not required to include a statement of that amount or that price in the notice; but

(d) upon request the Commissioner may provide a statement of that amount or that price to persons who, in the Commissioner's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

269TJA Concurrent dumping and subsidy

(1) Where the Minister is satisfied, as to any goods that have been exported to Australia:

(a) that the amount of the export price of those goods is less than the amount of the normal value of those goods; and

(b) that a countervailable subsidy has been received in respect of the goods; and

(c) that, because of the combined effect of the difference between the 2 amounts referred to in paragraph (a) and of the subsidy referred to in paragraph (b):

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened; or

(ii) the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may publish a notice under subsection 269TG(1), a notice under subsection 269TJ(1) or notices under both subsections 269TG(1) and 269TJ(1) at the same time in respect of the same goods.

(2) Where the Minister is satisfied, as to goods of any kind:

(a) that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and

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(b) that a countervailable subsidy:

(i) has been received in respect of goods the subject of the application that have already been exported to Australia; and

(ii) may be received in respect of like goods that may be exported to Australia in the future; and

(c) that, because of the combined effect of the difference referred to in paragraph (a) and of the subsidy referred to in paragraph (b):

(i) material injury to an Australian industry producing like goods has been or is being caused or is being threatened; or

(ii) the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may publish a notice under subsection 269TG(2), a notice under subsection 269TJ(2) or notices under both subsections 269TG(2) and 269TJ(2) at the same time in respect of the same goods.

(3) If the Minister has had under consideration the export of a consignment of goods to Australia with a view to determining whether or not notices should be published in accordance with subsection (1) or (2), under both section 269TG and 269TJ in respect of the same goods, the Minister may defer the decision to publish or not to publish notices under both of those sections covering the exporter concerned if he or she is given and accepts:

(a) an undertaking by the exporter under section 269TG, and an undertaking by the exporter under section 269TJ, in respect of the same goods; or

(b) an undertaking by the exporter under section 269TG and an undertaking by the government of the country of origin, or of the country of export, of the goods in the consignment under section 269TJ.

(4) If, in respect of the same consignment of goods, the Minister accepts 2 undertakings from the exporter of the goods or an undertaking from the exporter of the goods and an undertaking

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from the government of the country of origin or country of export of the goods, the Minister must be satisfied that the combined effect of the undertakings is not greater than is necessary to prevent material injury or the recurrence of material injury to an Australian industry producing like goods or to remove the actual or possible hindrance to the establishment of such an Australian industry.

269TK Third country countervailing duties

(1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

(a) a countervailable subsidy has been received in respect of the goods; and

(b) because of that:

(i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is being threatened; or

(ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under this section—material injury to an industry in a third country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country to do so, may, by public notice, declare that section 11 of that Act applies:

(c) to the goods in respect of which the Minister is so satisfied; and

(d) to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.

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(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:

(a) a countervailable subsidy:

(i) has been received in respect of goods the subject of the application that have already been exported to Australia; and

(ii) may be received in respect of like goods that may be exported to Australia in the future; and

(b) by reason thereof material injury to an industry in a third country engaged in the production of like goods has been or is being caused or is being threatened;

the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or makes, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 11 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

(3) If the Minister is satisfied that adequate information as to the amount of countervailable subsidy in relation to goods cannot be obtained for the purposes of this section, the amount of countervailable subsidy is to be taken to be such amount as is determined, in writing, by the Minister.

(4) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to the exporter.

(5) Where a notice under subsection (1) or (2) declares particular goods to be goods to which section 11 of the Dumping Duty Act applies, the notice must, subject to subsection (6), include a statement setting out:

(a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and

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(b) the amount that the Minister ascertained, at that time, was or would be the non-injurious price of the goods.

(6) If any person who has provided information to assist the Minister to ascertain:

(a) the amount of any countervailable subsidy received in respect of goods to which a notice under subsection (1) or (2) relates; or

(b) the non-injurious price of such goods;

claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:

(c) in accordance with subsection 269ZI(9), the Minister is not required to include a statement of that amount or that price in the notice; but

(d) upon request the Commissioner may provide a statement of that amount or that price to persons who, in the Commissioner's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

269TL Minister to give public notice not to impose duty

(1) Where the Minister receives a recommendation from the Commissioner 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 Dumping Duty Act applies, the Minister must give public notice to that effect.

269TLA Time limit for Minister to make certain decisions

(1) This section applies if the Minister receives a recommendation from the Commissioner concerning the imposition of dumping

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duty, third country dumping duty, countervailing duty or third country countervailing duty on goods.

(2) The Minister must decide whether or not to publish a dumping duty notice or a countervailing duty notice, or both a dumping duty notice and a countervailing duty notice, in respect of the goods within:

(a) 30 days after receiving the recommendation; or

(b) if the Minister considers there are special circumstances that prevent the decision being made within that period—such longer period as the Minister considers appropriate.

(3) If paragraph (2)(b) applies, the Minister must give public notice of the longer period.

(4) Subsection (2) does not apply if:

(a) the Minister defers the decision under subsection 269TG(4), 269TJ(3) or 269TJA(3); or

(b) subsection 269TN(4A) or (6) applies in relation to the decision; or

(c) the application to which the recommendation relates is withdrawn before the Minister makes the decision.

269TM Periods during which certain notices and undertakings to remain in force

(1) Subject to subsection (1A), if a notice is published after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant notification provision in respect of goods of a particular kind, that notice expires 5 years after the day on which it is published unless it is revoked before the end of that period.

(1A) If:

(a) a notice (the ***original notice***) is published under a relevant notification provision in respect of goods of a particular kind; and

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(b) in relation to the investigation that resulted in the publication of the original notice, the Minister accepted an undertaking under subsection 269TEB(5) or (6) that was proposed by a government of a country of export, or by an exporter, of goods of that kind; and

(c) before the end of the period of 5 years beginning on the day (the ***start day***) that the Minister accepted that undertaking:

(i) that government or exporter breaches that undertaking; and

(ii) the Minister, under subsection 269TEB(7), takes steps to facilitate the resumption of the investigation in so far as it relates to goods of that kind exported from that country or exported by that exporter; and

(iii) another notice is published under a relevant notification provision in respect of goods of that kind exported from that country or exported by that exporter;

then the other notice expires 5 years after the start day unless it is revoked before the end of that period.

(2) Where an undertaking is entered into after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant undertaking provision in respect of goods of a particular kind, that undertaking expires 5 years after the day on which it was entered into unless provision is made for its earlier expiration.

(3) If:

(a) a notice was or is published before section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences; and

(b) the notice is in force immediately before the commencement of that section;

the notice expires 5 years after the day on which it was published unless it is sooner revoked.

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(3A) If:

(a) an undertaking was or is entered into before section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences; and

(b) the undertaking is in force immediately before that section commences;

the Minister must, by notice in writing, give the person who gave the undertaking the opportunity, before the undertaking expires, to extend the undertaking so that it expires 5 years after the day on which it was entered into unless provision is made for its earlier expiration.

(3B) If a person who gave an undertaking of the kind referred to in subsection (3A) refuses or fails to extend its operation in the manner referred to in subsection (3A) before the undertaking expires, the Minister may, in substitution for the extension of the undertaking, publish a dumping duty notice or a countervailing duty notice that commences on the day after the undertaking expired and ends 2 years after that day unless it is sooner revoked.

(7) In this section:

relevant notification provision means subsection 269TG(2), 269TH(2), 269TJ(2), (4), (5) or (6) or 269TK(2).

relevant undertaking provision means subsection 269TG(4) or 269TJ(3).

269TN Retrospective notices

(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

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interim duty that might become payable under section 8, 9, 10 or 11 of the Dumping Duty 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 Commonwealth 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).

Dumping duties

(3) Subsection (1) does not prevent the publication of a notice under subsection 269TG(1) in respect of goods that have been entered for home consumption to which, by virtue of subsection (4) of this section, this subsection applies, if:

(a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 8 of the Dumping Duty Act or, within that period, the Commonwealth had the right to require and take such security; and

(b) the Minister considers that 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 serious undermining of the remedial effect of the dumping duty that will become payable upon publication of the notice.

(4) Subsection (3) applies to goods:

(a) that have been imported into Australia by an importer who the Minister considers 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

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publication of a notice under section 269TG in respect of goods of that kind, would have caused, material injury to an Australian industry by reason of the amount of the export price of the goods exported being less than the normal value of the goods exported.

(4A) Before the Minister decides to publish a dumping duty notice under subsection 269TG(1) in circumstances referred to in subsection (3) of this section, in respect of goods that have already been entered for home consumption, the Minister must:

(a) inform the importer of the goods of the decision he or she proposes to make; and

(b) allow a reasonable opportunity for the importer of the goods to comment on the proposed decision; and

(c) give consideration to the comment provided by the importer.

(4B) If:

(a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking under subsection 269TG(4) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 8 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Commonwealth had the right to require and take such security;

subsection (1) of this section does not prevent the publication of a notice under subsection 269TG(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.

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(4C) Despite subsections (3) to (4B), the Minister must not publish a notice under subsection 269TG(1) in respect of goods that have been entered for home consumption before the date of initiation of the investigation concerned.

Countervailing duties

(5) Subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that have been entered for home consumption if:

(a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 10 of the Dumping Duty Act or, within that period, the Commonwealth had the right to require and take such security; and

(b) the Minister considers that material injury, which is difficult to repair, has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind because a countervailable subsidy has been received from the country of export or country of origin of those goods, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury.

(6) Before the Minister decides to publish a countervailing duty notice under subsection 269TJ(1) in circumstances referred to in subsection (5) of this section, in respect of goods that have already been entered for home consumption, the Minister must:

(a) inform the importer of the goods of the decision he or she proposes to make; and

(b) allow a reasonable opportunity for the importer of the goods to comment on the proposed decision; and

(c) give consideration to the comments provided by the importer.

(7) Where:

(a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in

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accordance with subsection 269TJ(3) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Commonwealth had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that:

(c) are the produce or manufacture of that country or have been exported from that country, as the case may be; and

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that:

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(8) Where:

(a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TJ(3) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Commonwealth 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:

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(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.

269TP Power to specify goods

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.

269U Inquiries in relation to undertakings

(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 subsection 269TG(3D), 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 subsection 269TJ(2A), 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 Commissioner may authorise a Commission staff member 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) A Commission staff member authorised under subsection (1) to convene a meeting of representatives of an Australian industry

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shall give notice in writing to such persons as, in his or her 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 Commission staff member 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 Commission staff member 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 Commission staff member convening the meeting otherwise than at the meeting or to the Minister.

(6) The Commission staff member 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 Commission staff member convening a meeting in pursuance of subsection (2) shall not put before the meeting any information provided to him or her 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 Commission staff member convening the meeting shall furnish to the Commissioner for submission to the

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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 *Competition and Consumer Act 2010*, 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 Commission staff member convening the meeting in relation to the question being considered by the meeting.

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Division 4—Dumping duty or countervailing duty assessment

269UA What this Division is about

This Division enables a reconciliation of interim duty, and final duty, payable under the Dumping Duty Act. The Division permits an importer who has paid interim duty on particular goods to apply, within specified time limits, for an assessment of duty payable on those goods. In particular, the Division provides that:

- if the duty is less than the interim duty, the excess is to be refunded;
- if the duty is more than the interim duty, the interim duty is treated as duty and the balance waived;
- if the importer fails, within the time limits available, to seek an assessment of duty, the interim duty paid on the goods is taken to be duty actually payable.

269V Importers may apply for duty assessment in certain circumstances

(1) An importer of goods on which, under the Dumping Duty Act, an interim duty has been paid may, subject to subsection (2), by application lodged with the Commissioner, request that the Minister make an assessment of the liability of those goods to duty under that Act.

(2) An application for an assessment of duty under subsection (1) may only be lodged if:

(a) the application is lodged not more than 6 months after the end of the particular importation period in which the goods

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the subject of the application were entered for home consumption; and

(b) the importer contends that the total amount of duty payable in respect of those goods under the Dumping Duty Act is less, by a specified amount, than the total amount of interim duty that has been paid on those goods under that Act.

269W Manner of making applications for duty assessment

(1) An application for an assessment of duty on goods of a particular kind entered for home consumption during a particular importation period must be in writing and contain:

(a) a full description of the goods of that kind in each consignment imported during the particular importation period; and

(b) information concerning the amount of interim duty paid on the goods of that kind in each such consignment; and

(c) if an interim dumping duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are the normal value and the export price of goods of that kind in each such consignment; and

(d) if an interim countervailing duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are:

(i) the amount of the countervailable subsidy received on goods of that kind in each such consignment; and

(ii) the amount of the export price of goods of that kind in each such consignment; and

(e) a statement of the amount by which the applicant contends that the total interim duty paid on those goods exceeds the total duty payable under the Dumping Duty Act.

(1A) The application must also contain either:

(a) sufficient evidence to establish that the applicant's opinion of the amounts described in whichever of paragraphs (1)(c) and (d) apply is correct; or

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(b) both of the following:

(i) the evidence the applicant has to establish that the applicant's opinion of the amounts described in whichever of paragraphs (1)(c) and (d) apply is correct;

(ii) a commitment that someone else will give the Commissioner further evidence within 30 days after lodgment or such longer period as the Commissioner allows, so that the Commissioner will then have sufficient evidence to establish that the applicant's opinion of those amounts is correct.

(1B) If the interim duty on the goods covered by the application was calculated using the export price of the goods worked out (under paragraph 269TAB(1)(b) or otherwise) as the difference between:

(a) the price at which the importer of the goods sold them, in the condition in which they were imported, to someone who was not an associate of the importer; and

(b) the prescribed deductions (as defined in subsection 269TAB(2)) relating to the goods;

the requirement in subsection (1A) of this section is met only if the evidence referred to in that subsection includes evidence of the things described in paragraphs (a) and (b) of this subsection.

(2) An application must be lodged with the Commissioner in the manner approved under section 269SMS.

(2A) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to final duty assessment applications.

(3) The day on which an application is taken to have been lodged must be recorded on the application.

269X Consideration of duty assessment applications

(1) The Commissioner must, as soon as practicable after the lodgment of an application for assessment of duty in respect of goods that were entered for home consumption during a particular importation

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period and within 155 days after the lodgement of that application or such longer period as the Minister allows under section 269ZHI, examine the application and decide what recommendation to make to the Minister under subsection (6).

Note: The Commissioner may be required to reject the application or be able to terminate the examination of it without deciding what recommendation to make to the Minister. See section 269YA.

(2) If the Commissioner considers that any person (including the applicant) may be able to supply information relevant to the consideration of the application, the Commissioner may, by notice in writing, request the supply of that information, in writing:

(a) if the information is sought from a person other than the applicant—within a period specified in the notice ending not later than 120 days after the lodgment of the application; and

(b) if the information is sought from the applicant—within a period specified in the notice ending not later than 155 days after the lodgment of the application.

(3) Where the Commissioner proposes to take into account any relevant information that was not supplied to the Commissioner by the applicant, the Commissioner must:

(a) give the applicant a copy of the information that he or she proposes to take into account unless, in the opinion of the Commissioner, the provision of that information would adversely affect the business or commercial interests of a person supplying the information; and

(b) invite the applicant, within a specified period ending not later than 155 days after the lodgment of the application, to make any further submission the applicant considers appropriate in relation to that information.

(3A) However, the Commissioner must not give the applicant information that the exporter of goods covered by the application supplied to the Commissioner (whether as a result of a request under subsection (2) or otherwise) that is relevant to working out:

(a) the normal value of the goods; or

(b) the countervailable subsidy relating to the goods; or

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(c) the export price of the goods;

unless the exporter indicates that he or she is willing for the Commissioner to give the information to the applicant under paragraph (3)(a).

(4) If a person refuses or fails to supply information or to make a submission within the period allowed but subsequently supplies that information or makes that submission, the Commissioner may disregard that information or submission in considering the application.

(5) On the basis of the information and evidence contained in the application, any other information provided under subsection (2) or (3) that is not disregarded under subsection (4) and any other information the Commissioner considers relevant, the Commissioner must:

(a) provisionally ascertain, in relation to each consignment of goods to which the application relates, each variable factor relevant to the determination of duty payable on the goods under the Dumping Duty Act; and

(b) having regard to those variable factors as so provisionally ascertained and, where appropriate, to the non-injurious price of goods of that kind—provisionally calculate, in respect of each such consignment, the amount of duty payable under the Dumping Duty Act.

(5A) Subsection (5B) of this section applies if the Commissioner proposes to ascertain provisionally, for the purposes of paragraph (5)(a) of this section, the export price of goods (under paragraph 269TAB(1)(b) or otherwise) as the difference between:

(a) the price at which the importer of the goods sold them, in the condition in which they were imported, to someone who was not an associate of the importer; and

(b) the prescribed deductions (as defined in subsection 269TAB(2)) relating to the goods.

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(5B) In provisionally ascertaining the export price of goods as described in subsection (5A), the Commissioner must:

(a) take account of the following in relation to the goods:

(i) any change in normal value;

(ii) any change in costs incurred between importation and resale;

(iii) any movement in resale price which is duly reflected in subsequent selling prices; and

(b) despite paragraph 269TAB(1)(b), not deduct the amount of interim duty if the Commissioner has conclusive evidence of the things mentioned in subparagraphs (a)(i), (ii) and (iii) of this subsection.

An expression used in this subsection and subparagraph 3.3 of Article 9 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the World Trade Organization Agreement has the same meaning in this subsection as it has in that subparagraph.

(6) On the basis of the provisional calculation of duty referred to in paragraph (5)(b), the Commissioner must decide:

(a) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Dumping Duty Act by at least the amount contended in the application—to recommend to the Minister:

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and

(ii) that the Minister order a repayment of the amount of interim duty overpaid; or

(b) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Dumping Duty Act but not to the extent contended in the application—to recommend to the Minister:

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and

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(ii) that the Minister order a repayment of the amount of interim duty overpaid; or

(c) if satisfied that the total amount of duty payable under the Dumping Duty Act on the goods the subject of the application is equal to or exceeds the total of interim duty that was paid on the goods—to recommend to the Minister:

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; but

(ii) that the Minister order that any duty in excess of the interim duty paid on those goods be waived.

(7) As soon as practicable, but not later than 7 days after making a decision under subsection (6), the Commissioner must:

(a) notify the applicant, in writing, of the decision made; and

(b) if the decision is a negative preliminary decision:

(i) inform the applicant of the reasons why the Commissioner made the decision; and

(ii) inform the applicant of the applicant's right, within 30 days of the receipt of the notification, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

(8) The Commissioner must:

(a) if he or she has made a positive preliminary decision—recommend to the Minister, not later than 7 days after making the decision, that the Minister give effect to that decision; and

(b) if he or she has made a negative preliminary decision and the applicant has not exercised the right to seek a review of the decision by the Review Panel—recommend to the Minister, not later than 7 days after the end of the period available for seeking review of the decision, that the Minister give effect to that decision.

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269Y Duty assessments

(1) As soon as practicable, but no later than 30 days, after receiving a recommendation from the Commissioner or from the Review Panel under subsection 269ZZU(2) in relation to goods the subject of an application, the Minister must, having regard to the terms of that recommendation, by notice in writing:

(a) ascertain, for the purposes of this Act and the Dumping Duty Act, the variable factors relevant to the determination of duty payable under the Dumping Duty Act in respect of each consignment; and

(b) order that the total interim duty overpaid in respect of all consignments to which the application relates be repaid or that the total unpaid duty in excess of the interim duty already paid be waived, as the case requires.

(2) As soon as practicable after issuing a notice under subsection (1) the Minister must ensure that a copy of that notice is provided to the applicant.

(3) If the Minister issues a notice under subsection (1) ordering that an amount of interim duty be repaid to an applicant the Commonwealth is liable to make a repayment to the applicant accordingly.

(4) If:

(a) one or more consignments of goods of a particular kind that are the subject of a dumping duty notice or a countervailing duty notice are entered for home consumption during an importation period; and

(b) interim duty is paid on those goods under the Dumping Duty Act; and

(c) application is not lodged under section 269V of this Act for an assessment of duty payable on those goods under the Dumping Duty Act;

then:

(d) the Minister is taken, for the purposes of this Act and the Dumping Duty Act, to have ascertained each variable factor

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relevant to the determination of duty on each such consignment at the level at which that factor was ascertained or last ascertained by the Minister for the purpose of the dumping duty notice or countervailing duty notice; and

(e) the interim duty paid on those goods is taken to be the duty payable.

269YA Rejection etc. of application for duty assessment

(1) This section has effect despite sections 269X and 269Y if an application under section 269V is lodged with the Commissioner under section 269W.

(2) The Commissioner must reject the application if the Commissioner is satisfied within 20 days after it is lodged that it does not contain everything it must contain under subsections 269W(1) and (1A).

(3) The Commissioner must reject the application if:

(a) the application contains a commitment described in paragraph 269W(1A)(b); and

(b) within 20 days after the time described in that paragraph, the Commissioner is satisfied that he or she has not received from the applicant and one or more other persons sufficient evidence to establish that the applicant's opinion of the amounts described in whichever of paragraphs 269W(1)(c) and (d) apply is correct.

(4) The Commissioner may terminate examination of the application if he or she is satisfied after the last of the 20 days mentioned in subsection (2) or (3) of this section that he or she does not have enough information to be able to comply with paragraph 269X(5)(a).

(5) If the Commissioner rejects the application or terminates examination of it:

(a) the Commissioner must notify the applicant in writing of the following:

(i) the rejection or termination;

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(ii) the reasons for the rejection or termination;

(iii) the applicant's right, within 30 days of the receipt of the notification, to apply for a review by the Review Panel under Division 9 of the rejection or termination; and

(b) the Commissioner must not:

(i) provisionally ascertain a variable factor or provisionally calculate an amount under subsection 269X(5) in connection with the application; or

(ii) decide what recommendation to make to the Minister under subsection 269X(6) in connection with the application; and

(c) subsection 269Y(4) has effect as if the application had not been lodged under section 269V.

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Division 5—Review of anti-dumping measures

269Z What this Division is about

This Division enables affected parties (exporters, industry etc.) to apply for the review of anti-dumping measures. The Division also empowers the Minister to initiate such a review. The Division:

- sets out the circumstances in which applications can be brought;
- empowers the Commissioner to recommend, through a Minister's request, an extension of the ambit of a review where appropriate;
- sets out the procedure to be followed by the Commissioner in dealing with applications or requests and preparing reports for the Minister;
- empowers the Minister, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate;
- empowers the Minister, if interim duty has been paid under the Dumping Duty Act, to make any necessary adjustment of that interim duty.

269ZA Applications and requests for review of anti-dumping measures

(1) If:

(a) anti-dumping measures have been taken in respect of goods; and

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(b) an affected party considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:

(i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed; or

(ii) the anti-dumping measures are no longer warranted;

the affected party may, by application lodged with the Commissioner, request that the Commissioner initiate such a review.

(2) An application for review of anti-dumping measures must not be made:

(a) if the measures involve the publication of a dumping duty notice or a countervailing duty notice—earlier than 12 months after:

(i) the publication of the notice; or

(ii) the publication of a notice declaring the outcome of the last review of the notice (whether that last review was undertaken at the applicant's request or not); and

(b) if the measures involve the acceptance of an undertaking—earlier than 12 months after:

(i) the publication of notice of the acceptance of that undertaking; or

(ii) the publication of a notice declaring the outcome of the last review of the undertaking (whether that last review was undertaken at the applicant's request or not).

Example: If an application under section 269TB resulted in:

(a) the publication of the acceptance of an undertaking from exporter A on 1 January 1999; and

(b) the publication of a dumping duty notice covering exporters B and C on 1 March 1999;

an affected party could seek review of the undertaking on 2 January 2000 but could not seek review of both the undertaking and the dumping duty notices until 2 March 2000.

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However, the Minister could decide to review the notices before 2 March 2000 either on his or her own initiative or on the recommendation of the Commissioner. See subsection (3).

(3) If:

(a) anti-dumping measures have been taken in respect of goods; and

(b) the Minister considers (either as a result of a recommendation from the Commissioner under subsection 269ZC(4) or on his or her own initiative) that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:

(i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters may have changed; or

(ii) the anti-dumping measures are no longer warranted;

the Minister may, at any time, by notice in writing, request that the Commissioner initiate a review under this Division.

(4) If, as a result of a person's application under Division 6 for accelerated review of a dumping duty notice or a countervailing duty notice, the Minister has made a declaration under subsection 269ZG(3):

(a) that person may not make an application, under subsection (1) of this section, for a review of that notice earlier than 12 months after the making of that declaration; but

(b) for the purpose of determining whether subsection (2) permits any other person to apply for a review of the notice, the making of that declaration is not to be treated as a review of the notice.

(5) If:

(a) a person applies, under Division 9, for a review of the Minister's decision to publish a dumping duty notice or a countervailing duty notice or not to publish such a notice; and

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(b) as a result of that review:

(i) a dumping duty notice or a countervailing duty notice is published by the Minister despite an earlier decision not to publish such a notice; or

(ii) a dumping duty notice or countervailing duty notice originally published by the Minister is varied; or

(iii) another dumping duty notice or countervailing duty notice is substituted for the notice originally published by the Minister;

then, for the purpose only of determining whether subsection (2) permits a review of the new notice, the notice as varied or the substituted notice, that new notice, notice as varied or substituted notice has effect as if it had been published at the time of the Minister's decision not to publish a notice, or at the time of publication of the original notice, as the case requires.

269ZB Content and lodgment of applications for review of anti-dumping measures

(1) An application under subsection 269ZA(1) for review of anti-dumping measures must:

(a) be in writing; and

(b) be in a form approved by the Commissioner for the purposes of this section; and

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

(d) be signed in the manner indicated by the form; and

(e) be lodged in the manner approved under section 269SMS.

(2) Without otherwise limiting the matters that can be required by the form to be included, the application must include:

(a) a description of the kind of goods to which the measures the subject of the application relate; and

(b) a description of the measures the subject of the application; and

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(c) if the application is based on a change in variable factors—a statement of the opinion of the applicant concerning:
(i) the variable factors relevant to the taking of the measures taken that have changed; and
(ii) the amount by which each such factor has changed; and
(iii) the information that establishes that amount; and
(d) if the application is based on circumstances that in the applicant's view indicate that the anti-dumping measures are no longer warranted—evidence, in accordance with the form, of the circumstances.

(3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for review of anti-dumping measures.

(4) The day on which the application is taken to have been lodged must be recorded on the application.

269ZC Consideration of applications and requests for review

(1) If an application under subsection 269ZA(1) for review of anti-dumping measures is lodged with the Commissioner, the Commissioner must, within 20 days after receiving the application:
(a) examine the application; and
(b) if the Commissioner is not satisfied, having regard to the application and to any other information that the Commissioner considers relevant, of one or more of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.

(2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
(a) that the application complies with section 269ZB; and
(b) that there appear to be reasonable grounds for asserting either, or both, of the following:
(i) that the variable factors relevant to the taking of anti-dumping measures have changed;

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(ii) that the anti-dumping measures are no longer warranted.

(3) The notice informing the applicant of the rejection of the application must set out the reasons why the Commissioner was not satisfied of one or more of the matters set out in subsection (2).

(4) If the Commissioner decides not to reject an application for review of anti-dumping measures, the Commissioner must either:

(a) publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to review the measures covered by the application; or

(b) if the Commissioner considers that the review applied for should be extended to include any additional matter—recommend to the Minister that the review be extended accordingly.

(5) If the Commissioner is requested by the Minister to undertake a review of anti-dumping measures, either as a result of a recommendation made to the Minister under subsection (4) or otherwise, the Commissioner must, on receipt of that request, publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to review the measures covered by the request.

(6) If:

(a) the Commissioner recommends to the Minister under paragraph (4)(b) the extension of a review of anti-dumping measures; but

(b) the Commissioner is informed by the Minister, within 20 days after that recommendation is made, that the Minister does not require the review to be so extended;

the Commissioner must, on being so informed, publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to review the anti-dumping measures under this Division covered by the original application.

(7) The notice published by the Commissioner under subsection (4), (5) or (6) must:

(a) describe the kind of goods to which the review relates; and

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(b) describe the measures to which the review relates; and

(ba) if the review will examine whether the variable factors relevant to the taking of the measures have changed—state that fact; and

(bb) if the review will examine whether the measures are no longer warranted—state that fact; and

(c) indicate that a report will be made to the Minister:

(i) within 155 days after the date of publication of the notice; or

(ii) within such longer period as the Minister allows under section 269ZHI; and

(d) invite interested parties to lodge with the Commissioner, within 37 days after the date of publication of the notice, submissions concerning the review; and

(e) state that:

(i) within 110 days after the publication of the notice; or

(ii) such longer period as the Minister allows under section 269ZHI;

the Commissioner will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation concerning the measures under review; and

(f) invite interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and

(g) indicate the address at which, or the manner in which, submissions under paragraph (d) or (f) can be lodged.

269ZCA Application to extend a review of anti-dumping measures to include revocation

If:

(a) a notice was published by the Commissioner under subsection 269ZC(4), (5) or (6); and

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(b) the notice did not state the review will examine whether the measures are no longer warranted (see paragraph 269ZC(7)(bb)); and

(c) an affected party considers that it can provide evidence that may satisfy the Commissioner that there are reasonable grounds for determining that the anti-dumping measures described in the notice are no longer warranted;

the affected party may, by application lodged with the Commissioner, request that the Commissioner consider that evidence.

269ZCB Content and lodgment of application to extend a review of anti-dumping measures to include revocation

(1) An application under section 269ZCA must:

(a) be lodged within 37 days of the publication of the relevant notice under subsection 269ZC(4), (5) or (6); and

(b) be in writing; and

(c) be in a form approved by the Commissioner for the purposes of this section; and

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

(e) be signed in the manner indicated by the form; and

(f) be lodged in the manner approved under section 269SMS.

(2) Without otherwise limiting the matters that can be required by the form to be included, the application must include evidence of the circumstances that in the applicant's view indicate that the anti-dumping measures are no longer warranted.

(3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for review of anti-dumping measures.

(4) The day on which the application is taken to have been lodged must be recorded on the application.

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269ZCC Consideration of applications and requests for extensions of reviews

(1) If an application under section 269ZCA is lodged with the Commissioner, the Commissioner must, within 20 days after receiving the application:

(a) examine the application; and

(b) if the Commissioner is not satisfied, having regard to the application and to any other information that the Commissioner considers relevant, of one or more of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.

(2) For the purposes of subsection (1), the matters to be considered in relation to an application are:

(a) that the application complies with section 269ZCB; and

(b) that the Commissioner is satisfied that there appear to be reasonable grounds for recommending that the anti-dumping measures are no longer warranted.

(3) The notice informing the applicant of the rejection of the application must set out the reasons why the Commissioner was not satisfied of one or more of the matters set out in subsection (2).

(4) If the Commissioner decides not to reject an application, the Commissioner must publish a notice on the Anti-Dumping Commission's website in accordance with subsection (8).

(5) If the Commissioner considers (either as a result of an application under section 269ZCA or on the Commissioner's own initiative) that the review applied for should be extended to include any additional matter, the Commissioner may, within 40 days after the publication of the notice under subsection 269ZC(4), (5) or (6) relating to the review, recommend to the Minister that the review be extended accordingly.

(6) If:

(a) anti-dumping measures have been taken in respect of goods; and

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(b) an application under subsection 269ZA(1) for review of anti-dumping measures has been made; and

(c) the Minister considers (either as a result of a recommendation from the Commissioner under subsection (5) of this section or on the Minister's own initiative) that there appear to be reasonable grounds to extend the review applied for to include any additional matter;

the Minister may, within 60 days of the publication of the relevant notice under subsection 269ZC(4), (5) or (6), by notice in writing, request that the Commissioner extend the review applied for accordingly.

(7) If the Commissioner is requested under this section by the Minister to extend a review of anti-dumping measures, the Commissioner must, on receipt of that request, publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to so extend the review.

(8) The notice published by the Commissioner under subsection (4) or (7) must:

(a) describe the kind of goods to which the relevant review of anti-dumping measures relates; and

(b) describe the measures to which the review relates; and

(c) if the Commissioner is satisfied that there may be reasonable grounds for the Commissioner making a revocation recommendation—state that fact; and

(d) invite affected parties to lodge with the Commissioner submissions concerning the extended review.

269ZD Statement of essential facts in relation to review of anti-dumping measures

(1) If the Commissioner publishes a notice under subsection 269ZC(4), (5) or (6) in relation to the review of anti-dumping measures, he or she must, within 110 days after the publication of the notice or such longer period as the Minister allows under section 269ZHI, place on the public record a

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statement of the facts (the ***statement of essential facts***) on which the Commissioner proposes to base a recommendation to the Minister in relation to the review of those measures.

(2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:

(a) must have regard to:

(i) the application or request; and

(ii) any submissions relating generally to the review that are received by the Commissioner within 37 days after the publication of the notice under subsection 269ZC(4), (5) or (6); and

(iii) any other submission received by the Commissioner relating generally to the review if, in the Commissioner's opinion, having regard to the submission would not prevent the timely placement of the statement of essential facts on the public record; and

(b) may have regard to any other matters that the Commissioner considers relevant.

(3) The Commissioner is not obliged to have regard to any submissions relating generally to the review that are received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

269ZDA Report on review of measures

(1) The Commissioner must, after conducting a review of anti-dumping measures and within 155 days after the date of publication of the notice under subsection 269ZC(4), (5) or (6) in relation to those measures or such longer period as the Minister allows under section 269ZHI, give the Minister a report recommending:

(a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice:

(i) that the notice remain unaltered; or

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(ii) that the notice be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or

(iii) that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; and

(b) to the extent that the measures involved the acceptance by the Minister of an undertaking:

(i) that the undertaking remain unaltered; or

(ii) that the Minister seek a variation of the terms of the undertaking as indicated in the Commissioner's report; or

(iii) that the Minister indicate to the person who gave the undertaking that the undertaking is no longer acceptable and that the investigation of the need for a dumping duty notice or a countervailing duty notice, as the case requires, covering that person is to be resumed; or

(iv) that the Minister indicate to the person who gave the undertaking that the person is released from the undertaking and that the investigation of the need for a dumping duty notice or countervailing duty notice covering that person is terminated.

(1A) After conducting a review of anti-dumping measures under this Division, the Commissioner:

(a) must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review; and

(b) otherwise must make a revocation recommendation in relation to the measures, unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.

(2) Nothing in this section is to be taken to imply that the Commissioner cannot simultaneously make the same

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recommendation in relation to more than one exporter or person giving an undertaking.

(3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the report, the Commissioner:

(a) must have regard to:

(i) the application or request for review; and

(ia) any application to extend the review that was not rejected; and

(ib) any request to extend the review; and

(ii) any submission relating generally to the review to which the Commissioner has had regard for the purpose of formulating the statement of essential facts in relation to the review; and

(iii) that statement of essential facts; and

(iv) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record; and

(b) may have regard to any other matter that the Commissioner considers to be relevant to the review.

(4) The Commissioner is not obliged to have regard to any submission made in response to the statement of essential facts that is received by the Commissioner after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

(5) The report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report that:

(a) sets out the material findings of fact on which that recommendation is based; and

(b) provides particulars of the evidence relied on to support those findings.

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269ZDB Powers of the Minister in relation to review of anti-dumping measures

(1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with subsection (7), that for the purposes of this Act and the Dumping Duty Act:

(a) to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice or a countervailing duty notice:

(i) that the notice is to remain unaltered; or

(ii) that, with effect from a date specified in the declaration, the notice is taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods; or

(iii) that, with effect from a date specified in the declaration, the notice is to be taken to have effect or to have had effect, either in relation to a particular exporter or to exporters generally, as if the Minister had fixed different variable factors in respect of that exporter or of exporters generally, relevant to the determination of duty; and

(b) to the extent that the anti-dumping measures concerned involved the acceptance by the Minister of an undertaking:

(i) that the undertaking is to remain unaltered; or

(ii) that if, before a date specified in the declaration, the terms of the undertaking are altered in a manner specified in the declaration, the undertaking as so varied will be acceptable to the Minister; or

(iii) that the undertaking is no longer acceptable to the Minister and that the investigation of the need for a dumping duty notice or a countervailing duty notice is to be resumed immediately; or

(iv) that, with effect from a date specified in the declaration, the person who gave the undertaking is released from the undertaking and that the investigation giving rise to the undertaking is terminated.

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(1AA) The Minister must not make a revocation declaration in relation to anti-dumping measures unless a revocation review notice has been published in relation to the relevant review of those measures.

(1A) The Minister must make a declaration under subsection (1) within:

(a) 30 days after receiving the report; or

(b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such longer period as the Minister considers appropriate.

(1B) If paragraph (1A)(b) applies, the Minister must give public notice of the longer period.

(2) If the Minister makes a declaration under subsection (1), that declaration has effect according to its terms.

(3) If:

(a) the Minister makes a declaration under subsection (1); and

(b) under that declaration, new variable factors are taken to have been fixed, in relation to goods exported to Australia by a particular exporter, with effect from a date specified in the declaration; and

(c) interim duty paid on such goods on the basis of the variable factors as previously fixed exceeds the interim duty that would be payable on the basis of the new variable factors;

the person who paid the interim duty may apply under Division 3 of Part VIII for a refund of the excess.

(4) The Minister must, as soon as practicable after the making of a declaration under subsection (1) that affects an exporter or person giving an undertaking, inform that exporter or person of the terms of the declaration.

(5) Nothing in this section is to be taken to imply that the Minister cannot simultaneously make the same declaration in relation to more than one exporter or person giving an undertaking.

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(6) For the purposes of a declaration under subsection (1), the Minister must not fix a date:

(a) in a circumstance to which subparagraph (1)(a)(ii) or (iii) applies—that is earlier than the date of publication under section 269ZC of a notice indicating the proposal to undertake the review concerned; and

(b) in a circumstance to which subparagraph (1)(b)(ii) or (iv) applies—that is earlier than the date of the declaration.

(7) A notice under subsection (1) must be published on the Anti-Dumping Commission's website.

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Division 5A—Anti-circumvention inquiries

269ZDBA What this Division is about

If a notice has been published under subsection 269TG(2) or 269TJ(2) in respect of goods, this Division allows a person representing, or representing a portion of, the Australian industry producing like goods to apply for the conduct of an anti-circumvention inquiry in relation to the notice. This Division also allows the Minister to request such an inquiry. It:

- sets out when applications may be made; and
- sets out the procedure to be followed by the Commissioner in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the notice unaltered or to alter the notice as appropriate.

269ZDBB Circumvention activities

(1) This section sets out when circumvention activity, in relation to a notice published under subsection 269TG(2) or 269TJ(2), occurs.

Assembly of parts in Australia

(2) ***Circumvention activity***, in relation to the notice, occurs if the following apply:

(a) goods in the form of individual parts (the ***circumvention goods***) are exported to Australia;

(b) those parts are manufactured in a foreign country in respect of which the notice applies;

(c) those parts are assembled in Australia, whether or not with other parts, to create goods (the ***assembled goods***) that would

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be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;

(d) the total value of the parts manufactured in that foreign country is a significant proportion of the value of the assembled goods;

(e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

Assembly of parts in third country

(3) ***Circumvention activity***, in relation to the notice, occurs if the following apply:

(a) goods in the form of individual parts are manufactured in a foreign country (the ***original country***) in respect of which the notice applies;

(b) those parts are assembled in a foreign country in respect of which the notice does not apply, whether or not with other parts, to create goods (the ***circumvention goods***) that would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;

(c) the circumvention goods are exported to Australia;

(d) the total value of the parts manufactured in the original country is a significant proportion of the customs value (within the meaning of section 159) of the circumvention goods;

(e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

Export of goods through one or more third countries

(4) ***Circumvention activity***, in relation to the notice, occurs if the following apply:

(a) goods (the ***circumvention goods***) are exported to Australia from a foreign country in respect of which the notice does not apply;

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(b) before that export, there were one or more other exports of the goods from a foreign country to another foreign country;
(c) the first of those other exports was from a foreign country in respect of which the notice applies;
(d) the circumvention goods would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;
(e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

Arrangements between exporters

(5) ***Circumvention activity***, in relation to the notice, occurs if the following apply:
(a) goods (the ***circumvention goods***) are exported to Australia from a foreign country in respect of which the notice applies;
(b) the exporter exported the circumvention goods under an arrangement with another exporter from that foreign country;
(c) the other exporter is an exporter in respect of which the notice applies;
(d) the circumvention goods would be the subject of the notice if they were exported to Australia by the other exporter;
(e) either:
(i) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia; or
(ii) section 8 or 10 of the Dumping Duty Act, as the case requires, applies to the export of the circumvention goods to Australia, but the interim duty payable in relation to that export is less than the interim duty that would have been payable if the other exporter had exported the goods to Australia.

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Avoidance of intended effect of duty

(5A) ***Circumvention activity***, in relation to the notice, occurs if the following apply:

(a) goods (the ***circumvention goods***) are exported to Australia from a foreign country in respect of which the notice applies;

(b) the exporter is an exporter in respect of which the notice applies;

(c) either or both of sections 8 and 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;

(d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;

(e) the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.

Regulations

(6) ***Circumvention activity***, in relation to the notice, occurs in the circumstances prescribed by the regulations for the purposes of this subsection.

269ZDBC Applications and requests for conduct of an anti-circumvention inquiry

Applications by Australian industry

(1) If:

(a) a notice (an ***original notice***) has been published under subsection 269TG(2) or 269TJ(2) in respect of goods; and

(b) a person representing, or representing a portion of, the Australian industry producing like goods considers that one or more circumvention activities in relation to the notice have occurred; and

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(c) the person considers that it may be appropriate to alter the notice because of the circumvention activities;

the person may, by application lodged with the Commissioner, request that the Commissioner conduct an anti-circumvention inquiry in relation to the notice.

(1A) If:

(a) a person lodges an application under subsection (1) with the Commissioner; and

(b) the person describes, in the application, circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A); and

(c) the Commissioner publishes a notice (the ***inquiry notice***) under subsection 269ZDBE(4) because of the application;

the person must not lodge another application under subsection (1) of this section describing circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), within 12 months after the day the inquiry notice was published.

Requests by Minister

(2) If:

(a) a notice (an ***original notice***) has been published under subsection 269TG(2) or 269TJ(2) in respect of goods; and

(b) the Minister considers that one or more circumvention activities in relation to the notice have occurred; and

(c) the Minister considers that it may be appropriate to alter the notice because of the circumvention activities;

the Minister may, by notice in writing, request that the Commissioner conduct an anti-circumvention inquiry in relation to the original notice.

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269ZDBD Content and lodgement of applications for conduct of an anti-circumvention inquiry

Content of application

(1) An application under subsection 269ZDBC(1) for the conduct of an anti-circumvention inquiry in relation to an original notice must:
  (a) be in writing; and
  (b) be in a form approved by the Commissioner for the purposes of this section; and
  (c) contain such information as the form requires; and
  (d) be signed in the manner indicated by the form; and
  (e) be lodged in the manner approved under section 269SMS.

Note: For ***original notice***, see section 269ZDBC.

(2) Without limiting subsection (1), the application must include:
  (a) a description of the kind of goods that are the subject of the original notice; and
  (b) a description of the original notice the subject of the application; and
  (c) a description of the circumvention activities in relation to the original notice that the applicant considers have occurred; and
  (d) a description of the alterations to the original notice that the applicant considers should be made.

(2A) An application that describes circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), must not describe any other kind of circumvention activity in relation to that notice.

Time of lodgement

(3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for the conduct of anti-circumvention inquiries.

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(5) The day on which the application is taken to have been lodged must be recorded on the application.

269ZDBE Consideration of applications and requests for conduct of an anti-circumvention inquiry

Applications

(1) If an application under subsection 269ZDBC(1) for the conduct of an anti-circumvention inquiry in relation to an original notice is lodged with the Commissioner, the Commissioner must, within 20 days after receiving the application:
  (a) examine the application; and
  (b) if the Commissioner is not satisfied, having regard to the application and any other information that the Commissioner considers relevant, of either or both of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.

Note: For ***original notice***, see section 269ZDBC.

(2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
  (a) that the application complies with section 269ZDBD; and
  (b) that there appear to be reasonable grounds for asserting that one or more circumvention activities in relation to the original notice have occurred.

(3) The notice informing the applicant of the rejection of the application must set out the reasons why the Commissioner was not satisfied of either or both of the matters referred to in subsection (2).

(4) If the Commissioner does not reject an application for the conduct of an anti-circumvention inquiry in relation to the original notice, the Commissioner must publish a notice on the Anti-Dumping Commission's website indicating that such an inquiry is to be conducted.

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Requests

(5) If, under subsection 269ZDBC(2), the Minister requests the Commissioner to conduct an anti-circumvention inquiry in relation to an original notice, the Commissioner must, on receipt of that request, publish a notice on the Anti-Dumping Commission's website indicating that such an inquiry is to be conducted.

Note: For ***original notice***, see section 269ZDBC.

Content of notice

(6) A notice (the ***inquiry notice***) published by the Commissioner under subsection (4) or (5) must:

(a) describe the kind of goods to which the inquiry relates; and

(b) describe the original notice the subject of the inquiry; and

(c) state that the inquiry will examine whether circumvention activities in relation to the original notice have occurred; and

(d) indicate that a report will be made to the Minister:

(i) unless subparagraph (ii) applies—within 155 days after the day the inquiry notice is published or such longer period as the Minister allows under section 269ZHI; or

(ii) if the inquiry relates to whether circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), has occurred—within 100 days after the day the inquiry notice is published or such longer period as the Minister allows under section 269ZHI; and

(e) invite interested parties to lodge with the Commissioner, within 37 days after the day of publication of the inquiry notice, submissions concerning the inquiry; and

(f) if subparagraph (d)(i) applies—state that:

(i) within 110 days after the publication of the inquiry notice; or

(ii) within such longer period as the Minister allows under section 269ZHI;

the Commissioner will place on the public record a statement of the essential facts on which the Commissioner proposes to

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base a recommendation to the Minister in relation to the original notice; and

(g) if subparagraph (d)(i) applies—invite interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and

(h) indicate the address at which, or the manner in which, submissions under paragraph (e) or (g) may be lodged.

269ZDBEA Termination of anti-circumvention inquiry

General inquiry

(1) If:

(a) the Commissioner publishes a notice under subsection 269ZDBE(4); and

(b) subparagraph 269ZDBE(6)(d)(i) applies; and

(c) before the Commissioner would otherwise be required to place on the public record a statement referred to in subsection 269ZDBF(1), the Commissioner becomes satisfied that no circumvention activity in relation to the original notice has occurred;

the Commissioner may terminate the anti-circumvention inquiry concerned.

Note: For ***original notice***, see section 269ZDBC.

Accelerated inquiry

(2) If:

(a) the Commissioner publishes a notice under subsection 269ZDBE(4); and

(b) subparagraph 269ZDBE(6)(d)(ii) applies; and

(c) the Commissioner is satisfied that no circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), has occurred;

the Commissioner may terminate the anti-circumvention inquiry concerned.

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Note: For ***original notice***, see section 269ZDBC.

Notice of termination decision

(3) The Commissioner must:
  (a) give public notice of a decision under subsection (1) or (2); and
  (b) notify the applicant for the conduct of the anti-circumvention inquiry of the decision; and
  (c) inform the applicant of the applicant's right, within 30 days after the applicant is so notified, to apply for a review of the decision by the Review Panel under Division 9.

269ZDBF Statement of essential facts in relation to conduct of an anti-circumvention inquiry

(1) If the Commissioner publishes a notice under subsection 269ZDBE(4) or (5) about the conduct of an anti-circumvention inquiry in relation to an original notice and subparagraph 269ZDBE(6)(d)(i) applies, the Commissioner must:
  (a) within 110 days after the publication of the notice under subsection 269ZDBE(4) or (5); or
  (b) within such longer period as the Minister allows under section 269ZHI;

place on the public record a statement of the facts (the ***statement of essential facts***) on which the Commissioner proposes to base a recommendation to the Minister in relation to the original notice.

Note: For ***original notice***, see section 269ZDBC.

(2) In formulating the statement of essential facts, the Commissioner:
  (a) must have regard to:
    (i) the application or request; and
    (ii) any submissions concerning the inquiry that are received by the Commissioner within 37 days after the publication of the notice under subsection 269ZDBE(4) or (5); and

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(b) may have regard to any other matters that the Commissioner considers relevant.

Late submissions

(3) The Commissioner is not obliged to have regard to a submission concerning the inquiry that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

269ZDBG Report on anti-circumvention inquiry

Commissioner recommendations

(1) The Commissioner must, after conducting an anti-circumvention inquiry in relation to an original notice and within:

(a) if subparagraph 269ZDBE(6)(d)(i) applies—155 days after the day the notice under subsection 269ZDBE(4) or (5) about the inquiry is published or such longer period as the Minister allows under section 269ZHI; or

(b) if subparagraph 269ZDBE(6)(d)(ii) applies—100 days after the day the notice under subsection 269ZDBE(4) or (5) about the inquiry is published or such longer period as the Minister allows under section 269ZHI;

give the Minister a report recommending:

(c) the original notice remain unaltered; or

(d) the following:

(i) the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred;

(ii) the alterations to be made to the original notice.

Note: For ***original notice***, see section 269ZDBC.

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(2) In deciding on the recommendations to be made to the Minister in the report, the Commissioner:

(a) if paragraph (1)(a) applies—must have regard to:

(i) the application or request for the inquiry; and

(ii) any submission concerning the inquiry to which the Commissioner has had regard for the purpose of formulating the statement of essential facts in relation to the inquiry; and

(iii) that statement of essential facts; and

(iv) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record; and

(aa) if paragraph (1)(b) applies—must have regard to:

(i) the application or request for the inquiry; and

(ii) any submission concerning the inquiry that is received by the Commissioner within 37 days after the publication of the notice under subsection 269ZDBE(4) or (5); and

(b) in any case—may have regard to any other matter that the Commissioner considers to be relevant to the inquiry.

Late submissions

(3) The Commissioner is not obliged to have regard to a submission made in response to the statement of essential facts that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

(3A) The Commissioner is not obliged to have regard to a submission concerning the inquiry that is received by the Commissioner after the end of the period referred to in subparagraph (2)(aa)(ii) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

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Reasons for Commissioner recommendations

(4) The report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report that:

(a) sets out the material findings of fact on which that recommendation is based; and

(b) provides particulars of the evidence relied on to support those findings.

269ZDBH Minister's powers in relation to anti-circumvention inquiry

Minister's decision

(1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with subsection (9), that for the purposes of this Act and the Dumping Duty Act:

(a) the original notice is to remain unaltered; or

(b) the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.

Note: For ***original notice***, see section 269ZDBC.

(2) Without limiting subsection (1), the alterations may be of the following kind:

(a) the specification of different goods that are to be the subject of the original notice;

(b) the specification of different foreign countries that are to be the subject of the original notice;

(c) the specification of different exporters that are to be the subject of the original notice;

(d) in relation to existing exporters that are the subject of the original notice—the specification of different variable factors in respect of one or more of those exporters;

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(e) in relation to exporters that are to be the subject of the original notice—the specification of variable factors in respect of those exporters.

Timing of decision

(3) The Minister must make a declaration under subsection (1) within:
(a) 30 days after receiving the report; or
(b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such longer period as the Minister considers appropriate.

(4) If paragraph (3)(b) applies, the Minister must give public notice of the longer period.

Declaration has effect according to its terms

(5) If the Minister makes a declaration under subsection (1), that declaration has effect according to its terms.

Notification of declaration

(6) The Minister must, as soon as practicable after the making of a declaration under subsection (1) that affects an exporter, inform that exporter of the terms of the declaration.

Declaration may cover more than one exporter

(7) Nothing in this section is taken to imply that the Minister cannot simultaneously make the same declaration in relation to more than one exporter.

When declaration takes effect

(8) A day specified in a declaration as mentioned in paragraph (1)(b) must not be earlier than the day of publication of the notice under subsection 269ZDBE(4) or (5) about the conduct of an anti-circumvention inquiry in relation to the original notice.

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Manner of publication

(9) A notice under subsection (1) must be published on the Anti-Dumping Commission's website.

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Division 6—Certain exporters may seek accelerated review of dumping duty notices or countervailing duty notices

269ZDC What this Division is about

This Division provides for the early review of a dumping duty notice or a countervailing duty notice on the application of certain exporters of goods covered by the notice. The review can be sought when a review of the notice under Division 5 would not be available and is only open to new exporters.

269ZE Circumstances in which accelerated review may be sought

(1) If a dumping duty notice or a countervailing duty notice has been published:

(a) in respect of goods exported from a particular country of export; or

(b) in respect of goods exported by new exporters from a particular country of export;

a new exporter from that country (other than such an exporter in respect of whom a declaration has already been made under paragraph 269ZG(3)(b) in respect of a previous application) may, by application lodged with the Commissioner, request an accelerated review of that notice in so far as it affects that exporter.

(2) If the Commissioner is satisfied that:

(a) because that exporter refused to co-operate, in relation to the application for publication of that notice, the exportations of that exporter were not investigated; or

(b) the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice;

the Commissioner may reject the application.

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(3) If, during the course of an accelerated review, the Commissioner becomes satisfied that:

(a) the exporter is refusing to co-operate with any aspect of the review; or

(b) the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice;

the Commissioner may terminate the review.

(4) For the purposes of this section, an exporter is taken to be related to another exporter if the 2 exporters are associates of each other under subsection 269TAA(4).

269ZF Application for accelerated review

(1) An application for accelerated review must be in writing, be lodged in the manner approved under section 269SMS, and contain:

(a) a description of the kind of goods to which the dumping duty notice or countervailing duty notice relates; and

(b) a statement of the basis on which the exporter considers that the particular notice is inappropriate so far as the exporter is concerned.

(2) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for accelerated review.

(3) The day on which an application is taken to be lodged must be recorded on the application.

269ZG Consideration of application

(1) The Commissioner must, after considering the application and making such inquiries as the Commissioner thinks appropriate, give the Minister a report recommending:

(a) that the dumping duty notice or countervailing duty notice the subject of the application remain unaltered; or

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(b) that the dumping duty notice or countervailing duty notice the subject of the application be altered so as to apply to the applicant as if different variable factors had been fixed;

and set out the Commissioner's reasons for so recommending.

(2) A report by the Commissioner under subsection (1) must be completed as soon as practicable and in any case not later than 100 days after the day the application is lodged.

(3) After considering the recommendation of the Commissioner and the reasons for the recommendation, the Minister must, by notice published on the Anti-Dumping Commission's website:

(a) declare that, for the purposes of this Act and the Dumping Duty Act, the original dumping duty notice or countervailing duty notice is to remain unchanged; or

(b) declare that, with effect from the date the application is lodged, this Act and the Dumping Duty Act have effect as if the original dumping duty notice or countervailing duty notice had applied to the applicant but the Minister had fixed specified different variable factors relevant to the determination of duty;

and, where the Minister does so, the declaration has effect according to its terms.

(3A) The Minister must make a declaration under subsection (3) within:

(a) 30 days after receiving the report; or

(b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such longer period as the Minister considers appropriate.

(3B) If paragraph (3A)(b) applies, the Minister must give public notice of the longer period.

(4) The Minister must, as soon as practicable after the issue of a notice under subsection (3), notify the applicant of the term of the notice.

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269ZH Effect of accelerated review

If an application for accelerated review of a dumping duty notice or a countervailing duty notice is lodged:

(a) no interim duty can be collected in respect of consignments of goods, to which the application relates, entered for home consumption after the application is lodged and until the completion of the review; but

(b) the Commonwealth may, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim duty that may be payable.

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Division 6A—Continuation of anti-dumping measures

269ZHA What this Division is about

This Division provides for the Commissioner to alert interested parties to the anticipated termination of anti-dumping measures and provide them with an opportunity, before those measures expire, to apply for a continuation of the measures. The Division:

- sets out the consequences if no application is made;
- outlines the procedure to be followed by the Commissioner in dealing with an application and preparing a report for the Minister;
- empowers the Minister, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of the measures.

269ZHB Applications for continuation of anti-dumping measures

(1) Not later than 9 months before particular anti-dumping measures expire, the Commissioner must publish on the Anti-Dumping Commission's website a notice:

(a) informing persons that the dumping duty notice, countervailing duty notice or undertaking comprising those measures is due to expire on a specified day (the ***specified expiry day***); and

(b) inviting the following persons to apply within 60 days to the Commissioner, in accordance with section 269ZHC, for a continuation of those measures:

(i) the person whose application under section 269TB resulted in those measures;

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(ii) persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by those measures.

(2) If the Minister makes a declaration under paragraph 269ZG(3)(b) in relation to an anti-dumping duty notice or countervailing duty notice, the original dumping duty notice or countervailing duty notice and that notice as modified because of that declaration are both to be treated, for the purposes of this Division and despite section 269TM, as if they had been issued at the time of issue of the original notice.

(3) If no application for the continuation of the anti-dumping measures is received by the Commissioner within the period specified in the notice, then, on the specified expiry day:

(a) to the extent that the measures comprise a dumping duty notice—that notice expires; and

(b) to the extent that the measures comprise a countervailing duty notice—that notice expires; and

(c) to the extent that the measures comprise the giving of an undertaking—the person who gave the undertaking is taken to be released from the undertaking and the investigation giving rise to the undertaking is terminated.

269ZHC Content and lodgment of application for continuation of anti-dumping measures

(1) An application under section 269ZHB must:

(a) be in writing; and

(b) be in a form approved by the Commissioner for the purposes of this section; and

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

(d) be signed in the manner indicated in the form; and

(e) be lodged in the manner approved under section 269SMS.

(2) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for continuation of anti-dumping measures.

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(3) The day on which the application is taken to have been lodged must be recorded on the application.

269ZHD Consideration of applications for continuation of anti-dumping measures

(1) If an application or applications for continuation of anti-dumping measures are lodged with the Commissioner in accordance with section 269ZHC, the Commissioner must, within 20 days after the end of the 60 days referred to in paragraph 269ZHB(1)(b):

(a) examine each such application; and

(b) if the Commissioner is not satisfied in relation to any of the applications, having regard to the application and to any other information that the Commissioner considers relevant, of one or more of the matters referred to in subsection (2);

the Commissioner must reject each such application and inform the applicant, by notice in writing, accordingly.

(2) For the purposes of subsection (1), the matters to be considered in relation to an application are:

(a) whether the application complies with section 269ZHC; and

(b) whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

(3) A notice informing an applicant of the rejection of an application must set out the reasons why the Commissioner was not satisfied of one or more of the matters set out in subsection (2).

(4) If the Commissioner decides not to reject an application for continuation of anti-dumping measures taken in respect of goods as they affect a particular exporter of those goods, the Commissioner must publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to inquire whether continuation of the measures is justified.

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(5) The notice published by the Commissioner must:

(a) describe the kind of goods to which the anti-dumping measures apply; and

(b) describe the measures to which the application relates; and

(c) indicate that a report as to the continuation of these measures will be made to the Minister:

(i) within 155 days after the date of publication of the notice; or

(ii) within such longer period as the Minister allows under section 269ZHI; and

(d) invite interested parties to lodge with the Commissioner, within 37 days after the date of publication of the notice, submissions concerning the continuation of the measures; and

(e) state that:

(i) within 110 days after the publication of the notice; or

(ii) such longer period as the Minister allows under section 269ZHI;

the Commissioner will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation concerning the continuation of the measures; and

(f) invite interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and

(g) indicate the address at which, or the manner in which, submissions under paragraph (d) or (f) can be lodged.

269ZHE Statement of essential facts in relation to continuation of anti-dumping measures

(1) If the Commissioner publishes a notice under subsection 269ZHD(4) concerning the continuation of anti-dumping measures, he or she must, within 110 days after the publication of the notice or such longer period as the Minister allows under section 269ZHI, ensure that there is placed on the

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public record a statement of the facts (the ***statement of essential facts***) on which the Commissioner proposes to base his or her recommendation to the Minister concerning the continuation of those measures.

(2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:

(a) must have regard to:

(i) the application concerned; and

(ii) any submissions relating generally to the inquiry that are received by the Commissioner within 37 days after the publication of the notice under subsection 269ZHD(4); and

(b) may have regard to any other matters that the Commissioner considers relevant.

(3) The Commissioner is not obliged to have regard to any submissions relating generally to the inquiry that are received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

269ZHF Report on application for continuation of anti-dumping measures

(1) The Commissioner must, after conducting an inquiry into the continuation of anti-dumping measures and within 155 days after the date of publication of the notice under subsection 269ZHD(4) in relation to those measures or such longer period as the Minister allows under section 269ZHI, give the Minister a report recommending:

(a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice:

(i) that the notice remain unaltered; or

(ii) that the notice cease to apply to a particular exporter or to a particular kind of goods; or

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(iii) that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or

(iv) that the notice expire on the specified expiry day; and

(b) to the extent that the measures involved the acceptance by the Minister of an undertaking:

(i) that the undertaking remain unaltered; or

(ii) that the Minister seek a variation of the terms of the undertaking as indicated in the Commissioner's report; or

(iii) that the undertaking expire on the specified expiry day.

(2) The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

(3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the Commissioner's report, the Commissioner:

(a) must have regard to:

(i) the application for continuation of the anti-dumping measures; and

(ii) any submission relating generally to the continuation of the measures to which the Commissioner has had regard for the purpose of formulating the statement of essential facts in relation to the continuation of those measures; and

(iii) that statement of essential facts; and

(iv) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record; and

(b) may have regard to any other matter that the Commissioner considers to be relevant to the inquiry.

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(4) The Commissioner is not obliged to have regard to any submission made in response to the statement of essential facts that is received after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

(5) The report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report that:

(a) sets out the material findings of fact on which that recommendation is based; and

(b) provides particulars of the evidence relied on to support those findings.

269ZHG Powers of the Minister in relation to continuation of anti-dumping measures

(1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must by notice published in accordance with subsection (2):

(a) declare that the Minister has decided not to secure the continuation of the anti-dumping measures concerned; or

(b) declare that the Minister has decided to secure the continuation of the anti-dumping measures concerned.

Note: Subsection (3) deals with the end of the anti-dumping measures and subsection (4) deals with the continuation of the anti-dumping measures.

(1A) If the Minister receives the report less than 30 days before the specified expiry day, the Minister must make the declaration before that day.

(1B) If subsection (1A) does not apply, the Minister must make the declaration within:

(a) 30 days after receiving the report; or

(b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such

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longer period, ending before the specified expiry day, as the Minister considers appropriate.

(1C) If paragraph (1B)(b) applies, the Minister must give public notice of the longer period.

(2) A notice under subsection (1) must be published:
  (a) before the expiry day specified in the notice; and
  (b) on the Anti-Dumping Commission's website.

(3) If the Minister declares that he or she has decided not to secure the continuation of the anti-dumping measures, then, on the specified expiry day:
  (a) to the extent that the measures comprise a dumping duty notice—that notice expires; and
  (b) to the extent that the measures comprise a countervailing duty notice—that notice expires; or
  (c) to the extent that the measures comprise the giving of an undertaking—the person who gave the undertaking is taken to be released from the undertaking and the investigation giving rise to the undertaking is terminated;

as the case requires.

(4) If the Minister declares that he or she has decided to secure the continuation of the anti-dumping measures, the continuation of those measures is so secured:
  (a) to the extent that the measures comprise the publication of a dumping duty notice or a countervailing duty notice:
    (i) by the Minister determining, in writing, that the notice continues in force after the specified expiry day; or
    (ii) by the Minister determining, in writing, that the notice continues in force after the specified expiry day but that, after that day, the notice ceases to apply in relation to a particular exporter or to a particular kind of goods; or
    (iii) by the Minister determining, in writing, that the notice continues in force after the specified expiry day but that, after that day, the notice has effect, in relation to a particular exporter or to exporters generally, as if the

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Minister had fixed different specified variable factors in relation to that exporter or to exporters generally, relevant to the determination of duty; and

(b) to the extent that the measures involve the acceptance of an undertaking:

(i) by the person who gave the undertaking agreeing to extend it beyond the specified expiry day (without any variation) or, if the person will not so agree, by the Minister publishing a dumping duty notice or a countervailing duty notice to take effect on the day after the specified expiry day in substitution for the undertaking; or

(ii) by the person who gave the undertaking agreeing to extend it beyond the specified expiry day with the variations sought by the Minister or, if the person will not so agree, by the Minister publishing a dumping duty notice or a countervailing duty notice to take effect on the day after the specified expiry day in substitution for the undertaking.

(5) If the Minister secures the continuation of anti-dumping measures in accordance with this section, the measures continue in force for 5 years after the specified expiry day unless:

(a) in the case of a dumping duty notice or a countervailing duty notice—the notice is revoked before the end of that period; or

(b) in the case of an undertaking—provision is made for its earlier expiration.

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Division 7—Procedural and evidentiary matters

269ZHH What this Division is about

This Division:

- enables extension of various periods for doing things under this Part if the Minister is satisfied it is necessary;
- provides for the giving of public notice of decisions and determinations under this Part;
- provides for the Commissioner to maintain a public record of investigations, reviews and inquiries conducted by the Commissioner under this Part.

269ZHI Minister may extend certain periods of time

(1) The Commissioner may give the Minister a written request for one or more of the following:
  (a) an extension of the 110-day period referred to in subsection 269TDAA(1);
  (b) an extension of the 155-day period referred to in subsection 269TEA(1);
  (c) an extension of the 155-day period referred to in subsection 269X(1);
  (d) an extension of the 110-day period referred to in subsection 269ZD(1);
  (e) an extension of the 155-day period referred to in subsection 269ZDA(1);
  (ea) an extension of the 110-day period referred to in subsection 269ZDBF(1);
  (eb) an extension of the 155-day period referred to in paragraph 269ZDBG(1)(a);

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(ec) an extension of the 100-day period referred to in paragraph 269ZDBG(1)(b);

(f) an extension of the 110-day period referred to in subsection 269ZHE(1);

(g) an extension of the 155-day period referred to in subsection 269ZHF(1).

(2) The Commissioner must give reasons for the request.

(3) The Minister may approve a request if the Minister is satisfied that it is reasonable to do so. The Minister must notify the Commissioner of the extension period.

(4) If the Minister refuses a request, the Minister must notify the Commissioner of the refusal.

(5) The Minister may grant more than one extension of a period referred to in subsection (1).

269ZI Public notice

(1) If a person or body is required or empowered to give public notice of a decision or determination but the provision requiring or empowering the giving of that notice does not specify where the notice is to be given, it is to be published on the Anti-Dumping Commission's website.

(2) If a person or body is required or empowered to give public notice of a decision or determination, whether because of subsection (1) or otherwise, that person or body must:

(a) set out in the notice particulars of the decision or determination made; and

(b) set out in the notice, or in a separate report to which the notice refers, the reasons for the decision or determination including all material findings of fact or law on which the decision or determination is based; and

(c) if a person has a right to have the decision or determination reviewed by another body or referred to another body for

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review—set out in the notice full particulars of those rights; and

(d) if the material findings of fact or law are contained in a separate report—ensure that copies of the report are freely available and that the manner of obtaining a copy is set out in the notice.

(3) A person or body required or empowered to give public notice of a decision or determination must:

(a) ensure that a copy of the notice and, where appropriate, of a report to which the notice refers, is provided to each country whose exporters are affected by the decision or determination; and

(b) give a copy of the report to each other interested party known to be affected by the decision or determination.

(4) If the Commissioner gives public notice of a decision under paragraph 269TD(4)(b) to require securities in respect of interim duty that may become payable, the particulars of the decision to require those securities as set out in the notice should include, in particular:

(a) the names of the exporters of the goods concerned, or, where this is impracticable, the name of the country or countries of export concerned; and

(b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and

(c) in the case of an application for the publication of a notice under section 269TG or 269TH:

(i) particulars of dumping margins established in relation to each of the exporters involved; and

(ii) an explanation of the methods used to compare export prices and normal values to establish those dumping margins;

(d) in the case of an application for the publication of a notice under section 269TJ or 269TK—the amount of subsidy established in relation to each of the exporters involved; and

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(e) the considerations relevant to the determination of material injury to an industry, or of material hindrance to the establishment of an industry, for the purposes of the preliminary affirmative determination.

(5) If the Minister gives public notice:

(a) of a decision under section 269TG or 269TH to publish a dumping duty notice; or

(b) of a decision under section 269TL not to publish such a notice;

then, for the purposes of the public notice:

(c) the particulars of the decision should include:

(i) the matters referred to in paragraphs (4)(a), (b) and (c); and

(ii) particulars of the export price and normal value of the goods concerned ascertained, or last ascertained, for the purposes of subsection 269TG(1) or (2) or 269TH(1) or (2); and

(iii) any considerations relevant to a determination of material injury to an industry, or of material hindrance to the establishment of an industry, for the purposes of the decision; and

(d) if the decision involves any retrospective imposition of duty—the reasons for the decision should include the basis for the retrospective imposition of duty.

(6) If the Minister gives public notice:

(a) of a decision under section 269TJ or 269TK to publish a countervailing duty notice; or

(b) of a decision under section 269TL not to publish such a notice;

then, for the purposes of the public notice:

(c) the particulars of the decision should include:

(i) the matters referred to in paragraphs (4)(a), (b) and (d); and

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(ii) particulars of the countervailable subsidy received in respect of the goods concerned ascertained, or last ascertained, for the purposes of subsection 269TJ(1) or (2) or 269TK(1) or (2); and

(iii) any considerations relevant to a determination of material injury, to an industry or of material hindrance to the establishment of an industry, for the purposes of the decision; and

(d) if the decision involves any retrospective imposition of duty—the reasons for the decision should include the basis for the retrospective imposition of duty.

(7) If the Minister gives public notice under subsection 269TG(6) of a decision to accept an undertaking by an exporter of goods, the particulars of the decision to accept that undertaking should include, in particular:

(a) the name of the exporter of the goods concerned; and

(b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and

(c) the price below which, in accordance with the terms of the undertaking, the goods will not be sold for export to Australia.

(8) If the Minister gives public notice under subsection 269TJ(3C) of a decision to accept an undertaking given by a government of a country of export in relation to the export trade to Australia in like goods, the particulars of the decision to accept that undertaking should include, in particular:

(a) the name of the government of the country of export; and

(b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and

(c) details of the changes proposed to be made to the countervailable subsidy provided by that government in respect of those goods.

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(9) If, a person or body is required or empowered to give public notice of a decision or determination:

(a) the person or body must ensure that the notice given does not contain any information that is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests; but

(b) if it is practicable to do so, the person or body should include in the notice a summary of that information in a form that allows a reasonable understanding of the information without breaching that confidentiality or adversely affecting those interests.

(10) Nothing in this section limits the operation of another provision of this Part that specifies the matters that must be included in a public notice.

269ZJ Commissioner to maintain public record for certain purposes

(1) The Commissioner must, in relation to each application received under section 269TB that leads to an investigation, each application or request under section 269ZA that leads to a review, each application or request under section 269ZDBC that leads to an inquiry and each application under section 269ZHB that leads to an inquiry:

(a) maintain a public record of the investigation, review or inquiry conducted for the purposes of the application or request, containing, subject to subsection (2), a copy of all submissions from interested parties, the statement of essential facts compiled in respect of that investigation, review or inquiry, and a copy of all relevant correspondence between the Commissioner and other persons; and

(b) draw the attention of all interested parties to the existence of the public record, and to their entitlement to inspect that record; and

(c) at the request of an interested party, make the record available to that party for inspection.

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(2) To the extent that information given to the Commissioner by a person is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests, the person giving that information must ensure that a summary of that information:

(a) that contains sufficient detail to allow a reasonable understanding of the substance of the information; but

(b) that does not breach that confidentiality or adversely affect those interests;

is given to the Commissioner for inclusion in the public record.

(3) A person is not required to give the Commissioner a summary of information under subsection (2) for inclusion in the public record if the person satisfies the Commissioner that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

(4) If oral information is given to the Commissioner by a person, the Commissioner must not take that information into account unless it is subsequently put in writing by the person or by the Commissioner and thereby becomes available, subject to considerations of confidentiality and to the need to protect business and commercial interests, as a part of the public record.

(5) If:

(a) in relation to an application under subsection 269TB(1) or (2), 269ZA(1) or 269ZDBC(1) or section 269ZHB or to a request under subsection 269ZA(3) or 269ZDBC(2), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and

(b) the Commissioner indicates to the party that he or she disagrees with the claim;

but, despite the opinion of the Commissioner, the person making the claim will not:

(c) agree to the inclusion of the information in the public record; or

(d) prepare a summary of the information for inclusion in that record;

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the Commissioner may disregard the information unless it is demonstrated that the information is correct.

(6) If:

(a) in relation to an application under subsection 269TB(1) or (2), 269ZA(1) or 269ZDBC(1) or section 269ZHB or to a request under subsection 269ZA(3) or 269ZDBC(2), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and

(b) the Commissioner indicates to the party that he or she agrees with the claim;

but the person making the claim will not prepare a summary of the information for inclusion in that record, the Commissioner may disregard the information unless it is demonstrated that the information is correct.

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Division 8—Review Panel

269ZK What this Division is about

This Division establishes the Review Panel. It:

- deals with the appointment of members to the Panel; and
- deals with the terms and conditions for members; and
- provides for the provision of resources to the Panel; and
- regulates the disclosure of information in the Panel's control.

269ZL Establishment of Review Panel

The Review Panel is established by this section.

269ZM Membership of the Review Panel

The Review Panel consists of the following members:

(a) a Senior Member;

(b) at least 2 other members.

269ZN Review Panel's powers

The Review Panel has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Part in relation to the review of certain decisions made by the Minister or the Commissioner.

Note: Sections 269ZZA and 269ZZN set out these reviewable decisions.

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269ZO Protection of members

A member of the Review Panel has, in the performance of his or her duties as a member, the same protection and immunity as a Justice of the High Court.

269ZP Appointment of members

(1) Each member of the Review Panel is to be appointed by the Minister by written instrument.

(2) A member of the Review Panel holds office on a part-time basis.

(3) The Minister must not appoint an officer of Customs, the Commissioner or a Commission staff member as a member of the Review Panel.

(4) A person must not be appointed as a member of the Review Panel unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

269ZQ Period of appointment for members

A member of the Review Panel holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

269ZR Terms and conditions of appointment

(1) A member of the Review Panel holds office on such terms and conditions as are determined in writing by the Minister.

(2) An office of Review Panel member is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

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269ZS Disclosure of interests to the Minister

A member of the Review Panel must give written notice to the Minister of any direct or indirect pecuniary interest that the member has or acquires and that conflicts or could conflict with the proper performance of the member's functions.

269ZT Outside employment

A member of the Review Panel must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's duties.

269ZTA Resignation

(1) A member of the Review Panel may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

269ZTB Termination of appointment

(1) The Minister may terminate the appointment of a member of the Review Panel for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate the appointment of a member of the Review Panel if:

(a) the member:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

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(b) the member engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's duties (see section 269ZT); or

(c) the member fails, without reasonable excuse, to comply with section 269ZS; or

(d) the member is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

269ZTC Acting appointments

The Minister may, by written instrument, appoint a person to act as a member of the Review Panel:

(a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the member:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

269ZTD Provision of resources to Review Panel

(1) The Minister must arrange with the Review Panel for sufficient resources (including personnel) to be made available to the Panel to enable the Panel to perform the Panel's functions effectively.

(2) If a person is performing services for the Review Panel under such an arrangement, the person must perform those services in accordance with the directions of the Panel.

269ZU Review Panel may supply information

(1) Subject to this section, the Review Panel may supply information (including personal information) received by the Review Panel under this Act to a person.

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(2) The Review Panel or a person whose services are being made available to the Review Panel under section 269ZTD must not:

(a) except for the purposes of this Act, supply information (other than personal information) to a person if the supplying of the information would constitute a breach of confidence; and

(b) supply personal information to a person unless the information is supplied to the Commissioner, or a Commission staff member designated in writing by the Commissioner, for purposes relating to a reinvestigation conducted under section 269ZZL.

(3) Paragraph (2)(a) does not apply to the supply of information to:

(a) the Minister; or

(b) the Commissioner; or

(c) the Secretary of the Department; or

(d) a Commission staff member designated in writing by the Commissioner; or

(e) a person who is employed in the Department and who is designated in writing by the Secretary of the Department.

269ZV False or misleading information

(1) A person must not give the Review Panel any written information that the person knows to be false or misleading in a material particular.

Penalty: 20 penalty units.

(2) Subsection (1) does not apply to any written information if, at the time when the person gives it to the Review Panel, the person:

(a) informs the Review Panel that it is false or misleading in a material particular; and

(b) specifies in what respect it is, to the person's knowledge, false or misleading in a material particular.

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Division 9—Review by Review Panel

Subdivision A—Preliminary

269ZW What this Division is about

This Division sets out the procedures for review by the Review Panel of certain decisions by the Minister or the Commissioner. It includes:

- provisions dealing with definitions and other preliminary matters (Subdivision A); and
- the mechanism for review of certain Ministerial decisions (Subdivision B); and
- the mechanism for review of certain decisions made by the Commissioner (Subdivision C); and
- the keeping of a public record in relation to certain reviews conducted under this Division (Subdivision D).

This Division does not provide for a right of review of a decision made by the Minister following a review under Division 6 or Subdivision B of this Division.

269ZX Definitions

In this Division:

application means:

(a) in Subdivision B—an application for a review of a decision by the Minister referred to in section 269ZZA; and

(b) in Subdivision C—an application for a review of a decision by the Commissioner referred to in section 269ZZN.

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finding, in relation to a reviewable decision under Subdivision B, means a finding on a material question of fact or on a conclusion based on that fact.

interested party, in relation to a reviewable decision, means any one of the following persons:

(a) if there was an application under section 269TB or 269V that led to the making of the reviewable decision—the applicant in relation to that application;

(aa) if there was an application under subsection 269ZA(1) that led to the making of the reviewable decision—the applicant in relation to that application;

(aaa) if there was an application under subsection 269ZDBC(1) that led to the making of the reviewable decision—the applicant in relation to that application;

(ab) if there was an application under section 269ZHB that led to the making of the reviewable decision—the applicant in relation to that application;

(b) a person representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods to the goods the subject of the reviewable decision;

(c) a person who:

(i) is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the reviewable decision; or

(ii) has been or is likely to be directly concerned with the importation or exportation into Australia of like goods, to the goods the subject to the reviewable decision;

(d) a person who is or is likely to be directly concerned with the production or manufacture of:

(i) the goods the subject of the reviewable decision; or

(ii) like goods to those goods that have been, or are likely to be, exported to Australia;

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(e) a trade organisation a majority of whose members are, or are likely to be, directly concerned with:
  (i) the production or manufacture of the goods the subject of the reviewable decision or of like goods; or
  (ii) the importation or exportation into Australia of those goods; or
  (iii) both the activities referred to in subparagraphs (i) and (ii);
(f) the government of the country of export or country of origin:
  (i) of goods the subject of the reviewable decision that have been, or are likely to be, exported to Australia; or
  (ii) of like goods to those goods that have been, or are likely to be, exported to Australia.

reviewable decision means:
(a) in Subdivision B—a decision by the Minister referred to in section 269ZZA; and
(b) in Subdivision C—a decision by the Commissioner referred to in section 269ZZN.

269ZY Form and manner of applications

The Senior Member of the Review Panel must, by writing:
(a) approve a form for applications for a review under Subdivision B or C; and
(b) approve the manner of making those applications.

269ZYA Constitution of Review Panel for purposes of review

For the purposes of a particular review under Subdivision B or C, the Review Panel is to be constituted by a single member of the Panel specified in a written direction given by the Senior Member of the Panel.

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269ZYB Member unavailable to complete review

(1) This section applies if:
  (a) the Review Panel is undertaking a review under Subdivision B or C; and
  (b) before the review has been completed, the member who constitutes the Panel for the purposes of the review has:
    (i) ceased to be a member; or
    (ii) ceased to be available for the purposes of the review.

(2) The Senior Member of the Review Panel must give a written direction reconstituting the Panel for the purposes of the review.

(3) The Review Panel, as so reconstituted, must complete the review and may, for that purpose, have regard to any record of the proceedings of the review made by the Panel as previously constituted.

269ZZ Review Panel to have regard to same considerations as Minister

(1) If the Review Panel is required, in conducting a review under Subdivision B or C, to determine any matter ordinarily required to be determined by the Minister under this Act or the Dumping Duty Act, the Review Panel must determine the matter:
  (a) in like manner as if it were the Minister; and
  (b) having regard to the consideration to which the Minister would be required to have regard if the Minister were determining the matter.

(2) Subsection (1) applies in respect of goods that have not been imported into Australia at the time of the Review Panel's determination in a matter in respect of those goods as if:
  (a) the Review Panel's determination of the matter were being made after an importation of those goods into Australia; and
  (b) the importation occurred at the time of the anticipated importation of those goods into Australia.

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Subdivision B—Review of Ministerial decisions

269ZZA Reviewable decisions

(1) This Subdivision deals with the review by the Review Panel of the following decisions:

(a) a decision by the Minister to publish a dumping duty notice under subsection 269TG(1) or (2) or 269TH(1) or (2), or a countervailing duty notice under subsection 269TJ(1) or (2) or 269TK(1) or (2);

(b) a decision by the Minister under subsection 269TL(1) not to publish such a notice;

(c) a decision by the Minister under subsection 269ZDB(1);

(ca) a decision by the Minister under subsection 269ZDBH(1);

(d) a decision by the Minister under subsection 269ZHG(1).

(2) A reference to a decision by the Minister in subsection (1) does not include a reference to such a decision made by the Minister following a review under Division 6 or this Subdivision.

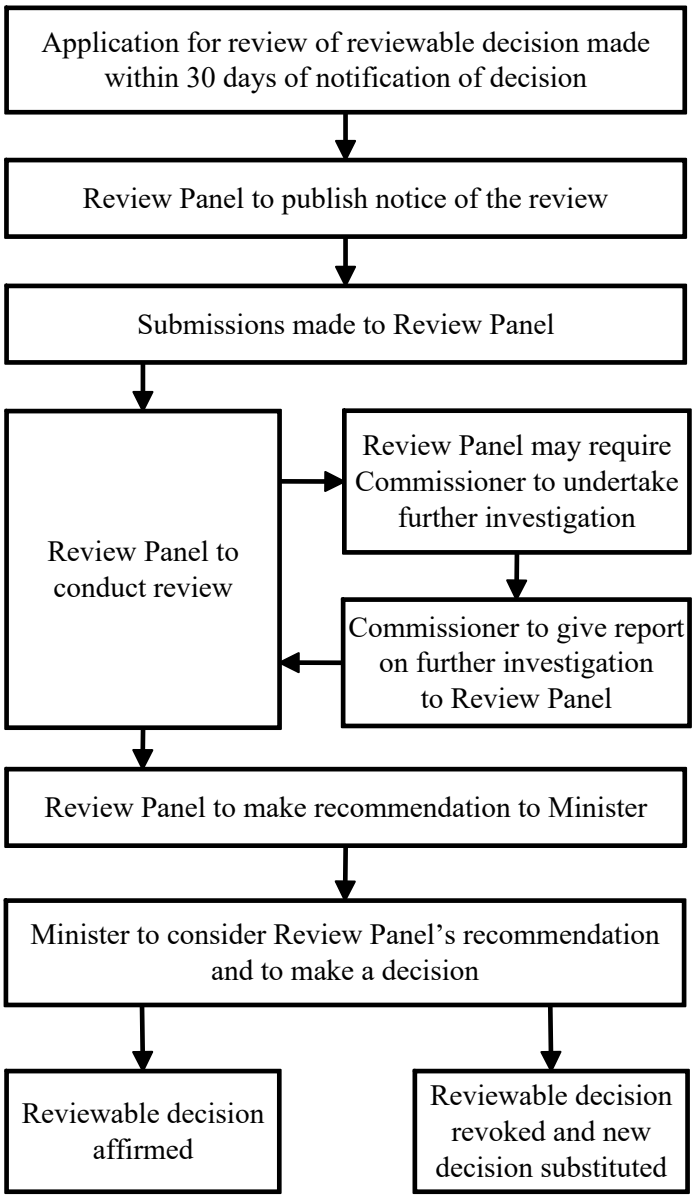
Note: The Review Panel only has the power to make certain recommendations to the Minister following a review of a decision under this Subdivision (see section 269ZZK). The Review Panel may not revoke the Minister's decision or substitute another decision.

269ZZB Overview of a review of Minister's decision

The following diagram gives an overview of a review under this Subdivision of a reviewable decision.

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Section 269ZZB



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269ZZC Who may seek a review?

A person who is an interested party in relation to a reviewable decision may apply for a review of that decision under this Subdivision.

269ZZD When must an application be made?

An application for a review must be made within 30 days after:

(a) for a decision referred to in paragraph 269ZZA(1)(a) or (b)—a public notice of the decision is first published on the Anti-Dumping Commission's website under section 269ZI; or

(b) for a decision referred to in paragraph 269ZZA(1)(c)—a notice of the decision is first published on the Anti-Dumping Commission's website under subsection 269ZDB(1); or

(ba) for a decision referred to in paragraph 269ZZA(1)(ca)—a notice of the decision is first published on the Anti-Dumping Commission's website under subsection 269ZDBH(1); or

(c) for a decision referred to in paragraph 269ZZA(1)(d)—a notice of the decision is first published on the Anti-Dumping Commission's website under subsection 269ZHG(1).

269ZZE How must an application be made?

(1) An application must:

(a) be in writing; and

(b) be in accordance with a form approved under section 269ZY; and

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

(d) be signed in the manner indicated in the form; and

(e) be made in the manner approved under section 269ZY; and

(f) be accompanied by the fee prescribed in an instrument under subsection (3).

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(2) Without limiting paragraph (1)(c), an application must:

(a) contain a full description of the goods to which the application relates; and

(b) contain a statement setting out the grounds on which the applicant believes the reviewable decision is not the correct or preferable decision; and

(c) contain a statement setting out the decision (the ***proposed decision***) that the applicant considers the Minister should have made; and

(d) contain a statement setting out how the grounds mentioned in paragraph (b) support the making of the proposed decision; and

(e) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—contain a statement setting out how the proposed decision is materially different from the reviewable decision.

Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in an application, including the need to accompany the application with a summary of such information.

Fee

(3) The Minister may, by legislative instrument, prescribe a fee for the purposes of paragraph (1)(f).

(4) The instrument may prescribe different fees for different kinds of applications or different kinds of applicants.

(5) The instrument may make provision for, and in relation to, the refund or waiver of any fee.

269ZZF Withdrawal of application

(1) An applicant may withdraw an application for a review.

(2) The withdrawal must:

(a) be in writing; and

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(b) be made in the manner approved under section 269ZY for making applications for a review.

269ZZG Rejection of application—failure to establish decision not the correct or preferable decision etc.

(1) If one or more of the following apply:

(a) the Review Panel is not satisfied that an application sets out reasonable grounds for the reviewable decision not being the correct or preferable decision;

(b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZE(2)(b) support the making of the proposed decision (see paragraph 269ZZE(2)(c));

(c) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZE(2)(c)) is materially different from the reviewable decision;

the Review Panel may, by notice given to the applicant, request the applicant to give the Review Panel, within the period specified in the notice, further information in relation to those matters.

(2) The Review Panel may reject an application if at any time after the end of the 30-day period referred to in section 269ZZD:

(a) the Review Panel is not satisfied that the applicant has given the Review Panel information setting out reasonable grounds for the reviewable decision not being the correct or preferable decision; or

(b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZE(2)(b) support the making of the proposed decision (see paragraph 269ZZE(2)(c)); or

(c) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZE(2)(c)) is materially different from the reviewable decision.

(3) Subsection (2) applies whether or not a notice is given under subsection (1).

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(4) Nothing in subsection (1) prevents the Review Panel from seeking further information from an applicant within the period specified in a notice under subsection (1).

(5) If:

(a) the Review Panel does not, under this Subdivision, reject an application; and

(b) in relation to information given by the applicant setting out the grounds for the reviewable decision not being the correct or preferable decision:

(i) the Review Panel is satisfied that one or more of those grounds (the ***reviewable grounds***) are reasonable grounds for the reviewable decision not being the correct or preferable decision; and

(ii) the Review Panel is satisfied that one or more of those grounds (the ***non-reviewable grounds***) are not reasonable grounds for the reviewable decision not being the correct or preferable decision;

then:

(c) the Review Panel must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds; and

(d) the Review Panel must reject the non-reviewable grounds.

269ZZH Rejection of application—failure to provide summary of confidential information

The Review Panel must reject an application if:

(a) the applicant in respect of the application claims that information included in it is confidential or is information whose publication would adversely affect a person's business or commercial interest; and

(b) the applicant fails to give a summary of that information to the Review Panel in accordance with section 269ZZY.

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269ZZHA Review Panel may hold conferences

(1) The Review Panel may, at any time after receiving an application for a review, hold a conference of such persons or bodies as it considers appropriate for the purpose of obtaining further information in relation to the application or review.

(2) In making a recommendation under subsection 269ZZK(1), the Review Panel may also have regard to:
  (a) that further information to the extent that it relates to the relevant information (within the meaning of subsection 269ZZK(6)); and
  (b) any conclusions reached at the conference based on that relevant information.

(3) If the Review Panel decides to hold a conference at any time after receiving an application for a review and before beginning to conduct the review:
  (a) the Review Panel must invite the applicant to attend the conference; and
  (b) if the applicant fails to attend the conference and the Review Panel is not satisfied that the applicant has a reasonable excuse for the failure—the Review Panel may reject the application.

269ZZI Public notification of review

(1) Before the Review Panel begins to conduct a review, the Review Panel must publish a notice on the Review Panel's website indicating that the Review Panel proposes to conduct that review.

(2) Without limiting the matters that must be dealt with in a notice under subsection (1), it must:
  (a) describe the goods to which the application relates; and
  (b) set out the decision that is sought to be reviewed and the grounds in relation to which the review is to be conducted; and

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(c) invite interested parties to lodge with the Review Panel, within 30 days starting from the date of publication of the notice, submissions concerning the application; and

(d) indicate the address at which, or the manner in which, such submissions can be lodged.

269ZZJ Submissions in relation to reviewable decision

Within 30 days after the publication of a notice under section 269ZZI in relation to a review of a reviewable decision, the following may make submissions to the Review Panel in accordance with that notice:

(a) interested parties in relation to the reviewable decision;

(aa) the Commissioner;

(b) a trade union representing one or more persons employed in the Australian industry producing, or likely to produce, like goods to the goods the subject of the reviewable decision;

(c) a person who uses the goods the subject of the reviewable decision, or like goods, in the production or manufacture of other goods in Australia.

Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in a submission, including the need to accompany the submission with a summary of such information.

269ZZK The review

(1) If an application is not rejected under section 269ZZG, 269ZZH or 269ZZHA, the Review Panel must make a report to the Minister on the application by:

(a) recommending that the Minister affirm the reviewable decision; or

(b) recommending that the Minister revoke the reviewable decision and substitute a specified new decision.

(1A) For a reviewable decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d), the Review Panel may make a recommendation

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referred to in paragraph (1)(b) of this section only if the new decision is materially different from the reviewable decision.

(2) A report under subsection (1) must set out the reasons for the Review Panel's recommendation.

(3) A report under subsection (1) must be made:
  (a) at least 30 days after the public notification of the review under section 269ZZI; but
  (b) before the end of:
    (i) unless subparagraph (ii) applies—the period of 60 days beginning on the day of that notification, or such longer period allowed by the Minister in writing because of special circumstances; or
    (ii) if the Review Panel gives the Commissioner a notice under subsection 269ZZL(1)—the period of 30 days beginning on the day the Commissioner gives the Panel the report under subsection 269ZZL(2).

(4) Subject to subsections (4A) and (5) and subsection 269ZZHA(2), in making the recommendation, the Review Panel:
  (a) must not have regard to any information other than the relevant information; and
  (b) must only have regard to the relevant information and any conclusions based on the relevant information that are contained in the application for the review or in any submissions received under section 269ZZJ within the period of 30 days referred to in that section.

(4A) If the Review Panel gives the Commissioner a notice under subsection 269ZZL(1), then, in making the recommendation, the Review Panel must have regard to the report the Commissioner gives the Panel under subsection 269ZZL(2).

(5) The Review Panel must not have regard to a submission under subsection (4) if:
  (a) the person giving the submission claims that information included in it is confidential or is information whose

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publication would adversely affect a person's business or commercial interest; and

(b) the person fails to give a summary of that information to the Review Panel in accordance with section 269ZZY.

(6) In this section:

relevant information means:

(a) if the reviewable decision was made pursuant to an application under section 269TB—the information to which the Commissioner had had regard or was, under paragraph 269TEA(3)(a), required to have regard, when making the findings set out in the report under section 269TEA to the Minister in relation to the making of the reviewable decision; and

(b) if the reviewable decision was made pursuant to an investigation initiated by the Minister as mentioned in section 269TAG—the information:

(i) that was collected for the purposes of that investigation in accordance with the Minister's requirements; and

(ii) that was before the Minister when the Minister made the reviewable decision; and

(c) if the reviewable decision was made because of an application under subsection 269ZA(1) or a request under subsection 269ZA(3)—the information the Commissioner had regard to, or was, under paragraph 269ZDA(3)(a), required to have regard to, when making the findings set out in the report under section 269ZDA to the Minister in relation to the making of the reviewable decision; and

(ca) if the reviewable decision was made because of an application under subsection 269ZDBC(1) or a request under subsection 269ZDBC(2)—the information the Commissioner had regard to, or was, under paragraph 269ZDBG(2)(a) or (aa), required to have regard to, when making the findings set out in the report under section 269ZDBG to the Minister in relation to the making of the reviewable decision; and

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(d) if the reviewable decision was made because of an application under section 269ZHB—the information the Commissioner had regard to, or was, under paragraph 269ZHF(3)(a), required to have regard to, when making the findings set out in the report under section 269ZHF to the Minister in relation to the making of the reviewable decision.

269ZZL Review Panel may require reinvestigation by Commissioner before making recommendation to Minister

(1) Before making a recommendation under subsection 269ZZK(1) and before the end of the period of 60 days beginning on the day of the public notification of the review under section 269ZZI, the Review Panel may, by written notice, require the Commissioner to:
   (a) reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
   (b) report the result of the reinvestigation to the Panel within a specified period.

(2) The Commissioner must conduct a reinvestigation in accordance with the Review Panel's requirements under subsection (1) and give the Panel a report of the reinvestigation concerning the finding or findings within the specified period.

(3) In a report under subsection (2), the Commissioner must:
   (a) if the Commissioner is of the view that the finding or any of the findings the subject of reinvestigation should be affirmed—affirm the finding or findings; and
   (b) set out any new finding or findings that the Commissioner made as a result of the reinvestigation; and
   (c) set out the evidence or other material on which the new finding or findings are based; and
   (d) set out the reasons for the Commissioner's decision.

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269ZZM Minister's decision

(1) After receiving a report by the Review Panel under subsection 269ZZK(1), the Minister must:

(a) affirm the reviewable decision concerned; or

(b) revoke that decision and substitute a new decision.

(1A) The Minister must make a decision under subsection (1) within:

(a) 30 days after receiving the report; or

(b) if the Minister considers there are special circumstances that prevent the decision being made within that period—such longer period as the Minister considers appropriate.

(1B) If paragraph (1A)(b) applies, the Minister must give notice of the longer period on the Review Panel's website.

(2) The Minister's decision under subsection (1) takes effect from the time specified by the Minister.

(3) Without limiting subsection (1), the Minister may, under that subsection:

(a) publish a dumping duty notice or countervailing duty notice; or

(b) vary or revoke a dumping duty notice or countervailing duty notice; or

(c) revoke a dumping duty notice or countervailing duty notice and substitute another dumping duty notice or countervailing duty notice (as the case requires); or

(d) if the following apply:

(i) the reviewable decision is a decision by the Minister under subsection 269ZHG(1) not to secure the continuation of anti-dumping measures;

(ii) those measures comprised a dumping duty notice or a countervailing duty notice;

(iii) the notice expired under subsection 269ZHG(3) on a day;

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declare that the notice, as in force immediately before its expiry, is reinstated; or

(e) if the following apply:

(i) the reviewable decision is a decision by the Minister under subsection 269ZHG(1) not to secure the continuation of anti-dumping measures;

(ii) those measures comprised the giving of an undertaking by a person;

(iii) the person was released from the undertaking under subsection 269ZHG(3);

(iv) the person, by notice in writing given to the Minister, agrees to the undertaking being reinstated;

declare that the undertaking, as in force immediately before the person was released from the undertaking, is reinstated.

(4) The Minister must give notice of his or her decision on the Review Panel's website.

(5) In spite of section 269TM, any new dumping duty notice or countervailing duty notice published in the exercise of a power conferred on the Minister under subsection (3) or any such notice as varied or substituted in the exercise of that power, expires:

(a) in the case of a notice published after a review of a decision not to publish such a notice—5 years after the publication of the decision not to publish such a notice; or

(aa) in the case of a notice published where the following applies:

(i) the reviewable decision is a decision by the Minister under subsection 269ZHG(1) not to secure the continuation of anti-dumping measures;

(ii) those measures comprised the giving of an undertaking by a person;

(iii) the person was released from the undertaking under subsection 269ZHG(3);

(iv) the person does not agree to the undertaking being reinstated;

5 years after the day the decision to publish the notice takes effect; or

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(b) in the case of a varied or substituted notice—5 years after the publication of the original notice.

Example: If the reviewable decision relates to a dumping duty notice that was published on 1 July 1998, and if the Minister, following a review under this Division, revokes that notice and substitutes a new dumping duty notice on 1 January 1999, the substituted notice will expire on 1 July 2003.

(5A) A notice that is reinstated under subsection (1), as mentioned in paragraph (3)(d), expires 5 years after the day the decision to reinstate the notice takes effect, unless the reinstated notice is revoked before the end of that period.

(5B) An undertaking that is reinstated under subsection (1), as mentioned in paragraph (3)(e), expires 5 years after the day the decision to reinstate the undertaking takes effect, unless provision is made for its earlier expiration.

(6) If:

(a) the Minister makes a decision under subsection (1) to revoke or vary a dumping duty notice or countervailing duty notice (the ***original notice***), or to revoke the original notice and substitute another notice, with effect from a date before the Minister's decision; and

(b) an amount of interim duty has been paid on goods the subject of the original notice in excess of the amount of interim duty that would have been payable on those goods as a result of the Minister's decision;

the person who paid the interim duty may apply for a refund of the excess under Division 3 of Part VIII.

Subdivision C—Review of Commissioner's decisions

269ZZN Reviewable decisions

This Subdivision deals with the review of the following decisions:

(a) a decision by the Commissioner under subsection 269TC(1) or (2) to reject an application under subsection 269TB(1) or (2), as the case requires (a ***negative prima facie decision***);

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(b) a decision by the Commissioner to terminate an investigation under subsection 269TDA(1), (2), (3), (7), (13), (13A), (14) or (14A) (a ***termination decision***);

(c) a decision by the Commissioner to make recommendations to the Minister under paragraph 269X(6)(b) or (c) (a ***negative preliminary decision***);

(d) a decision (a ***rejection decision***):

(i) by the Commissioner that the Commissioner is satisfied as described in subsection 269YA(2) or (3); or

(ii) by the Commissioner to terminate under subsection 269YA(4) examination of an application;

(e) a decision by the Commissioner to terminate an anti-circumvention inquiry under subsection 269ZDBEA(1) or (2) (also a ***termination decision***).

269ZZO Who may seek a review

The following table sets out who may make an application for a review under this Subdivision.

Persons who may apply for review

Item	Reviewable decision	Applicant
1	A negative prima facie decision under subsection 269TC(1) rejecting an application made under subsection 269TB(1)	The person who made the application under subsection 269TB(1)
2	A negative prima facie decision under subsection 269TC(2) rejecting an application under subsection 269TB(2)	The person who made the application under subsection 269TB(2)

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Persons who may apply for review		
Item	**Reviewable decision**	**Applicant**
3	A termination decision under subsection 269TDA(1), (2), (3), (7), (13), (13A), (14) or (14A)	The person who made the application for the dumping duty notice or countervailing duty notice
4	A negative preliminary decision under paragraph 269X(6)(b) or (c)	The person who made the application for an assessment of duty under section 269V that relates to the decision
5	A rejection decision	The applicant under section 269V for an assessment of duty whose application was affected by the decision
6	A termination decision under subsection 269ZDBEA(1) or (2)	The applicant under subsection 269ZDBC(1) for the conduct of the anti-circumvention inquiry

269ZZP When must an application be made?

An application for a review must be made within 30 days after the applicant was notified of the reviewable decision concerned by the Commissioner.

269ZZQ How must an application be made?

(1) An application must:
  (a) be in writing; and
  (b) be in accordance with a form approved under section 269ZY; and
  (c) contain such information as the form requires; and
  (d) be signed in the manner indicated in the form; and
  (e) be made in the manner approved under section 269ZY; and

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(f) be accompanied by the fee prescribed in an instrument under subsection (2).

Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in an application for a review of a termination decision, including the need to accompany the application with a summary of such information.

(1A) Without limiting paragraph (1)(c), an application must:

(a) contain a statement setting out the grounds on which the applicant believes the reviewable decision is not the correct or preferable decision; and

(b) contain a statement setting out the decision (the ***proposed decision***) that the applicant considers the Commissioner should have made; and

(c) contain a statement setting out how the grounds mentioned in paragraph (a) support the making of the proposed decision; and

(d) for a decision referred to in paragraph 269ZZN(c)—contain a statement setting out how the proposed decision is materially different from the reviewable decision.

Fee

(2) The Minister may, by legislative instrument, prescribe a fee for the purposes of paragraph (1)(f).

(3) The instrument may prescribe different fees for different kinds of applications or different kinds of applicants.

(4) The instrument may make provision for, and in relation to, the refund or waiver of any fee.

269ZZQAA Withdrawal of application

(1) An applicant may withdraw an application for a review.

(2) The withdrawal must:

(a) be in writing; and

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(b) be made in the manner approved under section 269ZY for making applications for a review.

269ZZQA Rejection of application—failure to establish decision not the correct or preferable decision etc.

(1) If one or more of the following apply:

(a) the Review Panel is not satisfied that an application sets out reasonable grounds for the reviewable decision not being the correct or preferable decision;

(b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZQ(1A)(a) support the making of the proposed decision (see paragraph 269ZZQ(1A)(b));

(c) for a decision referred to in paragraph 269ZZN(c)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZQ(1A)(b)) is materially different from the reviewable decision;

the Review Panel may, by notice given to the applicant, request the applicant to give the Review Panel, within the period specified in the notice, further information in relation to those matters.

(2) The Review Panel may reject an application if at any time after the end of the 30-day period referred to in section 269ZZP:

(a) the Review Panel is not satisfied that the applicant has given the Review Panel information setting out reasonable grounds for the reviewable decision not being the correct or preferable decision; or

(b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZQ(1A)(a) support the making of the proposed decision (see paragraph 269ZZQ(1A)(b)); or

(c) for a decision referred to in paragraph 269ZZN(c)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZQ(1A)(b)) is materially different from the reviewable decision.

(3) Subsection (2) applies whether or not a notice is given under subsection (1).

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(4) Nothing in subsection (1) prevents the Review Panel from seeking further information from an applicant within the period specified in a notice under subsection (1).

(5) If:

(a) the Review Panel does not, under this Subdivision, reject an application; and

(b) in relation to information given by the applicant setting out the grounds for the reviewable decision not being the correct or preferable decision:

(i) the Review Panel is satisfied that one or more of those grounds (the ***reviewable grounds***) are reasonable grounds for the reviewable decision not being the correct or preferable decision; and

(ii) the Review Panel is satisfied that one or more of those grounds (the ***non-reviewable grounds***) are not reasonable grounds for the reviewable decision not being the correct or preferable decision;

then:

(c) the Review Panel must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds; and

(d) the Review Panel must reject the non-reviewable grounds.

269ZZR Rejection of application for review of termination decision

The Review Panel must reject an application for a review of a termination decision if:

(a) the applicant in respect of the application claims that information included in it is confidential or is information whose publication would adversely affect a person's business or commercial interest; and

(b) the applicant fails to give a summary of that information to the Review Panel in accordance with section 269ZZY.

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269ZZRA Review Panel may hold conferences

(1) The Review Panel may, at any time after receiving an application for a review, hold a conference of such persons or bodies as it considers appropriate for the purpose of obtaining further information in relation to the application or review.

(2) In making a decision on the review, the Review Panel may also have regard to:

(a) that further information to the extent that it relates to the information that was before the Commissioner when the Commissioner made the reviewable decision; and

(b) any conclusions reached at the conference based on the information that was before the Commissioner when the Commissioner made the reviewable decision.

(3) If the Review Panel decides to hold a conference at any time after receiving an application for a review and before beginning to conduct the review:

(a) the Review Panel must invite the applicant to attend the conference; and

(b) if the applicant fails to attend the conference and the Review Panel is not satisfied that the applicant has a reasonable excuse for the failure—the Review Panel may reject the application.

269ZZRB Review Panel may seek further information from the Commissioner

(1) In reviewing a reviewable decision under this Subdivision, the Review Panel may seek further information from the Commissioner in relation to information that was before the Commissioner when the Commissioner made the reviewable decision.

(2) In making a decision on the review, the Review Panel may also have regard to that further information.

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269ZZRC Notification of review

Negative prima facie decisions, negative preliminary decisions and rejection decisions

(1) Before the Review Panel begins to conduct a review of a negative prima facie decision, a negative preliminary decision or a rejection decision, the Review Panel must give a notice to the applicant and the Commissioner indicating that the Review Panel proposes to conduct that review.

(2) A notice under subsection (1) must:
  (a) describe the goods to which the application relates; and
  (b) set out the decision that is sought to be reviewed and the grounds in relation to which the review is to be conducted.

Termination decision

(3) Before the Review Panel begins to conduct a review of a termination decision, the Review Panel must publish a notice on the Review Panel's website indicating that the Review Panel proposes to conduct that review.

(4) A notice under subsection (3) must:
  (a) describe the goods to which the application relates; and
  (b) set out the decision that is sought to be reviewed and the grounds in relation to which the review is to be conducted.

269ZZS The review of a negative prima facie decision

(1) If an application for the review of a negative prima facie decision is not rejected under section 269ZZQA or 269ZZRA, the Review Panel must make a decision on the application by:
  (a) affirming the reviewable decision; or
  (b) revoking the reviewable decision and substituting a new decision accepting the application under subsection 269TB(1) or (2) (as the case requires).

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(2) As soon as practicable after a new decision is substituted under subsection (1), the Commissioner must publish a notice under subsection 269TC(4) in respect of the application referred to in paragraph (1)(b).

(3) Subject to subsections 269ZZRA(2) and 269ZZRB(2), in making a decision under this section, the Review Panel must have regard only to information that was before the Commissioner when the Commissioner made the reviewable decision.

(4) The Review Panel's decision must be made within 60 days after the giving of the notice under subsection 269ZZRC(1) to the applicant or such longer period allowed by the Minister in writing because of special circumstances.

269ZZT The review of a termination decision

(1) If an application for the review of a termination decision is not rejected under section 269ZZQA, 269ZZR or 269ZZRA, the Review Panel must make a decision on the application by:
  (a) affirming the reviewable decision; or
  (b) revoking the reviewable decision.

(2) If the Review Panel revokes a reviewable decision (other than a decision under subsection 269ZDBEA(2)):
  (a) unless paragraph (b) applies:
    (i) as soon as practicable after the revocation, the Commissioner must publish a statement of essential facts under section 269TDAA in relation to the application for a dumping duty notice or countervailing duty notice that is related to the review; and
    (ii) after that publication, the investigation of the application resumes under this Part; or
  (b) if the reviewable decision was a decision under subsection 269ZDBEA(1):
    (i) as soon as practicable after the revocation, the Commissioner must publish a statement of essential

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facts under section 269ZDBF in relation to the anti-circumvention inquiry concerned; and

(ii) after that publication, the conduct of the anti-circumvention inquiry concerned resumes under this Part.

(3) If the Review Panel revokes a reviewable decision under subsection 269ZDBEA(2), the conduct of the anti-circumvention inquiry concerned resumes under this Part.

(4) Subject to subsections 269ZZRA(2) and 269ZZRB(2), in making a decision under this section, the Review Panel must have regard only to information that was before the Commissioner when the Commissioner made the reviewable decision.

(5) The Review Panel's decision must be made within 60 days after the publication of the notice under subsection 269ZZRC(3) or such longer period allowed by the Minister in writing because of special circumstances.

(6) The Review Panel must publish its decision under this section on its website.

269ZZU The review of a negative preliminary decision

(1) If an application for the review of a negative preliminary decision is not rejected under section 269ZZQA or 269ZZRA, the Review Panel must make a decision on the application by:

(a) affirming the reviewable decision; or

(b) revoking the reviewable decision and substituting a new decision under subsection 269X(6).

(1A) The Review Panel may revoke a reviewable decision and substitute a new decision under subsection 269X(6) only if the new decision is materially different from the reviewable decision.

(2) If the Review Panel revokes a reviewable decision and substitutes a new decision under subsection 269X(6), the Review Panel must,

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within 7 days after making the new decision, recommend that the Minister give effect to that decision.

(3) Subject to subsections 269ZZRA(2) and 269ZZRB(2), in making a decision under this section, the Review Panel must have regard only to information of the kinds referred to in subsection 269X(5) that was before the Commissioner when the Commissioner made the reviewable decision.

(4) The Review Panel's decision must be made within 60 days after the giving of the notice under subsection 269ZZRC(1) to the applicant or such longer period allowed by the Minister in writing because of special circumstances.

269ZZUA The review of a rejection decision

(1) If an application for the review of a rejection decision is not rejected under section 269ZZQA or 269ZZRA, the Review Panel must make a decision on the application by:
  (a) affirming the rejection decision; or
  (b) revoking the rejection decision.

(2) If the Review Panel revokes a rejection decision relating to an application under section 269V, subsection 269YA(5) ceases to apply in relation to the application.

(3) If the Review Panel revokes a rejection decision relating to rejection under subsection 269YA(2) or (3) of an application under section 269V:
  (a) the Commissioner must resume the examination of the application with a view to complying with subsections 269X(5) and (6) within 110 days after being informed of the revocation; and
  (b) the revocation does not prevent the Commissioner from terminating the examination under subsection 269YA(4).

(4) If the Review Panel revokes a rejection decision relating to termination under subsection 269YA(4) of the examination of an application under section 269V, the Commissioner must comply

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with subsections 269X(5) and (6) within 110 days after being informed of the revocation.

(5) Subject to subsections 269ZZRA(2) and 269ZZRB(2), in making a decision under this section, the Review Panel must have regard only to information that was before the Commissioner when the Commissioner made the rejection decision.

(6) The Review Panel's decision must be made within 60 days after the giving of the notice under subsection 269ZZRC(1) to the applicant or such longer period allowed by the Minister in writing because of special circumstances.

269ZZV Effect of Review Panel's decision

The Review Panel's decision on a review:

(a) has effect as if it were a decision made by the Commissioner; and

(b) takes effect from the time the Review Panel makes the decision.

Subdivision D—Public record in relation to reviews

269ZZW Application

This Subdivision applies only to:

(a) an application for a review of a reviewable decision under Subdivision B; and

(b) an application for a review of a termination decision under Subdivision C.

269ZZX Public record maintained by Review Panel

(1) The Review Panel must, in relation to each application for a review:

(a) maintain a public record containing:

(i) a copy of the application; and

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(ii) if the Review Panel seeks further information from the applicant—any such information given to the Review Panel by the applicant; and

(iii) if the application is an application for a review under Subdivision B—any submissions received under section 269ZZJ within the period of 30 days referred to in that section; and

(iv) a summary of further information obtained at a conference mentioned in section 269ZZHA or 269ZZRA; and

(b) at the request of an interested party in respect of the reviewable decision concerned, make that record available to that party for inspection.

(2) The public record must not contain any information in respect of which a summary is given to the Review Panel under subsection 269ZZY(1).

269ZZY Confidential and sensitive commercial information

(1) To the extent that information provided to the Review Panel by a person is claimed by the person to be:

(a) confidential; or

(b) information whose publication would adversely affect a person's business or commercial interest;

the person giving that information must, at the time the information is given to the Review Panel, also give a summary of that information to the Review Panel for inclusion in the public record maintained under section 269ZZX.

(2) The summary must:

(a) contain sufficient detail to allow a reasonable understanding of the substance of the information; but

(b) does not breach the confidentiality or adversely affect the interests concerned.

Note: For the consequences of failing to comply with subsection (1), see sections 269ZZH and 269ZZR and subsection 269ZZK(5).

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Part XVC—International Trade Remedies Forum

269ZZYA Simplified outline

The following is a simplified outline of this Part:

- This Part establishes the International Trade Remedies Forum.
- The Forum is to advise the Minister on the anti-dumping provisions in Part XVB and in the *Customs Tariff (Anti-Dumping) Act 1975*.

269ZZYB Establishment of International Trade Remedies Forum

The International Trade Remedies Forum is established by this section.

269ZZYC Functions of the Forum

The Forum has the following functions:

(a) to advise the Minister on the operation of Part XVB and of the *Customs Tariff (Anti-Dumping) Act 1975*;

(b) to advise the Minister on improvements that could be made to that Part or Act.

269ZZYD Membership of the Forum

(1) The Forum consists of the following members:

(a) the Commissioner (within the meaning of Part XVB);

(b) 11 members, each of whom represents one or more of the following groups:

(i) Australian producers;

(ii) Australian manufacturers;

(iii) Australian industry bodies;

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(iv) Australian importers;

(c) 4 members who represent Australian trade unions;

(d) such number of members to represent the Commonwealth as the Minister thinks fit;

(e) such other members (if any) as the Minister thinks fit.

(2) Each of the groups mentioned in paragraph (1)(b) must be represented by at least one of the 11 members referred to in that paragraph.

269ZZYE Appointment of Forum members

(1) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) is to be appointed by the Minister by written instrument.

(2) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) holds office on a part-time basis.

(3) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

(4) An appointment under this section is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

269ZZYF Resignation

(1) A member of the Forum (except the Commissioner (within the meaning of Part XVB)) may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

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269ZZYG Forum meetings

Number of meetings

(1) The Forum must meet at least twice each calendar year.

Commissioner to convene meetings

(2) The Commissioner (within the meaning of Part XVB) may convene a meeting at any time.

Presiding member

(3) The Commissioner (within the meaning of Part XVB) presides at all meetings at which he or she is present. The Commissioner may nominate a person to attend a meeting in his or her place and, if the Commissioner does so, that person presides.

Conduct of meetings

(4) The Minister may, by writing, determine the procedures to be followed at meetings of the Forum, including the number of members who are to constitute a quorum.

(5) A determination made under subsection (4) is not a legislative instrument.

(6) The Minister may, by signed instrument, delegate to the following the power of the Minister under subsection (4):
   (a) the Commissioner (within the meaning of Part XVB);
   (b) a Commission staff member (within the meaning of that Part).

269ZZYH Disclosure of information

(1) The Commissioner (within the meaning of Part XVB), or a Commission staff member (within the meaning of that Part), may disclose information (including personal information) obtained under this Part to an officer of Customs for the purposes of a Customs Act.

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Interaction with the Privacy Act 1988

(2) For the purposes of the *Privacy Act 1988*, the disclosure of personal information under subsection (1) is taken to be a disclosure that is authorised by this Act.

Definition

(3) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

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Part XVI—Regulations and by-laws

270 Regulations

(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, 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 customs control, and the obligations of persons accepting such goods for carriage.

(1A) The regulations may make provision for and in relation to the following:

(a) the charging and recovery of fees in respect of any matter under this Act or the regulations;

(b) the way, including the currency, in which fees are to be paid;

(c) the persons who may be paid fees on behalf of the Commonwealth;

(d) the remission, refund or waiver of fees of a kind referred to in paragraph (a) or the exempting of persons from the payment of such fees.

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(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.

(6) Regulations for the purposes of Subdivision B of Division 1 of Part XII must not prescribe an Act unless the Act deals with a subject matter in relation to which UNCLOS gives Australia jurisdiction.

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271 Comptroller-General of Customs may make by-laws

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-General of Customs may, subject to the succeeding sections of this Part, make by-laws for the purposes of that item or proposed item.

272 By-laws specifying goods

The Comptroller-General of Customs 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.

273 Determinations

(1) The Comptroller-General of Customs 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.

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(2) The Comptroller-General of Customs 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 or she has made a by-law for the purposes of that item or proposed item.

(3) Where, under this section, the Comptroller-General of Customs 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.

273A By-laws and determinations for purposes of repealed items

The Comptroller-General of Customs 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.

273B Publication of by-laws and notification of determinations

(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.

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(2) Notice of the making of a determination under this Part shall be published in the *Gazette* as soon as practicable after the making of the determination and the notice shall specify:

(a) the kind of goods to which the determination applies;

(b) the conditions, if any, specified in the determination; and

(c) the item or proposed item for the purposes of which the determination was made.

273C Retrospective by-laws and determinations not to increase duty

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.

273D By-laws and determinations for purposes of proposals

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.

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273EA Notification of proposals when House of Representatives is not sitting

(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, make a legislative instrument giving notice that it is intended, within 7 sitting days of the House of Representatives after the date of the registration of the instrument under the *Legislation Act 2003*, to propose in the Parliament a Customs Tariff or Customs Tariff alteration in accordance with particulars specified in the instrument and operating at and after the time specified in the instrument, 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 registration of the instrument under the *Legislation Act 2003*; or

(b) in any other case—a time earlier than 6 months before the time of registration of the instrument under the *Legislation Act 2003*.

(2) Where notice of intention to propose a Customs Tariff or a Customs Tariff alteration has been given 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.

(3) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a legislative instrument made under subsection (1) of this section.

273F Interpretation

(1) In this Part:

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proposed item of a Customs Tariff means:

(a) an item of a Customs Tariff proposed in the Parliament; or

(b) an item of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament.

(2) Unless the contrary intention appears, a reference in this Part to an item of a Customs Tariff includes a reference to a heading and a subheading in Schedule 3 to the *Customs Tariff Act 1995*.

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Part XVII—Miscellaneous

273G Briefing of Leader of Opposition on certain matters

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.

273GAA Notices

(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 Comptroller-General of Customs makes a decision under section 118 not to grant a Certificate of Clearance, he or she 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 or she shall cause to be served, either personally or by post, a notice in writing setting out the decision on the person.

(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.

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273GAB Authorisation to disclose information to an officer

(1) A person may disclose to an officer information about any matter relating to actual or proposed travel:

(a) of any person or goods on the way (directly or indirectly) to Australia; or

(b) involving the departure from Australia of any person or goods;

even if the information is personal information (as defined in the *Privacy Act 1988*).

Note: An officer is obliged to handle personal information in accordance with the *Privacy Act 1988*. Part 6 of the *Australian Border Force Act 2015* also limits the recording and disclosure of information disclosed to the officer under this section.

(2) To avoid doubt, this section does not:

(a) require anyone to disclose information to an officer; or

(b) affect a requirement of or under another provision of this Act for a person to disclose information to an officer (whether by answering a question, by providing a document or by other means).

273GA Review of decisions

(1) Subject to this section, applications may be made to the Administrative Review Tribunal for review of the following:

(aa) a determination by the Comptroller-General of Customs for the purposes of subsection 28(2);

(ab) a determination by the Comptroller-General of Customs for the purposes of subsection 28(3);

(a) a decision of a Collector under section 35A making a demand;

(aaa) a decision by the Comptroller-General of Customs for the purposes of paragraph 58A(6)(c) refusing to authorise a journey;

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(aaac) a decision by the Comptroller-General of Customs under section 67ED to refuse to register a person as a special reporter;

(aaad) a decision by the Comptroller-General of Customs under section 67EK to refuse to renew a person's registration as a special reporter;

(aaae) a decision by the Comptroller-General of Customs under section 67EM to cancel the registration of a special reporter generally or in relation to low value cargo of a particular kind;

(aaaf) a decision by the Comptroller-General of Customs under section 67G to refuse to register a person or a partnership as a re-mail reporter;

(aaag) a decision by the Comptroller-General of Customs under section 67G or 67J to impose a condition on a re-mail reporter's registration;

(aaah) a decision by the Comptroller-General of Customs under section 67J to vary a condition of a re-mail reporter's registration;

(aaai) a decision by the Comptroller-General of Customs under section 67K to cancel a re-mail reporter's registration;

(aab) a decision by an officer under section 69 to refuse to grant a permission under that section;

(aaba) a decision by an officer under section 69 to impose a condition on a permission given under that section;

(aac) a decision by an officer under section 69 to revoke a permission granted under that section;

(aad) a decision by an officer under section 70 to refuse to grant a permission under that section;

(aae) a decision by an officer under section 70 to revoke a permission granted under that section;

(aaf) a decision by an officer under section 71 to refuse to authorise the delivery of goods into home consumption;

(aafa) a decision by an officer under section 71AAAC or 71AAAM to suspend an authority to deliver goods into home consumption;

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(aafb) a decision by an officer under section 71AAAN to cancel an authority to deliver goods into home consumption;

(aag) a decision by an officer under section 71C or 71DJ to cancel or suspend an authority to deal with goods;

(aah) a decision by an officer under section 71E to refuse an application of a permission to move goods;

(aaq) a decision by the Comptroller-General of Customs under section 77G not to grant a depot licence;

(aar) a decision by the Comptroller-General of Customs under section 77J not to extend the period within which further information or documents concerning a depot licence application is or are to be supplied;

(aara) a decision by the Comptroller-General of Customs under subsection 77LA(1) not to vary a depot licence;

(aarb) a decision by the Comptroller-General of Customs under subsection 77LA(3) not to allow a further period;

(aarc) a decision by the Comptroller-General of Customs under subsection 77LA(8) to vary a depot licence;

(aas) a decision by the Comptroller-General of Customs under section 77P not to grant an extension of time;

(aat) a decision by the Comptroller-General of Customs under section 77Q to impose conditions on a depot licence or to vary the conditions of a depot licence;

(aau) a decision by the Comptroller-General of Customs under section 77V to suspend a depot licence;

(aav) a decision by the Comptroller-General of Customs under section 77VC to cancel a depot licence;

(b) a decision of the Comptroller-General of Customs or a Collector for the purposes of Part V;

(baaa) a decision of the Comptroller-General of Customs under section 102F to give a direction;

(baa) a decision of the Comptroller-General of Customs giving an approval, or refusing to give an approval, under paragraph 105(2)(a);

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(ba) a decision by the Comptroller-General of Customs under section 114B to refuse to grant a person confirming exporter status;

(bb) a decision by the Comptroller-General of Customs under section 114B to cancel or modify a person's status as a confirming exporter;

(bc) a decision by an officer under section 114C to cancel or suspend an authority to deal with goods;

(c) a decision by the Comptroller-General of Customs under section 118 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-General of Customs under section 132B making a quota order;

(f) a decision of the Comptroller-General of Customs under section 132C varying a quota order;

(h) a decision of the Comptroller-General of Customs under subsection 161J(2) specifying a rate of exchange;

(haaa) a decision of a Collector under section 163 in relation to an application for a refund, rebate or remission of duty;

(j) a decision of the Comptroller-General of Customs under section 164B;

(ja) a decision of the Comptroller-General of Customs under subsection 165(3) to make a demand for payment of an amount of drawback, refund or rebate of duty that was overpaid or for payment of an amount that is a debt due to the Commonwealth under subsection 278(2);

(jb) a decision of a Collector under section 168 in relation to an application for a drawback of duty;

(jc) a decision of the Comptroller-General of Customs to refuse to enter into a trusted trader agreement under subsection 176A(1);

(je) a decision of the Comptroller-General of Customs to vary, suspend or terminate a trusted trader agreement under subsection 178A(1);

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(k) a decision of the Minister, the Comptroller-General of Customs, or a Collector for the purposes of Part XI;

(m) a decision under subsection 269H(1) to reject an application for a TCO;

(maa) a decision under subsection 269L(4) to the effect that the Comptroller-General of Customs is not satisfied that a proposed amendment of a description of goods to be covered by a TCO does not contravene subsection 269L(3):

(ma) a decision of the Comptroller-General of Customs under section 269HA rejecting a TCO application;

(n) a decision of the Comptroller-General of Customs under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269P(1);

(o) a decision of the Comptroller-General of Customs under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269Q(1);

(p) a decision of the Comptroller-General of Customs under subsection 269SA(1) or (2);

(q) a decision of the Comptroller-General of Customs under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269SC(1);

(r) a decision of the Comptroller-General of Customs under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269SC(4);

(s) a decision by the Comptroller-General of Customs under subsection 269SD(1AB), (1), (1A), (2), (2A) or (5).

(2) Where a dispute referred to in subsection 167(1) has arisen and the owner of the goods has, in accordance with that subsection, paid under protest the sum demanded by the Collector, an application may be made to the Tribunal for review of the decision to make that demand and of any other decision forming part of the process of making, or leading up to the making of, that first-mentioned decision.

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(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 or she is not entitled to bring an action under subsection 167(2).

(6A) An application may not be made to the Tribunal in respect of a decision under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269P(1), 269Q(1) or 269SC(1) or (4) unless the person who makes the application to the Tribunal is:

(a) an affected person within the meaning of section 269SH; and

(b) is adversely affected by the decision on the reconsideration.

(7) Where, on an application made under subsection (2), the Tribunal has made a decision reviewing a demand made by the Collector, the proper duty payable in respect of the goods concerned shall be deemed to be:

(a) the sum determined to be the proper duty by, or ascertained to be the proper duty in accordance with:

(i) the decision of the Tribunal; or

(ii) an order of a court on appeal from that decision; or

(b) the sum paid under protest;

whichever is the less.

(8) In this section, ***decision*** has the same meaning as in the *Administrative Review Tribunal Act 2024*.

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273H Review of decisions under Customs Tariff Act

(1) Applications may be made to the Administrative Review Tribunal for review of a decision of the Comptroller-General of Customs under section 9 of the *Customs Tariff Act 1995*.

(2) In subsection (1), ***decision*** has the same meaning as in the *Administrative Review Tribunal Act 2024*.

273K Statement to accompany notification of decisions

(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 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 Review Tribunal Act 2024*, application may be made to the Administrative Review 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.

273L Transmission of firearms information and other information to ACIC

Home Affairs Secretary

(1) The Home Affairs Secretary may disclose firearms information, or other information prescribed by the regulations for the purposes of this subsection, that is contained in one or more electronic systems under the control of the Home Affairs Secretary, to the ACIC CEO.

Note: This section constitutes an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 of the *Privacy Act 1988*.

(2) Without limiting subsection (1), the Home Affairs Secretary may disclose information mentioned in subsection (1) by arranging for

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the automatic transmission of that information to one or more electronic systems under the control of the ACIC CEO.

Comptroller-General of Customs

(3) The Comptroller-General of Customs may disclose firearms information, or other information prescribed by the regulations for the purposes of this subsection, that is contained in one or more electronic systems under the control of the Comptroller-General of Customs, to the ACIC CEO.

Note 1: See subsection 4(1) for the definition of ***Comptroller-General of Customs***.

Note 2: This section constitutes an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 of the *Privacy Act 1988*.

(4) Without limiting subsection (3), the Comptroller-General of Customs may disclose information mentioned in subsection (3) by arranging for the automatic transmission of that information to one or more electronic systems under the control of the ACIC CEO.

Firearms information

(5) ***Firearms information*** is information relating to firearms or other goods relating to firearms (including firearms frames, firearms receivers and firearms sound suppressors). That information may include the following:

(a) information relating to the import or export of the firearms or other goods;

(b) information relating to licences or permits (however described) for the firearms or other goods;

(c) personal information or other information in relation to one or more persons.

Other prescribed information

(6) Information prescribed for the purposes of subsection (1) or (3) must be information relating to goods that are not firearms or other goods relating to firearms. That information may include the following:

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(a) information relating to the import or export of the goods;
(b) information relating to licences or permits (however described) for the goods;
(c) personal information or other information in relation to one or more persons.

General definitions

(7) In this section:

ACIC means the agency known as the Australian Criminal Intelligence Commission established by the *Australian Crime Commission Act 2002*.

ACIC CEO means the Chief Executive Officer of the ACIC.

Home Affairs Secretary means the Secretary of the Department administered by the Minister administering the *Australian Border Force Act 2015*.

personal information has the same meaning as in the *Privacy Act 1988*.

273M Entry and transmission of information by computer

If this Act requires or permits information (including information in the form of particular words) to be entered into or transmitted by a computer (however described), the information may be entered into or transmitted by the computer in an encoded form chosen by:

(a) except in relation to subsection 273L(2)—the Comptroller-General of Customs; or
(b) in relation to subsection 273L(2)—the Home Affairs Secretary within the meaning of section 273L.

274 Commissioned ships and aircraft to be reported

The person in command of any ship or aircraft holding commission from the Sovereign or from any foreign State having on board any goods other than ship's or aircraft's stores laden in a place outside

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Australia or in Australia shall when called upon by the Comptroller-General of Customs 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.

275 Commissioned ships and aircraft may be searched

Ships or aircraft under commission from the Sovereign or any foreign State having on board any goods other than ship's or aircraft's stores laden in a place outside Australia or in Australia may be boarded and searched by the Comptroller-General of Customs or an authorised officer in the same manner as other ships or aircraft, and the Comptroller-General of Customs or the authorised officer may secure any such goods and for that purpose bring them ashore.

275A Direction not to move a ship or aircraft from a boarding station

(1) Where a Collector considers that it is desirable, for the purposes of this Act, 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 or her, and in force, under this section.

Penalty: 100 penalty units.

(2A) Subsection (2) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) Where a direction not to move a ship or aircraft from a boarding station has been given under subsection (1):

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(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) If a Collector (not being the Comptroller-General of Customs) gives a direction under subsection (1) not to move a ship or aircraft from a boarding station, the Collector must as soon as practicable notify the Comptroller-General of Customs 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-General of Customs is satisfied that no purpose of this Act is served by holding the ship or aircraft at the boarding station;

he or she 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 or she 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 prima facie evidence of the matters as to which the person has certified that he or she is satisfied.

276 Collector's sales

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.

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(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.

277 Proceeds of sales

(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 Finance Minister 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.

277A Jurisdiction of courts

(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

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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.

278 Recoverable payments

(1) If, apart from this subsection, the Commonwealth does not have power under this Act or the regulations to pay an amount (the ***relevant amount***) to a person purportedly as:

(a) a refund or rebate of duty to which the person is entitled to in accordance with section 163; or

(b) a drawback of duty to which the person is entitled to in accordance with regulations made for the purposes of section 168;

then the Commonwealth may pay the relevant amount to the person.

Debt

(2) If a payment is made under subsection (1) to the person, the relevant amount is a debt due to the Commonwealth by the person.

Note: For recovery of the debt, see section 165.

Appropriation

(3) The Consolidated Revenue Fund is appropriated for the purposes of making payments under subsection (1).

279 Reports about recoverable payments

(1) The Secretary of the Department must cause the following information to be included in the Department's annual report for a financial year:

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(a) the number of payments under subsection 278(1) that APS employees in the Department are aware of that were made during that financial year;

(b) the total amount of the payments referred to in paragraph (a);

(c) the number of payments under subsection 278(1) that APS employees in the Department became aware of during that financial year that were made during an earlier financial year;

(d) the total amount of the payments referred to in paragraph (c);

(e) for each payment referred to in paragraph (c)—the financial year in which the payment was made.

(2) Information is not required in the Department's annual report if no APS employee in the Department is aware of any payments referred to in paragraph (1)(a) or (c).

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Schedule I—The Commonwealth of Australia

Security to the Commonwealth

By this Security the subscribers are, pursuant to the *Customs Act 1901*, bound to 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 *[insert date]*.

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)."

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Customs Act 1901

No. 6, 1901

Compilation No. 192

Compilation date: 27 August 2026

Includes amendments: Act No. 82, 2026

This compilation is in 5 volumes

Volume 1:	Parts I to VI sections 1 to 126C
Volume 2:	Parts IVA to XI sections 126D to 183UAA
Volume 3:	Parts XII to XVA sections 183UA to 269SK
Volume 4:	Parts XVB to XVII sections 269SM to 279 Schedule
Volume 5:	**Endnotes**

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This compilation

This is a compilation of the *Customs Act 1901* that shows the text of the law as amended and in force on 27 August 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

C[x] = Compilation No. x

ch = Chapter(s)

cl = clause(s)

cont. = continued

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

Ord = Ordinance

orig = original

p = page(s)

para = paragraph(s)/subparagraph(s)/sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

pt = Part(s)

r = regulation(s)/Court rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)/rule(s)/subrule(s)/order(s)/suborder(s)

sch = Schedule(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

sub ch = Sub-Chapter(s)

sub div = Subdivision(s)

sub pt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Act 1901	6, 1901	3 Oct 1901	4 Oct 1901 (gaz 1901, p 165)	
Spirits Act 1906	21, 1906	12 Oct 1906	1 Jan 1907 (gaz 1907)	—
Customs (Inter-State Accounts) Act 1910	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	never commenced	—
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: 24 July 1934	—
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 (gaz 1947, p 337)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Act 1949	45, 1949	27 Oct 1949	1 Apr 1950 (gaz 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	s 16 and 17
Customs Act 1951	56, 1951	11 Dec 1951	11 Dec 1951	s 7
Customs Act 1952	108, 1952	19 Nov 1952	s 7 and 11: 14 Dec 1956 (gaz 1956, p 3889) Remainder: 19 Nov 1952	s 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	—
Customs Act 1957	37, 1957	7 June 1957	s 4: 7 Sept 1957 Remainder: 7 June 1957	s 9(2) and 11(2)
Customs Act 1959	54, 1959	22 May 1959	s 6–8 and 17: 1 Jan 1960 s 3, 4, 9–11, 13, 15, 20–24 and 29: 1 Sept 1960 (gaz 1960, p 3065) Remainder: 22 May 1959	s 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 (gaz 1961, p 4309) Remainder: 19 Dec 1960	s 2(3)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Act 1963	48, 1963	16 Oct 1963	s 5, 20, 22, 31 and 32: 1 July 1964 (gaz 1964, p 2348) s 14(1), 15 and 16: 1 Sept 1965 (gaz 1965, p 3767) Remainder: 16 Oct 1963	s 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 (gaz 1966, p 1963)	—
as amended by				
Customs Act (No. 3) 1965	133, 1965	18 Dec 1965	14 Feb 1966	—
Customs Act (No. 3) 1965	133, 1965	18 Dec 1965	14 Feb 1966	—
Customs Act 1966	28, 1966	24 May 1966	s 3: 16 June 1966 (gaz 1966, p 3185) Remainder: 24 May 1966	—
Customs Act 1967	54, 1967	30 May 1967	30 May 1967	s 11
Customs Act 1968	14, 1968	16 May 1968	13 June 1968	—
Customs Act (No. 2) 1968	104, 1968	2 Dec 1968	s 1, 2, 31 and 37: 2 Dec 1968 s 29 and 30: 18 June 1968 Remainder: 1 Oct 1969 (gaz 1969, p 5771)	s 37
Customs Act 1971	12, 1971	5 Apr 1971	s 1–3 and 5: 5 Apr 1971 s 4: 1 July 1974 (gaz 1974, No 53D)	s 5

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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	s 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	s 3(2), 4(2), (3), 5(2) and 6(2)
Postal and Telecommunications Commissions (Transitional Provisions) Act 1975	56, 1975	12 June 1975	s 4 and 38: 1 July 1975 (s 2(1) and gaz 1975, No S122) Remainder: 12 June 1975	—
as amended by				
Customs Act (No. 2) 1975	107, 1975	9 Oct 1975	8 pm (by standard time in the Australian Capital Territory) on 19 Aug 1975 (s 2)	s 2
Customs Act 1975	77, 1975	20 June 1975	20 June 1975 (s. 2)	—
Customs Act (No. 2) 1975	107, 1975	9 Oct 1975	8 pm (by standard time in the Australian Capital Territory) on 19 Aug 1975 (s 2)	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: 22 Dec 1975 (s 2(7))	s 4
Customs Amendment Act (No. 2) 1976	174, 1976	13 Dec 1976	s 4: 1 Feb 1977 (gaz 1977, No S8) Remainder: 13 Dec 1976	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment Act 1977	154, 1977	10 Nov 1977	s 3, 4 and 9: 20 Oct 1978 (gaz 1978, No S195) s 7: 24 Oct 1978 (gaz 1978, No S219) Remainder: 10 Nov 1977	s 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: 4 Dec 1978	s 4 and 5
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	Parts II–XVII (s 3–123): 15 May 1979 (gaz 1979, No S86) Remainder: 28 Mar 1979	s 124
Customs Amendment Act 1979	92, 1979	14 Sept 1979	s 5 and 6: never commenced	s 4(2), (3) and 17
as amended by				
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	Part III (s 27, 28): 13 Sept 1979 s 2(7))	—
Customs and Excise Legislation Amendment Act (No. 2) 1985	175, 1985	16 Dec 1985	Part III (s 14, 15): never commenced (s 2(6))	—
Customs (Detention and Search) Act 1990	79, 1990	23 Oct 1990	23 Apr 1991	—
Customs Amendment Act (No. 2) 1979	116, 1979	25 Oct 1979	1 June 1980 (s 2 and gaz 1980, No G21, p 2)	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	19 Oct 1979 (s 2 and gaz 1979, No S206)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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
Customs Amendment Act (No. 2) 1980	13, 1980	8 Apr 1980	1 Feb 1981 (s 2 and gaz 1980, No S282)	s 4(2), 5(2), (3) and 7
Customs Amendment Act 1980	15, 1980	15 Apr 1980	16 Apr 1980 (s 2)	—
Customs Amendment Act (No. 3) 1980	110, 1980	6 June 1980	s 3(b), 4 and 5: 1 July 1980 (gaz 1980, No S146) Remainder: 6 June 1980	s 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: 12 June 1981 (s 2(1))	—
Customs Amendment Act 1981	64, 1981	12 June 1981	s 6–12, 15–18, 19(2), 20–24 and 27: 21 Dec 1983 (gaz 1983, No S332) s 13 and 14: never commenced Remainder: 10 July 1981	s 28(2), (3) and 38
as amended by				
Off-shore Installations (Miscellaneous Amendments) Act 1982	51, 1982	16 June 1982	(*see* 51, 1982 below)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	(*see* 5, 1990 below)	—
Customs Amendment (Securities) Act 1981	67, 1981	12 June 1981	10 July 1981	s 3(2)
Customs (Unlawful Exportation of Food) Amendment Act 1981	152, 1981	26 Oct 1981	26 Oct 1981	—
Customs (Valuations) Amendment Act 1981	157, 1981	27 Oct 1981	s 4: 14 May 1981 s 5, 8 and 11–13: 30 Nov 1981 (gaz 1981, No. S246) s 9: 10 July 1981 Remainder: 27 Oct 1981	s 10(2) and 13
Export Control (Miscellaneous Amendments) Act 1982	48, 1982	9 June 1982	1 Jan 1983 (s 2 and gaz 1982, No G48, p 2)	—
Off-shore Installations (Miscellaneous Amendments) Act 1982	51, 1982	16 June 1982	s 12, 13, 22 and Part III (s 26–28): 21 Dec 1983 (s 2(2) and gaz 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): 22 Sept 1982 (s 2(1))	s 280(2) and (3)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Amendment Act 1982	81, 1982	23 Sept 1982	s 1–3 and 71: 23 Sept 1982 s 4, 16–21, 23, 28, 29, 32–52, 55–65, 67, 68, 69(4), 72 and 73: 26 Apr 1983 (gaz 1983, No S80) s 5, 7, 9, 10, 12, 14, 15, 25, 54, 66 and 70(3): never commenced s 6, 8, 11, 13, 26, 27, 30, 31, 53 and 70(1), (2): 22 Dec 1983 (gaz 1983, No S333) s 22, 24 and 74–76: 2 Dec 1985 (gaz 1985, No S490) Remainder: 1 Apr 1985 (gaz 1985, No S96)	s 6(2) and 71
as amended by				
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	s 3: 22 Dec 1983 (s 2(5)(a))	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	s 3: 23 Sept 1982 (s 2(10))	s. 2(24)
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	(*see* 40, 1985 below)	—
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	(*see* 5, 1990 below)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Diesel Fuel Taxes Legislation Amendment Act 1982	108, 1982	5 Nov 1982	8 pm (by standard time in the Australian Capital Territory) on 17 Aug 1982 (s 2)	s 5(2)
Customs Tariff (Miscellaneous Amendments) Act 1982	115, 1982	22 Nov 1982	s 1, 2, 7 and 8(1): 22 Nov 1982 Remainder: 1 Jan 1983 (s 2 and gaz 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	s 5 and 6: 1 July 1983 (gaz 1983, No S136, p 3) Remainder: 14 June 1983	s 2(2) and (3)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	s 3: 8 pm (by standard time in the Australian Capital Territory) on 17 Aug 1982 (s 2(4)(c)), 18 July 1983 (s 2(4)(b)), 1 May 1984 (s 2(4)(a))	s 7(1)
Customs and Excise Amendment Act 1983	101, 1983	23 Nov 1983	s 4: never commenced (s 2(3)) s 5: 1 Jan 1983 ss. 8 and 11: 23 Nov 1983 s 10 and 12: 1 July 1983 (s 2(5)) Remainder: 8 pm (by standard time in the Australian Capital Territory) on 23 Aug 1983 (s 2(1))	s 6(2)

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Act	Number and year	Assent	Commencement	Application, saving and 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 (s 2 and gaz 1985, No S38)	—
Public Service Reform Act 1984	63, 1984	25 June 1984	s 151(2): 1 July 1984 (s 2(4) and gaz 1984, No S245)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	Sch: 1 Jan 1983 (s 2(7)) 23 July 1984 (s 2(1)), 2 Dec 1985 (s 2(8) and gaz 1985, No S490), never commenced (s 2(9))	s 2(24) and 5(2)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	s 3: 22 Nov 1984 (s 2(1))	s 6(1)
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1985	39, 1985	29 May 1985	10 June 1985 (s 2 and gaz 1985, No S194)	s 4

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act 1985	40, 1985	30 May 1985	s 1, 2, 18–20, 21(2) and 22: 30 May 1985 s 4, 7–12, 34, 36 and 44: never commenced (s 2(3), (4)) s 21(1): 1 Jan 1983 s 24 and 25: 16 Dec 1985 (s. 2(6)) Part III (s 27, 28): 13 Sept 1979 (s 2(7)) s 29 and 31: 1 Apr 1985 s 30: 2 Dec 1985 (s 2(9)) s 35: 29 Nov 1985 (gaz 1985, No. S490) s 38: 1 July 1984 (s 2(10)) s 45 and 46: 23 July 1984 (s 2(11)) Remainder: 27 June 1985	s 2(5) and 26
as amended by				
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	(*see* 5, 1990 below)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act (No. 2) 1985	175, 1985	16 Dec 1985	s 3 and 8: 16 Dec 1985 (s 2(1)) s 4, 7 and 12: 1 May 1986 (s 2(2) and gaz 1986, No S182) s 5, 11 and 13: 13 Jan 1986 (s 2(3)) s 6: 2 Dec 1985 (s 2(4) and gaz 1985, No S490) s 9 and 10: 1 Nov 1985 (s 2(5))	s 8(2), 9(2) and 10(2)
Customs Administration (Transitional Provisions and Consequential Amendments) Act 1986	10, 1986	13 May 1986	13 May 1986	s 2(2) and 4
Customs and Excise Legislation Amendment Act 1986	34, 1986	3 June 1986	ss. 7, 8(1), 9, 11 and 12: 3 June 1986 (s 2(1)) s 8(2), 10 and 13–15: 1 July 1987 (s 2(2) and gaz 1987, No. S138) s 16–18: 1 July 1986 (s 2(3))	—
Customs and Excise Legislation Amendment Act (No. 2) 1986	149, 1986	11 Dec 1986	s 5 and 16: 8 Jan 1987 s 11: 21 Oct 1986 s 12(1): 1 Oct 1983 Remainder: 11 Dec 1986	—
Customs (Valuation) Amendment Act 1987	51, 1987	5 June 1987	1 July 1987	s 3

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Tariff (Miscellaneous Amendments) Act 1987	76, 1987	5 June 1987	1 Jan 1988 (s 2 and gaz 1987, No. S351)	ss. 4 and 8 s 8(2A) (ad. by 89, 1992, s. 23)
as amended by				
Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992	89, 1992	30 June 1992	(*see* 89, 1992 below)	—
Customs and Excise Legislation Amendment Act 1987	81, 1987	5 June 1987	s 1 and 2: Royal Assent s 3(1), 5 and 6: 1 July 1987 s 4 and 7: 14 May 1987 Remainder: 1 Aug 1987 (gaz 1987, No S135)	ss. 3 and 11
Sea Installations (Miscellaneous Amendments) Act 1987	104, 1987	6 Nov 1987	Parts I–IV (s 1–30) and Part VII (s 57): 15 Oct 1987 Remainder: 6 Nov 1987 (s 2(2))	s 21
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 3: 18 Dec 1987 (s 2(1))	s 5(1)
Civil Aviation Act 1988	63, 1988	15 June 1988	Part III (s 17–32), s 98 and Parts IX, X (s 99–103): 1 July 1988 (gaz 1988, No S189) Remainder: 15 June 1988	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment Act (No. 2) 1988	66, 1988	15 June 1988	s 4–11: 13 July 1988 s 13–19: 1 Dec 1988 (gaz 1988, No S366) s 24: 15 June 1988 (s 2(4)) Part VI (ss. 25–28): 1 Sept 1988 (s 2(5) and gaz 1988, No S256) Remainder: 15 June 1988	s 6(2) and (3)
as amended by				
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part VII (s 25–27): 15 June 1988 (s 2(4))	—
Customs Legislation (Anti-Dumping Amendments) Act 1988	76, 1988	24 June 1988	1 Sept 1988 (s 2 and gaz 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 (s 28, 29): 11 Jan 1989 (s 2(3))	—
Telecommunications Amendment Act 1988	121, 1988	14 Dec 1988	s 5, 6, 10, 12, 13, 23(2) and 26(1): 1 Jan 1989 (gaz 1988, No. S402) s 14, 23(3) and 26(2): 30 June 1989 (gaz 1989, No S216) Remainder: 14 Dec 1988	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
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	s 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 s 19, 21, 23, 24, 29, 31 and 32: 1 July 1989 Part IV (s 44, 45): 16 June 1982 (s 2(7)) Remainder: 5 May 1989	s 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 s 6, 8, 16 and 18: 19 July 1989 Remainder: 21 June 1989	s 5(2), (3) and 7(2)
Crimes Legislation Amendment Act 1989	108, 1989	30 June 1989	s 10: 30 June 1990 Parts 5–7 (s 17–35): 28 July 1989 Part 8 (s 36–43): 1 July 1989 Remainder: 30 June 1989	s 21(2), 22(2), 23(2) and 25(2)
Customs Legislation (Anti-Dumping) Act 1989	174, 1989	21 Dec 1989	s 1 and 2: 21 Dec 1989 Remainder: 21 Dec 1989 (s 2(2) and gaz 1989, No S395)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	s 1–3 and 25: 17 Jan 1990 s 4(1)(b), 16, 26(1)(b), (c) and 33 (in part): 1 July 1989 s 15: 1 Aug 1989 Remainder: 1 Jan 1990	s 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	Part 1 (s 1, 2) and Part 3 (s 6, 7): 17 Jan 1990 s 8–10: 17 July 1990 s 12, 13 and 51(1)(b), (2): 17 Jan 1990 (s 2(5)) Remainder: 14 Feb 1990	—
Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990	37, 1990	7 June 1990	18 Feb 1991 (s 2 and gaz 1991, No S47)	—
Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990	70, 1990	16 June 1990	1 July 1990 (gaz 1990, No. S172)	s 20(2)–(7)
Customs (Detention and Search) Act 1990	79, 1990	23 Oct 1990	23 Apr 1991	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act 1990	111, 1990	21 Dec 1990	s 1–3, 4(a)–(d), (g), 5, 11, 27, 30, 34(d), (e), 35, 36, 37 (in part), 38, 39 and 47–49: 21 Dec 1990 s 4(e), (h), 6–9, 13–23, 28, 29, 31, 32, 34(a)–(c) and 40–46: 1 June 1991 (gaz 1991, No S137) s 26: 18 Jan 1991 s 33: 21 Dec 1989 Remainder: 21 June 1991	s 15(2), 21(2) and 38
Crimes Legislation Amendment Act 1991	28, 1991	4 Mar 1991	s 74(1): 4 Mar 1991 (s 2(1))	—
Customs Amendment Act 1991	82, 1991	26 June 1991	26 June 1991	s 9(2)–(4)
Proceeds of Crime Legislation Amendment Act 1991	120, 1991	27 June 1991	s 1 and 2: 27 June 1991 Remainder: 27 Dec 1991	—
Crimes Legislation Amendment Act (No. 2) 1991	123, 1991	23 Aug 1991	s 5–10, Parts 3–7 (s 11–34), Part 9 (s 38, 39) and s 40–50: 20 Sept 1991 Part 8 (s 35–37): 6 Dec 1991 (gaz 1991, No S330) s 51: 23 Feb 1992 Remainder: 23 Aug 1991	s 31(2) and (3)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs and Excise Legislation Amendment Act 1992	34, 1992	20 May 1992	s 1–3, 4(c), (d), 21, 40, 48, 49(c), 51, 52 and 56: 20 May 1992 s 10–14, 24, 30–36, 41, 44, 50, 53–55 and 57: 17 June 1992 Remainder: 1 Sept 1992 (gaz 1992, No S251)	s 18(2)–(4), 23(2) and 50
Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992	89, 1992	30 June 1992	s 1–3, 9, 11 and 22: 30 June 1992 s 4–8, 12–18 and 21: 10 July 1992 (gaz 1992, No S187, p 2) s 23: 1 Jan 1988 Remainder: 1 Nov 1992 (gaz 1992, No GN43)	s 12(2), 19(2) and 21 s 20 (am by 8, 1994, s 23)
as amended by				
Customs Legislation Amendment Act 1993	8, 1994	18 Jan 1994	s 23 (item 3): 1 Nov 1992 (s 2(4))	—
Territories Law Reform Act 1992	104, 1992	30 June 1992	s 24: 1 July 1992 (s 2(3))	—
Crimes Legislation Amendment Act 1992	164, 1992	11 Dec 1992	s 3–17: 1 Feb 1993 (gaz 1993, No GN1) Remainder: 8 Jan 1993	—
Customs Legislation (Anti-Dumping Amendments) Act 1992	207, 1992	21 Dec 1992	s 1 and 2: 21 Dec 1992 s 8: 10 July 1992 Remainder: 1 Jan 1993 (gaz 1992, No S403)	s 17
as amended by				
Customs Legislation Amendment Act 1993	8, 1994	18 Jan 1994	s 23 (item 2): 1 Jan 1993 (s 2(7))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment Act 1992	209, 1992	22 Dec 1992	s 4(a), 11, 12, 19, 20 and 22: 1 Sept 1992 s 4(b), (c), 6–10, 13(2), 14, 15(d), 16, 17, 24, 25 and 27: 1 June 1993 (gaz 1993, No GN17) s 5 and 23: 19 Jan 1993 s 21: 18 Aug 1992 Remainder: 22 Dec 1992	—
as amended by				
Customs Legislation Amendment Act 1993	8, 1994	18 Jan 1994	s 23 (item 1): 18 Aug 1992 (s 2(6))	—
Corporate Law Reform Act 1992	210, 1992	24 Dec 1992	s 125: 23 June 1993 ((s 2(3) and gaz 1993, No S186)	—
Imported Food Control Act 1992	221, 1992	24 Dec 1992	15 June 1993 (gaz 1993, No GN22)	s 10
Customs and Excise Legislation Amendment Act 1993	113, 1993	24 Dec 1993	s 1–4, 7 and 9: 24 Dec 1993 s 5(c), 6, 14 and 15(c): 1 Jan 1994 s 8, 10–13 and 17: 1 Apr 1994 (gaz 1994, No S112) Remainder: 24 June 1994	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment Act 1993	8, 1994	18 Jan 1994	ss. 4–7, 14, 16(1) and 18: 18 Jan 1994 (s 2(1)) s 8: 1 Sept 1992 (s 2(2)) s 9, 10 and 20: 1 Apr 1994 (s 2(8) and gaz 1994, No S112) s 11–13: 15 Feb 1994 (s 2(3)) s 15 and 16(2): 1 Nov 1992 (s 2(4)) s 17: 5 Jan 1994 (s 2(5)) s 19: 2 May 1994 (s 2(8) and gaz 1994, No GN15)	s 3
Maritime Legislation Amendment Act 1994	20, 1994	15 Feb 1994	1 Aug 1994 (gaz 1994, No S289)	—
Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994	65, 1994	30 May 1994	30 Nov 1994	—
Customs Legislation (World Trade Organization Amendments) Act 1994	150, 1994	13 Dec 1994	s 1–3: 13 Dec 1994 Remainder: 1 Jan 1995 (gaz 1994, No S471)	s 3 and 29
Crimes and Other Legislation Amendment Act 1994	182, 1994	19 Dec 1994	s 31: 16 Jan 1995 (s 2(4))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs, Excise and Bounty Legislation Amendment Act 1995	85, 1995	1 July 1995	Sch 4 (items 1, 26–45, 49–53, 56, 67): 1 July 1995 (s 2(5)) Sch 4 (items 2–6, 10–15, 17, 57–61, 63–66), Sch 9 (items 51–59) and s 13–20: 1 July 1995 (s 2(1)) Sch 4 (items 7–9, 46–48, 54, 55, 62): 9 Nov 1995 (s 2(4), (6) and gaz 1995, No GN44) Sch 4 (items 16, 18–25): 1 Apr 1994 (s 2(3))	s 13–20
Customs and Excise Legislation Amendment Act 1995	87, 1995	1 July 1995	s 3 (items 2, 6, 7, 10, 11): 1 Aug 1986 (s 2(2)) Remainder: 1 July 1995 (s 2(3))	s 2(2) (am by 21, 1996, Sch 1 [item 1]) s 2(3) (am by 21, 1996, Sch 1 [items 2–4]) s 5 (am by Sch 1 [items 5–7])
as amended by				
Customs and Excise Legislation Amendment Act (No. 1) 1996	21, 1996	28 June 1996	1 July 1995	—
Customs Tariff (Miscellaneous Amendments) Act 1996	15, 1996	24 June 1996	1 July 1996 (s 2)	—
Customs Amendment Act 1996	30, 1996	9 July 1996	15 July 1996 (gaz 1996, No S263)	Sch 1 (items 36–43)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 46): 1 July 1995 (s 2(2)) Sch 4 (item 56): 25 Oct 1996 (s 2(1))	—
Customs Amendment Act (No. 1) 1997	3, 1997	28 Feb 1997	s 1–3: 28 Feb 1997 Remainder: 1 Apr 1997 (gaz 1997, No GN12)	Sch 1 (items 8, 11, 16, 22, 27) s 2(2) (am by 8, 1998, Sch 1 [item 7]) s 2(4) (rep by 8, 1998, Sch 1 [item 8])
as amended by				
Customs and Excise Legislation Amendment Act (No. 1) 1998	8, 1998	31 Mar 1998	Sch 1 (items 7–9): 31 Mar 1998 (s 2(1))	—
Crimes and Other Legislation Amendment Act 1997	20, 1997	7 Apr 1997	Sch 1 (items 17, 18): 7 Apr 1997 (s 2(1))	—
Customs and Excise Legislation Amendment Act (No. 1) 1997	97, 1997	30 June 1997	Sch 1 (items 1–5, 7–9, 20, 23–26–39, 41): 31 Dec 1997 (s 2(3), (4)) Sch 1 (items 6, 10–19, 21, 22, 40): 1 Aug 1997 (s 2(2) and gaz 1997, No. GN30)	Sch 1 (items 40, 41)
Environment, Sport and Territories Legislation Amendment Act 1997	118, 1997	7 July 1997	Sch 1 (item 22): 7 July 1997 (s 2(1))	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (items 657–661): 1 Jan 1998 (s 2(2) and gaz 1997, No GN49)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Telecommunications (Interception) and Listening Device Amendment Act 1997	160, 1997	11 Nov 1997	Sch 3 (items 9, 10): 11 Nov 1997 (s 2(1)) Sch 3 (items 1–8, 11–13): 1 Feb 1998 (s 2(2)(c)) and gaz 1998, No GN3)	s 3 (rep by 151, 1999, Sch 2)
as amended by				
Telecommunications (Interception) Amendment Act 1999	151, 1999	11 Nov 1999	11 Nov 1999	—
Customs and Excise Legislation Amendment Act (No. 2) 1997	167, 1997	11 Nov 1997	31 Jan 1998 (s 2 and gaz 1998, No GN1)	—
Customs and Excise Legislation Amendment Act (No. 1) 1998	8, 1998	31 Mar 1998	Sch 1 (items 1, 2): 31 Mar 1998 (s 2(1)) Sch 1 (items 3, 4): 1 Aug 1997 (s 2(2)) Sch 1 (items 5, 6): 1 July 1995 (s 2(3))	—
Therapeutic Goods Legislation Amendment Act 1998	34, 1998	17 Apr 1998	17 Apr 1998	—
Customs Legislation (Anti-dumping Amendments) Act 1998	79, 1998	2 July 1998	Sch 1 (items 1–38, 40–86), Sch 2 and 4: 24 July 1998 (s 2(2) and gaz 1998, No. GN29) Sch 1 (item 39): 22 Dec 1998 (s 2(3), (5))	Sch 4
as amended by				
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 2 (item 17): 24 July 1998 (s 2(1) item 32)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs (Anti-dumping Amendments) Act 1999	26, 1999	14 May 1999	Sch 1 (items 1–3): 1 July 1999 (gaz 1999, No S286) Sch 1 (items 4, 6, 8, 10, 12, 14, 16, 18): 1 Jan 1993 Sch 1 (items 5, 7, 9, 11, 13, 15, 17, 19): 24 July 1998 (s 2(4)) Remainder: 14 May 1999	Sch 1 (item 20)
Customs and Excise Amendment (Diesel Fuel Rebate Scheme) Act 1999	87, 1999	8 July 1999	1 July 2000	—
as amended by				
A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999	177, 1999	22 Dec 1999	Sch 6 (item 6): 1 July 2000 (s 2(8))	—
Customs Amendment Act (No. 1) 1999	108, 1999	10 Sept 1999	Sch 1 (items 4, 5): 1 Sept 1992 (s 2(2)) Remainder: 10 Sept 1999	Sch 1 (items 3, 5, 6)
Customs Amendment (Temporary Importation) Act 1999	109, 1999	10 Sept 1999	10 Sept 1999	Sch 1 (item 2)
Customs Legislation Amendment Act (No. 1) 1999	137, 1999	3 Nov 1999	Sch 1: 16 Dec 1999 ((s 2(2) and gaz 1999, No S627)	—
ACIS Administration Act 1999	139, 1999	3 Nov 1999	Sch 1: 30 Dec 1999 (s 2 and gaz 1999, No S627)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment Act (No. 2) 1999	142, 1999	3 Nov 1999	Sch 1 and 2: 3 May 2000 Sch 3: 1 July 2000 Remainder: 3 Nov 1999	Sch 1 (items 9–11), Sch 2 (item 6) and Sch 3 (items 131, 132)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 355): 5 Dec 1999 (s 2(1), (2) and gaz 1999, No S584)	—
Border Protection Legislation Amendment Act 1999	160, 1999	8 Dec 1999	Sch 2: 16 Dec 1999 (s 2(6) and gaz 1999, No. S624)	Sch 2 (item 51)
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Sch 3 (items 1, 24): 10 Dec 1999 (s 2(2))	—
A New Tax System (Indirect Tax and Consequential Amendments) Act 1999	176, 1999	22 Dec 1999	Sch 2 (Part 1): 22 Dec 1999 (s 2(6)) Sch 2 (Part 2): 1 July 2000 (s 2(7)) Sch 2 (Part 3): 3 May 2000 (s 2(8))	Sch 2 (items 7, 9, 11, 15, 19, 22, 24, 26, 32)
A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999	177, 1999	22 Dec 1999	Sch 6 (items 1–5): 1 July 2000 (s 2(8))	—
Taxation Laws Amendment Act (No. 9) 1999	181, 1999	22 Dec 1999	1 July 2000 (s 2)	—
Customs Amendment Act (No. 1) 2000	7, 2000	7 Mar 2000	Sch 1: 1 Aug 2000 (s 2(2) and gaz 2000, No S411) Remainder: 7 Mar 2000	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act 2000	23, 2000	3 Apr 2000	Sch 1–3: 26 May 2000 (gaz 2000, No S269) Remainder: 3 Apr 2000	Sch 2 (items 5, 11)
Timor Gap Treaty (Transitional Arrangements) Act 2000	25, 2000	3 Apr 2000	s 4–7 and Sch 2 (items 26–32): 1:23 am (Australian Central Standard Time) 26 Oct 1999 (s 2(2), 4)	s 4–7
Customs Amendment (Alcoholic Beverages) Act 2000	84, 2000	30 June 2000	1 July 2000	—
A New Tax System (Tax Administration) Act (No. 2) 2000	91, 2000	30 June 2000	Sch 4B (items 1–5): 1 July 2000 (s 3(5A))	—
as amended by				
Taxation Laws Amendment Act (No. 8) 2000	156, 2000	21 Dec 2000	Sch 7 (item 11): 1 July 2000 (s 2(6))	—
Indirect Tax Legislation Amendment Act 2000	92, 2000	30 June 2000	Sch 11 (items 16G–16I): 1 July 2000 (s 2(1))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 162–165, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Privacy Amendment (Private Sector) Act 2000	155, 2000	21 Dec 2000	Sch 3: 21 Dec 2000 Remainder: 21 Dec 2001	—
Taxation Laws Amendment Act (No. 8) 2000	156, 2000	21 Dec 2000	Sch 2 (items 21–24, 25(2)): 21 Dec 2000 (s 2(1))	Sch 2 (item 25(2))

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1) and (2): 24 May 2001 (s 2(1)(a)) Sch 21 (items 1–121, 123, 125–141): 15 Dec 2001 (s 2(3)) Sch 21 (items 122, 124): never commenced (s 2(8))	s 4(1) and (2)
Taxation Laws Amendment (Excise Arrangements) Act 2001	25, 2001	6 Apr 2001	Sch 3 (items 1–82, 84–102): 4 May 2001 (s 2(1)(b)) Sch 3 (items 83, 103): never commenced (s 2(a))	Sch 3 (items 9, 90, 96, 100, 102)
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Sch 3 (items 152–165): 15 July 2001 (s 2(3) and gaz 2001, No S285)	ss. 4–14

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001	95, 2001	20 July 2001	s 1–3 and Sch 3 (items 82, 84, 109, 123, 152–171): 20 July 2001 (s 2(1)) Sch 1 (items 1–5, 9–14, 16–22), Sch 2 (items 1A–1C, 2, 4, 5, 5A, 6, 7) and Sch 3 (items 49, 54–56, 63, 65, 113, 114, 136, 144, 146–149, 151): 1 July 2002 (s 2(1)–(7) and gaz 2002, No S223) Sch 2 (item 1) and Sch 3 (items 1, 48, 48A, 50–53, 57–60, 62, 64, 66, 68, 72–74, 77, 83, 91, 93, 94, 96, 97, 97A, 100, 101): 22 Sept 2004 (s 2(1)–(7) and gaz 2004, No GN32) Sch 3 (item 43): 18 May 2005 (s 2(3A) and F2005L01087) Sch 4: 20 July 2003 (s 2(1)–(7)) Remainder: 19 July 2005 (s 2(1–7) and F2005L01812)	s 4 (ad by 82, 2002, Sch 3 [item 66]) Sch 1 (items 2, 8), Sch 2 (item 5A) and Sch 3 (items 99, 121) Sch 2 (item 8) (ad by 136, 2003, Sch 1 [item 34]) s 2(2), (4)–(6) (am by 82, 2002, Sch 3 [items 56, 59–64]) s 2(3) (am by 82, 2002, Sch 3 [items 57, 58]; am by 25, 2004, Sch 2 [item 28]) s 2(3A) (ad by 25, 2004, Sch 2 [item 29]) s 2(7) (ad by 82, 2002, Sch 3 [item 65]; am by 136, 2003, Sch 1 [item 33A]; am. by 25, 2004, Sch 2 [item 30]) Sch 3 (item 45) (rep by 75, 2008, Sch 3 [item 9])

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
				Sch 3 (item 82) (am by 82, 2002, Sch 3 [items 70, 71]; rep by 25, 2004, Sch 2 [item 31]) Sch 3 (item 84) (rep by 136, 2003, Sch 1 [item 36])
as amended by				
Border Security Legislation Amendment Act 2002	64, 2002	5 July 2002	Sch 6 (items 10–15): (*see* 64, 2002 below)	—
Customs Legislation Amendment Act (No. 1) 2002	82, 2002	10 Oct 2002	Sch 3 (items 56–73): (*see* 82, 2002 below)	—
Customs Legislation Amendment Act (No. 2) 2003	136, 2003	17 Dec 2003	Sch 1 (items 33A, 34–41): (*see* 136, 2003 below)	—
Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004	25, 2004	25 Mar 2004	Sch 2 (items 28–31): 25 Mar 2004	—
Customs Legislation Amendment (Modernising) Act 2008	75, 2008	12 July 2008	Sch 3 (item 9): 9 Aug 2008	—
Border Protection (Validation and Enforcement Powers) Act 2001	126, 2001	27 Sept 2001	27 Sept 2001	s 4–9

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Crime Authority Legislation Amendment Act 2001	135, 2001	1 Oct 2001	Sch 1–7 and 9–12: 12 Oct 2001 (gaz 2001, No. S428) Sch 8: 13 Oct 2001 (gaz 2001, No. S428) Remainder: 1 Oct 2001	—
Measures to Combat Serious and Organised Crime Act 2001	136, 2001	1 Oct 2001	Sch 1 (items 50, 51): 12 Oct 2001 (s 2(2) and gaz 2001, No S428) Sch 4 (items 59–69) and Sch 5 (items 8, 9): 29 Oct 2001 (s 2(5))	—
Cybercrime Act 2001	161, 2001	1 Oct 2001	21 Dec 2001 (gaz 2001, No. S529)	Sch 2 (item 31)
Fuel Legislation Amendment (Grant and Rebate Schemes) Act 2001	165, 2001	1 Oct 2001	Sch 1 (item 1): 1 Oct 2001	—
Diesel Fuel Rebate Scheme Amendment Act 2002	46, 2002	29 June 2002	29 June 2002	Sch 1 (item 5)
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 1 (item 6): 1 July 2002 (s 2(1) item 5) Sch 1 (items 7, 8): 3 July 2002 Sch 1 (items 9–13): 24 July 1998 (s 2(1) items 7, 8)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Border Security Legislation Amendment Act 2002	64, 2002	5 July 2002	Sch 1, 2, Sch 4 (items 1–27), Sch 5, Sch 6 (items 1–9, 16–18) and Sch 8: 5 Jan 2003 Sch 4 (items 28–32) and Sch 6 (items 10–15): 19 July 2005 (s 2(1) items 5, 8) Sch 7 and 10: 2 Aug 2002 Remainder: 5 July 2002	Sch 6 (item 6) and Sch 9 (item 3)
Telecommunications Interception Legislation Amendment Act 2002	67, 2002	5 July 2002	Sch 1 (items 23, 29, 33, 37, 39): 22 June 2000 Remainder: 5 July 2002	—
Customs Legislation Amendment Act (No. 1) 2002	82, 2002	10 Oct 2002	Sch 3 (items 1–23, 26, 44, 66–69, 72, 73) and Sch 5 (items 6–10): 19 July 2005 (s (2(1) items 1, 3–7, 9, 14, 23, 26, 27, 30) Sch 3 (items 28, 30–43, 45–47, 49, 55): 22 Sept 2004 (s 2(1) items 11, 13, 15, 17, 20) Sch 3 (items 70, 71): 20 July 2001 (s 2(1)) Sch 5 (items 1–5): 10 Apr 2003 Remainder: 10 Oct 2002	s 4 and Sch 2 (item 4) s 2(1) (am. by 25, 2004, Sch 2 [item 27])
as amended by				
Customs Legislation Amendment Act (No. 2) 2003	136, 2003	17 Dec 2003	Sch 1 (item 33): 5 Jan 2003 (s 2(1) item 7)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004	25, 2004	25 Mar 2004	Sch 2 (item 27): 10 Oct 2002 (s 2(1) item 18)	—
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Sch 6 (items 17–26): 1 Jan 2003 (s 2(1) and gaz 2002, No GN44)	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 2 (items 33–38): 1 Jan 2003	—
Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003	10, 2003	2 Apr 2003	Sch 1 (items 1–52, 54–75, 78–82): 20 May 2002 Remainder: 2 Apr 2003	—
Crimes Legislation Enhancement Act 2003	41, 2003	3 June 2003	Sch 3 (item 30): 1 July 1995 (s 2(1) item 20) Sch 3 (item 42): 3 June 2003	Sch 3 (item 42)
Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003	54, 2003	27 June 2003	1 July 2003	Sch 3 (item 25)
Customs Amendment Act (No. 1) 2003	62, 2003	30 June 2003	Sch 1: 1 July 2003 Sch 2: 28 July 2003 (gaz 2003, No S310) Remainder: 30 June 2003	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment Act (No. 1) 2003	119, 2003	4 Dec 2003	Sch 1 (items 1–8, 12–26): 19 Dec 2003 (gaz 2003, No S485) Sch 2: 1 Dec 2002 Sch 3 (item 10): 1 July 2003 Sch 3 (items 11, 12): 22 Sept 2004 (s 2(1) item 11) Remainder: 4 Dec 2003	Sch 1 (items 6, 8, 26, 32, 34, 37) and Sch 3 (items 5, 7, 9, 12) Sch 3 (item 3) (rep. by 5, 2007, Sch 7 [item 4])
as amended by				
Customs Legislation Amendment (Border Compliance and Other Measures) Act 2007	5, 2007	19 Feb 2007	Sch 7 (items 3, 4): (*see* 5, 2007 below)	—
Customs Legislation Amendment Act (No. 2) 2003	136, 2003	17 Dec 2003	Sch 1 (items 1, 2): 19 July 2005 (s 2(1) item 2) Sch 1 (item 3–6): 22 Sept 2004 (s 2(1) items 3, 4) Sch 1 (item 7): 19 July 2005 (s 2(1) item 5) Sch 1 (items 8–32): 14 Jan 2004 Sch 1 (items 33A, 34–41): 17 Dec 2003	Sch 1 (items 2, 32, 37–41)
Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003	140, 2003	17 Dec 2003	Sch 1 (items 17, 18): 1 Jan 2005 (s 2(1) item 3)	—
Designs (Consequential Amendments) Act 2003	148, 2003	17 Dec 2003	Sch 1 and 2: 17 June 2004 (s 2(1) item 2) Remainder: 17 Dec 2003	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004	25, 2004	25 Mar 2004	s 4–18 and Sch 2 (items 1–3, 5, 16–26): 25 Mar 2004 (s 2(1) items 10, 12, 17) s 19 and Sch 1: 19 July 2005 (s 2(1) items 2–9) Sch 2 (item 4): 5 Jan 2003 (s 2(1) item 11) Sch 2 (items 6–14): 25 Sept 2004 (s 2(1) items 13–15) Sch 2 (item 15): 22 Sept 2004 (s 2(1) item 16)	s 7–19 s 4 (am. by 105, 2005, Sch 1 [item 1]) s 5 and 6 (rs. by 105, 2005, Sch 1 [item 2])
as amended by				
Customs Amendment (Extension of Import Cut-over Time) Act 2005	105, 2005	24 Aug 2005	24 Aug 2005	—
Australian Federal Police and Other Legislation Amendment Act 2004	64, 2004	22 June 2004	Sch 2 (item 7): 1 July 2004	—
Bankruptcy Legislation Amendment Act 2004	80, 2004	23 June 2004	Sch 1 (items 192–194, 212, 213, 215): 1 Dec 2004 (gaz 2004, No. GN34)	Sch 1 (items 212, 213, 215)
Excise and Other Legislation Amendment (Compliance Measures) Act 2004	91, 2004	29 June 2004	Sch 1 (item 1): never commenced (s 2(1) item 2) Sch 1 (items 2–9): 29 Dec 2004 Sch 2–4: 30 June 2004 Remainder: 29 June 2004	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment (Airport, Port and Cargo Security) Act 2004	111, 2004	13 July 2004	Sch 1 and 5: 14 July 2004 (s 2(1) items 2, 16) Sch 2 (items 1, 2, 4) and Sch 4: 10 Aug 2004 (s 2(1) items 3, 4, 6, 15) Sch 2 (items 3, 5) and Sch 3 (items 3, 4, 6): never commenced (s 2(1) items 5, 7, 10, 11, 13) Sch 3 (items 1, 2, 5, 7) and Sch 6 (items 1–4): 13 Jan 2005 (s 2(1) items 8, 9, 12, 14, 17, 18) Sch 6 (items 5–12): 19 July 2005 (s 2(1) item 19) Remainder: 13 July 2004 (s 2(1) item 1)	s 4
US Free Trade Agreement Implementation Act 2004	120, 2004	16 Aug 2004	Sch 1: 1 Jan 2005 (s 2(1) and gaz 2004, No GN51)	—
Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004	127, 2004	31 Aug 2004	Sch 1 (item 24): 1 Mar 2005 Sch 5 (items 3–8): 28 Sept 2004	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Act 2004	130, 2004	26 Nov 2004	Sch 1 (items 1–3, 6): 1 Jan 2005 (s 2(1) items 2, 3, 6) Sch 1 (items 4, 5, 7, 8): never commenced (s 2(1) items 4, 5, 7, 8) Remainder: 26 Nov 2004	—
Customs Amendment Act 2004	133, 2004	9 Dec 2004	Sch 2: never commenced (s 2(1) item 3) and Act No. 129, 2005 (s 2(1) item 2) Remainder: 9 Dec 2004	Sch 1 (item 110)
Surveillance Devices Act 2004	152, 2004	15 Dec 2004	15 Dec 2004	Sch 1 (item 6)
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s. 4 and Sch 1 (items 127–133, 496): 22 Feb 2005	s 4 and Sch 1 (item 496)
Customs Legislation Amendment (Import Processing Charges) Act 2005	91, 2005	6 July 2005	Sch 1 (items 1–8): 19 July 2005 (s 2(1) items 2–6)	—
Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005	129, 2005	8 Nov 2005	Sch 1 (items 14–66, 75, 76): 6 Dec 2005 Sch 8: 8 Nov 2005	Sch 1 (items 75, 76)
Anti-Terrorism Act (No. 2) 2005	144, 2005	14 Dec 2005	s. 4 and Sch 10 (item 29): 14 Dec 2005 Sch 1 (item 23): 15 Dec 2005	s 4

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Offshore Petroleum (Repeals and Consequential Amendments) Act 2006	17, 2006	29 Mar 2006	Sch 2 (items 18–20): 1 July 2008 (s 2(1) and F2008L02273)	—
Customs Amendment (Fuel Tax Reform and Other Measures) Act 2006	76, 2006	26 June 2006	1 July 2006	Sch 1 (item 19)
Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006	109, 2006	27 Sept 2006	Sch 3: 27 June 2005	—
Customs Amendment (2007 Harmonized System Changes) Act 2006	119, 2006	4 Nov 2006	4 Nov 2006	—
Customs Legislation Amendment (New Zealand Rules of Origin) Act 2006	166, 2006	12 Dec 2006	1 Jan 2007	Sch 1 (items 22, 23)
Law and Justice Legislation Amendment (Marking of Plastic Explosives) Act 2007	3, 2007	19 Feb 2007	Sch 2: 25 Aug 2007	—
Customs Legislation Amendment (Border Compliance and Other Measures) Act 2007	5, 2007	19 Feb 2007	Sch 1, 3 and 4: 20 Feb 2007 Sch 2: 19 Mar 2007 Sch 5: 19 Aug 2007 Sch 7 (items 3, 4): 4 Dec 2003 (s 2(1) item 8) Remainder: 19 Feb 2007	Sch 1 (item 6), Sch 4 (item 7) and Sch 7 (item 2)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 1 (item 3): 15 Dec 2004 (s 2(1) item 4) Sch 4 (items 6–12) and Sch 5: 15 Mar 2007	—
International Trade Integrity Act 2007	147, 2007	24 Sept 2007	Sch1 (items 27–37): 24 Mar 2008 Remainder: 24 Sept 2007	Sch 1 (items 30, 32)
Customs Amendment (Strengthening Border Controls) Act 2008	74, 2008	12 July 2008	Sch 1: 12 Jan 2009 Sch 2: 9 Aug 2008 Remainder: 12 July 2008	Sch 1 (item 37) and Sch 2 (item 22)
Customs Legislation Amendment (Modernising) Act 2008	75, 2008	12 July 2008	Sch 1: 27 Mar 2009 (gaz 2009, No S57) Sch 2: 13 July 2008 Sch 3 (items 1–8, 10–12) and Sch 4: 9 Aug 2008	Sch 1 (item 2), Sch 3 (items 10–12) and Sch. 4 (item 3)
Migration Legislation Amendment Act (No. 1) 2008	85, 2008	15 Sept 2008	Sch 2 (items 4–9): 15 Mar 2009	Sch 2 (item 9)
Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008	117, 2008	21 Nov 2008	Sch 3 (items 9–11): 22 Nov 2008	—
Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008	127, 2008	27 Nov 2008	Sch 1: 6 Mar 2009 (gaz 2009, No GN7) Remainder: 27 Nov 2008	Sch 1 (item 3)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 2 (items 43–52): 10 Dec 2008	Sch 2 (item 52)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Sch 2 (items 21–24): 23 May 2009	—
Customs Amendment (Enhanced Border Controls and Other Measures) Act 2009	34, 2009	22 May 2009	Sch 1, Sch 2 and Sch 15: 22 May 2009 Sch 3, Sch 5–9, Sch 10 (items 1, 2, 4), Sch 11, Sch 12 (items 1, 2), Sch 13, Sch 14, Sch 16 and Sch 17: 19 June 2009 Sch 4: 22 Nov 2009	Sch 1 (item 3), Sch 6 (item 5) and Sch 10 (item 4)
Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009	97, 2009	2 Oct 2009	Sch 1: 1 Jan 2010 (gaz 2009, No. GN48) Remainder: 2 Oct 2009	Sch 1 (item 2)
Crimes Legislation Amendment (Serious and Organised Crime) Act 2010	3, 2010	19 Feb 2010	Sch 3 (item 21): 19 Feb 2010	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (items 16, 17) and Sch 5 (items 33–43): 1 Mar 2010	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 50): 1 Jan 2011	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 54–57): 22 Mar 2011 Sch 5 (items 83–86) and Sch 7 (item 45): 19 Apr 2011	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 468–478) and Sch 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
Customs Amendment (Export Controls and Other Measures) Act 2011	63, 2011	29 June 2011	Sch 1 and Sch 2 (items 1–32, 39–56): 28 Nov 2011 (F2011L02441) Sch 3: 27 July 2011	—
Customs Amendment (Serious Drugs Detection) Act 2011	78, 2011	25 July 2011	Sch 1: 25 Jan 2012 Remainder: 25 July 2011	Sch 1 (items 36, 37)
Customs Amendment (Anti-dumping Improvements) Act 2011	123, 2011	17 Oct 2011	Sch 1: 24 Oct 2011 (F2011L02104) Remainder: 17 Oct 2011	Sch 1 (item 15)
Customs Amendment (Anti-dumping Measures) Act 2011	124, 2011	17 Oct 2011	Sch 1: 24 Oct 2011 (F2011L02105) Remainder: 17 Oct 2011	Sch 1 (item 16)
Customs Amendment (New Zealand Rules of Origin) Act 2012	1, 2012	6 Mar 2012	Sch 1: 30 Apr 2012 (gaz 2012, No. GN21) Remainder: 6 Mar 2012	Sch 1 (items 11, 15)
as amended by				
Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Act 2012	172, 2012	4 Dec 2012	Sch 2 (items 2–5): 30 Apr 2012 (s 2(1) item 4)	—
Crimes Legislation Amendment (Powers and Offences) Act 2012	24, 2012	4 Apr 2012	Sch 5 (items 13, 14): 4 Apr 2012 Sch 5 (item 15): never commenced (s 2(1) item 9)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (Reducing Business Compliance Burden) Act 2012	37, 2012	15 Apr 2012	Sch 1 (items 1–10, 15): 15 Apr 2012	Sch 1 (item 15)
Indirect Tax Laws Amendment (Assessment) Act 2012	39, 2012	15 Apr 2012	Sch 1 (items 10–15, 152–165, 239): 1 July 2012	Sch 1 (item 239)
as amended by				
Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 2 (item 2): 1 July 2012 (s 2(1) item 4)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (items 41–49): 22 Sept 2012	—
Customs Amendment (Smuggled Tobacco) Act 2012	146, 2012	6 Nov 2012	7 Nov 2012	Sch 1 (item 3)
Customs Amendment (Military End-Use) Act 2012	152, 2012	13 Nov 2012	14 Nov 2012	—
Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012	167, 2012	28 Nov 2012	Sch 1 (items 20–22): 28 May 2013 Sch 1 (item 23): 29 Nov 2012	Sch 1 (item 23)
Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Act 2012	172, 2012	4 Dec 2012	Sch 1: 1 Jan 2013 (gaz 2013, No. GN1) Sch 2 (item 1): 4 Dec 2012	Sch 1 (item 3)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (Anti-dumping Improvements) Act (No. 3) 2012	196, 2012	12 Dec 2012	Sch 1–3: 11 June 2013 (F2013L00917) Sch 4 (items 1–7, 9): 13 Dec 2012 Sch 4 (item 8): 10 June 2013 (s 2(1) item 4) Remainder: 12 Dec 2012	Sch 1 (item 13), Sch 2 (item 15), Sch 3 (item 11) and Sch 4 (item 9)
as amended by				
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 2 (item 1): 11 June 2013 (s 2(1) item 3)	—
Customs Amendment (Anti-dumping Improvements) Act (No. 1) 2012	205, 2012	13 Dec 2012	Sch 1: 10 June 2013 (F2013L00915) Remainder: 13 Dec 2012	Sch 1 (items 105–107)
Customs Amendment (Anti-dumping Improvements) Act (No. 2) 2012	206, 2012	13 Dec 2012	Sch 1: 11 June 2013 (F2013L00916) Remainder: 13 Dec 2012	Sch 1 (item 10)
Maritime Powers (Consequential Amendments) Act 2013	16, 2013	27 Mar 2013	Sch 1: 27 Mar 2014 (s 2(1))	—
Customs Amendment (Anti-Dumping Commission) Act 2013	32, 2013	30 Mar 2013	Sch 1 (items 1–14, 22, 23): 1 July 2013	Sch. 1 (items 22, 23)
Customs Amendment (Miscellaneous Measures) Act 2013	33, 2013	30 Mar 2013	Sch 1 (items 1–9): 30 Sept 2013 Sch 1 (items 10–39, 42–81, 85–99): 31 Mar 2013	Sch 1 (items 9, 17, 28, 34, 38)
Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013	52, 2013	28 May 2013	Sch 1 (items 1–44, 47–143): 28 Nov 2013 Sch 1 (items 45, 46): 29 May 2013	Sch 1 (items 42, 46, 58, 143)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 2 (item 1): 28 Nov 2013 (s 2(1) item 3)	—
Customs Amendment (Anti-dumping Measures) Act 2013	95, 2013	28 June 2013	1 Jan 2014	Sch 1 (item 38)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 1 (items 74–76) and Sch 3 (items 78–94, 343): 29 June 2013	Sch 3 (item 343)
Customs Amendment (Anti-Dumping Commission Transfer) Act 2013	139, 2013	13 Dec 2013	Sch 1 (items 1–93, 100–104): 27 Mar 2014 (F2014L00281)	Sch 1 (items 100–104)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (items 18, 19) and Sch 4 (items 25, 65–79): 24 June 2014 (s 2(1) items 2, 9)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 91–93) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

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as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 5 (items 3, 4) and Sch 7 (items 4, 5): 17 Oct 2014 (s 2(1) items 2, 4)	—
Customs Amendment (Korea-Australia Free Trade Agreement Implementation) Act 2014	113, 2014	21 Oct 2014	Sch 1: 12 Dec 2014 (s 2(1) item 2) Remainder: 21 Oct 2014 (s 2(1) item 1)	Sch 1 (item 3)
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 1 (items 111–114): 1 Dec 2014 (s 2(1) item 2) Sch 3 (items 1–14): 4 Nov 2014 (s 2(1) item 3) Sch 6 (item 19): 1 July 2015 (s 2(1) item 4)	Sch 1 (item 114)
Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Act 2014	124, 2014	4 Dec 2014	Sch 1: 15 Jan 2015 (s 2(1) item 2) Remainder: 4 Dec 2014 (s 2(1) item 1)	Sch 1 (item 3)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment Act 2015	4, 2015	25 Feb 2015	26 Feb 2015 (s 2)	Sch 1 (item 42)
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (item 12) and Sch 3 (items 62–69): 25 Mar 2015 (s 2(1) items 2, 10)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (items 76–79, 348, 349): 5 Mar 2016 (s 2(1) item 2)	Sch 3 (items 348, 349)
Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015	12, 2015	5 Mar 2015	Sch 1 (items 2–13): 5 Sept 2015 (s 2(1) item 2) Sch 2 (items 19–23) and Sch 6 (items 6–8): 6 Mar 2015 (s 2(1) items 3, 7)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 1 and 9: 1 July 2015 (s 2(1) items 2, 7) Sch 8 (items 4–7): 5 Sept 2015 (s 2(1) item 4)	Sch 1 (items 862–965), Sch 8 (item 7) and Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Customs Amendment (Anti-dumping Measures) Act (No. 1) 2015	42, 2015	20 May 2015	Sch 1: 2 Nov 2015 (s 2(1) item 2)	Sch 1 (items 12, 55, 56, 58, 66, 68, 70, 79, 82, 84, 91, 124, 127)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 120): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (items 5–9) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3: 16 June 2015 (s 2(1) item 3)	Sch 3 and 4
as amended by				
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (item 9): 20 Sept 2017 (s 2(1) item 4)	—
Customs Amendment (Australian Trusted Trader Programme) Act 2015	73, 2015	25 June 2015	Sch 1 (items 1–5): 1 July 2015 (s 2(1) item 2)	—
Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Act 2015	81, 2015	26 June 2015	Sch 1 (items 1–6, 11, 25–28): 1 July 2015 (s 2(1) item 1)	Sch 1 (items 11, 25–28)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 160, 161): 5 Mar 2016 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (China-Australia Free Trade Agreement Implementation) Act 2015	136, 2015	11 Nov 2015	Sch 1: 20 Dec 2015 (s 2(1) item 2) Sch 2: 5 Mar 2016 (s 2(1) item 3)	Sch 1 (item 3)
Customs Amendment (Fees and Charges) Act 2015	141, 2015	12 Nov 2015	Sch 1: 1 Jan 2016 (s 2(1) item 2)	Sch 1 (items 21–23)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 1 (item 18) and Sch 4 (items 1, 107–109, 359–361): 10 Mar 2016 (s 2(1) items 2, 6)	—
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016	26, 2016	23 Mar 2016	Sch 1 (items 12–15, 34, 35): 1 May 2016 (s 2(1) item 2)	Sch 1 (items 34, 35)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (items 17, 18) and Sch 3 (item 17): 21 Oct 2016 (s 2(1) item 1)	—
Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 1 (items 16, 17): 17 Nov 2016 (s 2(1) item 2)	—
Customs Amendment (2017 Harmonized System Changes) Act 2016	77, 2016	23 Nov 2016	Sch 1: 1 Jan 2017 (s 2(1) item 2)	—
Customs and Other Legislation Amendment Act 2017	19, 2017	4 Apr 2017	Sch 1: 2 May 2017 (s 2(1) item 2) Sch 2: 1 July 2017 (s 2(1) item 3) Sch 3–6: 5 Apr 2017 (s 2(1) item 4)	Sch 1 (item 4), Sch 2 (item 8), Sch 4 (item 4) and Sch 5 (item 4)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Product Emissions Standards (Consequential Provisions) Act 2017	107, 2017	14 Sept 2017	15 Sept 2017 (s 2(1) item 1)	—
Customs Amendment (Anti-Dumping Measures) Act 2017	119, 2017	30 Oct 2017	Sch 1: 31 Oct 2017 (s 2(1) item 2)	Sch 1 (item 4)
Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017	120, 2017	30 Oct 2017	Sch 1: 1 Dec 2017 (s 2(1) item 2) Sch 2: 1 Dec 2020 (s 2(1) item 3)	Sch 1 (item 12) and Sch 2 (item 10)
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 2 (items 117, 118, 284): 11 May 2018 (s 2(1) items 3, 7)	Sch 2 (item 284)
Customs Amendment (Illicit Tobacco Offences) Act 2018	89, 2018	31 Aug 2018	Sch 1 and 2: 1 Sept 2018 (s 2(1) items 2, 3)	Sch 1 (item 7) and Sch 2 (item 7)
Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018	112, 2018	25 Sept 2018	Sch 1: 13 Dec 2020 (s 2(1) item 2)	Sch 1 (item 5)
Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018	127, 2018	19 Oct 2018	Sch 1: 30 Dec 2018 (s 2(1) item 2)	Sch 1 (item 5)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (Collecting Tobacco Duties at the Border) Act 2018	131, 2018	25 Oct 2018	Sch 1: 1 July 2019 (s 2(1) item 2)	Sch 1 (items 12–16)
Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018	148, 2018	8 Dec 2018	Sch 4: 9 Dec 2018 (s 2(1) item 6)	Sch 4 (item 21)
Customs Amendment (Product Specific Rule Modernisation) Act 2018	151, 2018	10 Dec 2018	14 Dec 2018 (s 2(1) item 1)	Sch 1 (item 41)
Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018	164, 2018	10 Dec 2018	Sch 4 (item 3): 1 July 2021 (s 2(1) item 5) Sch 4 (item 17): 1 July 2023 (s 2(1) item 6)	—
as amended by				
Road Vehicle Standards (Consequential and Transitional Provisions) Amendment Act 2022	17, 2022	1 Apr 2022	Sch 1 (item 1): 1 Apr 2022 (s 2(1) item 1)	—
Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019	3, 2019	1 Mar 2019	Sch 3 and 5: 2 Mar 2019 (s 2(1) items 4, 6)	—
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (items 40–57): 30 Aug 2019 (s 2(1) item 2)	—

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Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Combatting Child Sexual Exploitation Legislation Amendment Act 2019 (C2019A00072)	72, 2019	20 Sept 2019	sch 2 (item 7), sch 7 (items 38-41, 45-48): 21 Sept 2019 (s 2(1) items 3, 4)	sch 7 (items 45-48)
Customs Amendment (Immediate Destruction of Illicit Tobacco) Act 2019 (C2019A00076)	76, 2019	2 Oct 2019	3 Oct 2019 (s 2(1) item 1)	—
Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019 (C2019A00108)	108, 2019	3 Dec 2019	sch 1: 11 Feb 2020 (s 2(1) item 2) sch 2: 5 July 2020 (s 2(1) item 3) sch 3: 17 Jan 2020 (s 2(1) item 4)	sch 1 (item 5), sch 2 (item 5), sch 3 (item 5)
Export Control (Consequential Amendments and Transitional Provisions) Act 2020 (C2020A00013)	13, 2020	6 Mar 2020	sch 2 (item 9), sch 3 (items 1-91): 3 am (A.C.T.) 28 Mar 2021 (s 2(1) item 2)	sch 3 (items 1-91)
Statute Update (Regulations References) Act 2020 (C2020A00018)	18, 2020	6 Mar 2020	sch 1 (item 23): 6 Sept 2020 (s 2(1) item 1)	—
Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020 (C2020A00092)	92, 2020	14 Oct 2020	sch 3 (items 3-7, 40): 1 Jan 2021 (s 2(1) item 7)	sch 3 (item 40)

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (Product Specific Rule Modernisation) Act 2021 (C2021A00004)	4, 2021	16 Feb 2021	9 Apr 2021 (s 2(1) item 1)	sch 1 (item 51)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021 (C2021A00013)	13, 2021	1 Mar 2021	sch 2 (items 294, 295): 1 Sept 2021 (s 2(1) item 5)	—
Customs Amendment (2022 Harmonized System Changes) Act 2021 (C2021A00090)	90, 2021	2 Sept 2021	sch 1: 1 Jan 2022 (s 2(1) item 2)	sch 1 (item 2)
Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021 (C2021A00112)	112, 2021	25 Oct 2021	sch 1: 1 Jan 2022 (s 2(1) item 2)	sch 1 (item 5)
Treasury Laws Amendment (2021 Measures No. 5) Act 2021 (C2021A00127)	127, 2021	7 Dec 2021	sch 2 (items 37-45): 8 Dec 2021 (s 2(1) item 3)	—
Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022 (C2022A00057)	57, 2022	23 Nov 2022	sch 1: 29 Dec 2022 (s 2(1) item 2)	sch 1 (item 5)

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Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (Australia-United Kingdom Free Trade Agreement Implementation) Act 2022 (C2022A00059)	59, 2022	23 Nov 2022	sch 1: 31 May 2023 (s 2(1) item 2)	sch 1 (item 5)
Offshore Electricity Infrastructure Legislation Amendment Act 2022 (C2022A00071)	71, 2022	30 Nov 2022	sch 1: 1 Dec 2022 (s 2(1) item 1)	sch 1 (item 33)
Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023 (C2023A00040)	40, 2023	28 June 2023	sch 4 (items 1-7): 1 July 2023 (s 2(1) item 5)	—
Customs Legislation Amendment (Controlled Trials and Other Measures) Act 2023 (C2023A00066)	66, 2023	14 Sept 2023	sch 1 (items 2-4): 14 Mar 2024 (s 2(1) item 2) sch 2 (items 1-10, 15): 15 Sept 2023 (s 2(1) item 3)	sch 2 (item 15)
Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023 (C2023A00074)	74, 2023	20 Sept 2023	sch 1 (items 29-34): 20 Mar 2024 (s 2(1) item 2) sch 4 (items 14-24): 18 Oct 2023 (s 2(1) item 3)	sch 1 (item 34)
Crimes and Other Legislation Amendment (Omnibus No. 2) Act 2023 (C2023A00098)	98, 2023	27 Nov 2023	sch 2 (items 18-20, 23): 28 Nov 2023 (s 2(1) item 1)	sch 2 (item 23)

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024 (C2024A00039)	39, 2024	31 May 2024	sch 10 (items 17-28): 14 Oct 2024 (s 2(1) item 2)	—
Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024 (C2024A00050)	50, 2024	27 June 2024	sch 2: 28 June 2024 (s 2(1) item 3)	—
Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024 (C2024A00051)	51, 2024	28 June 2024	sch 1 (items 1-71, 170, 171, 173-178, 186, 187): 1 July 2024 (s 2(1) item 1)	sch 1 (items 170, 171, 186)
Customs Amendment (Strengthening and Modernising Licensing and Other Measures) Act 2024 (C2024A00079)	79, 2024	5 Sept 2024	sch 1 (items 1-120, 123-266): 5 Mar 2025 (s 2(1) items 2, 3)	sch 1 (items 25, 106, 110, 118, 120, 143, 171, 179, 187, 195, 205, 209, 266)
Crown References Amendment Act 2024 (C2024A00115)	115, 2024	10 Dec 2024	sch 1 (item 10): 11 Dec 2024 (s 2(1) item 1)	—
Customs Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Act 2024 (C2024A00116)	116, 2024	10 Dec 2024	sch 1: 21 Apr 2025 (s 2(1) item 2) sch 2: 10 June 2025 (s 2(1) item 3)	sch 1 (items 6, 13, 15, 18), sch 2 (item 21)

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment (Expedited Seizure and Disposal of Engineered Stone) Act 2025 (C2025A00011)	11, 2025	20 Feb 2025	21 Feb 2025 (s 2(1) item 1)	—
Customs Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Act 2025 (C2025A00032)	32, 2025	2 Aug 2025	sch 1: 1 Oct 2025 (s 2(1) item 2)	sch 1 (item 5)
Criminal Code Amendment (State Sponsors of Terrorism) Act 2025 (C2025A00060)	60, 2025	6 Nov 2025	sch 3 (items 44-46): 8 Nov 2025 (s 2(1) item 2)	—
Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Act 2026 (C2026A00001)	1, 2026	21 Jan 2026	sch 1 (items 11-13), sch 2 (items 122, 123): 22 Jan 2026 (s 2(1) items 2, 3)	sch 2 (item 123)
Law and Justice Legislation Amendment (New South Wales Local Court) Act 2026 (C2026A00004)	4, 2026	5 Mar 2026	sch 1 (items 6-9, 30): 28 Mar 2026 (s 2(1) item 1)	sch 1 (item 30)
Combatting Illicit Tobacco Act 2026 (C2026A00082)	82, 2026	26 Aug 2026	sch 1 (items 1-6): 27 Aug 2026 (s 2(1) item 2)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part I	
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; No 14, 1968; No 104, 1968; No 134, 1971; No 216, 1973; No 28, 1974; No 120, 1974; No 91, 1976; No 174, 1976; No 154, 1977; No 92, 1979 (as am by No 40, 1985); No 155, 1979; No 180, 1979; No 110, 1980; No 64, 1981; No 152, 1981; No 48, 1982; No 51, 1982; No 80, 1982; No 115, 1982; No 72, 1984; No 165, 1984; No 39, 1985; No 175, 1985; No 34, 1986; No 81, 1987; No 76, 1987; No 104, 1987; No 23, 1989; No 24, 1989; No 78, 1989; No 5, 1990; No 37, 1990; No 79, 1990; No 111, 1990; No 82, 1991; No 34, 1992; No 104, 1992; No 209, 1992; No 8, 1994; No 20, 1994; No 65, 1994; No 85, 1995; No 15, 1996; No 3, 1997; No 97, 1997; No 167, 1997; No 8, 1998; No 87, 1999; No 137, 1999; No 142, 1999; No 160, 1999; No 176, 1999; No 7, 2000; No 25, 2000; No 137, 2000; No 24, 2001; No 25, 2001; No 95, 2001; No 161, 2001; No 64, 2002; No 82, 2002; No 10, 2003; No 54, 2003; No 62, 2003; No 119, 2003; No 25, 2004; No 80, 2004; No 130, 2004; No 91, 2005; No 129, 2005; No 17, 2006; No 76, 2006; No 3, 2007; No 5, 2007; No 8, 2007; No 147, 2007; No 74, 2008; No 117, 2008; No 144, 2008; No 33, 2009; No 34, 2009; No 8, 2010; No 5, 2011; No 46, 2011; No 78, 2011; No 24, 2012; No 37, 2012; No 39, 2012; No 16, 2013; No 32, 2013; No 33, 2013; No 52, 2013; No 139, 2013; No 62, 2014; No 109, 2014; No 4, 2015; No 41, 2015; No 62, 2015; No 73, 2015; No 26, 2016; No 120, 2017; No 131, 2018
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Provision affected	How affected
	am No 57, 2019; No 92, 2020; No 13, 2021; No 90, 2021; No 71, 2022; No 40, 2023; No 66, 2023; No 74, 2023; No 51, 2024; No 60, 2025; No 4, 2026
s 4AAA	ad No 144, 2008
s 4AA	ad No 113, 1993
s 4AB	ad No 160, 1999
s 4A	ad No 5, 1990
	am No 111, 1990; No 85, 1995; No 25, 2001; No 54, 2003; No 10, 2015; No 41, 2015; No 1, 2026
s 4B	ad No 95, 2001
	am No 129, 2005; No 3, 2007
s 4C	ad No 95, 2001
	am No 120, 2004; No 41, 2015
s 5	rs No 56, 1951
	am No 216, 1973; No 28, 1974; No 81, 1982
s 5AA	ad No 24, 2001
Part II	
s 5A	ad No 51, 1982
	am No 104, 1987; No 85, 1995; No 24, 2001; No 82, 2002; No 41, 2015; No 62, 2015
s 5B	ad No 104, 1987
	am No 85, 1995; No 137, 1999; No 24, 2001; No 82, 2002; No 41, 2015; No 62, 2015
s 5BA	ad No 71, 2022
s 5C	ad No 104, 1987
	am No 71, 2022
s 6	rep No 28, 1974
	ad No 118, 1997
	rs No 8, 1998
s 7	am No 28, 1974; No 154, 1977; No 51, 1982; No 63, 1984
	rs No 39, 1985
	am No 85, 1995

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Endnote 4—Amendment history

Provision affected	How affected
	rs No 25, 2001
	am No 54, 2003
	rs No 41, 2015
s 8	am No 10, 1916
	rs No 14, 1968
	am No 51, 1982; No 39, 1985; No 34, 1986; No 85, 1995; No 17, 2006; No 117, 2008; No 41, 2015
s 8A	ad No 12, 1923
	rs No 14, 1968
	am No 41, 2015
s 9	rs No 92, 1979; No 24, 1989
	am No 174, 1989; No 207, 1992; No 25, 2001; No 54, 2003; No 25, 2004; No 46, 2011; No 206, 2012; No 32, 2013; No 139, 2013
s 10	rs No 92, 1979
	rep No 39, 1985
s 11	rs No 92, 1979
	am No 79, 1990; No 64, 2002; No 8, 2010; No 5, 2011; No 26, 2016; No 4, 2026
s 12	rep No 47, 1953
s 13	rs No 56, 1951; No 48, 1963
	am No 14, 1968; No 28, 1974; No 154, 1977; No 10, 1986; No 85, 1995; No 8, 2007; No 33, 2009; No 41, 2015
s 14	am No 12, 1923; No 64, 1981; No 41, 2015
s 15	am No 12, 1923; No 108, 1952; No 54, 1959
	rs No 110, 1980
	am No 10, 1986; No 85, 1995; No 111, 2004; No 109, 2006; No 41, 2015
s 16	am No 12, 1923; No 108, 1952
	rep No 110, 1980
s 17	am No 39, 1985; No 85, 1995; No 3, 1997
	rep No 41, 2015

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Provision affected	How affected
s 18	rep No 110, 1980
s 19	am No 12, 1923; No 108, 1952; No 28, 1966; No 54, 1967; No 64, 1981; No 10, 1986; No 85, 1995; No 82, 2002; No 8, 2007; No 41, 2015
s 20	rs No 54, 1959
	rep No 104, 1968
	ad No 209, 1992
	am No 24, 2001; No 82, 2002; No 63, 2011; No 41, 2015
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 27	rep No 41, 2015
s 28	am No 28, 1966; No 54, 1967
	rs No 110, 1980
	am No 39, 1985; No 175, 1985; No 85, 1995; No 3, 1997; No 41, 2015
s 29	rep No 110, 1980
Part III	
Part III heading	am No 34, 1992
s 30	am No 36, 1910; No 104, 1968; No 64, 1981; No 34, 1986; No 111, 1990; No 34, 1992; No 221, 1992; No 25, 2001; No 95, 2001; No 76, 2006; No 63, 2011; No 32, 2013; No 33, 2013; No 41, 2015
s 30A	ad No 22, 1984

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Endnote 4—Amendment history

Provision affected	How affected
	am No 39, 1985; No 10, 1986; No 24, 1989; No 111, 1990; No 85, 1995; No 8, 2007; No 41, 2015
s 31	am No 12, 1923; No 108, 1952; No 64, 1981; No 111, 1990
	rs No 4, 2015
	am No 41, 2015
s 32	rep No 137, 1999
s 33	am No 28, 1966; No 54, 1967; No 104, 1968
	rs No 64, 1981
	am No 51, 1982; No 81, 1982
	rs No 95, 2001
	am No 82, 2002; No 63, 2011; No 41, 2015
s. 33A	ad. No. 51, 1982
	am. No. 104, 1987; No. 85, 1995; No. 24, 2001; No. 82, 2002; No 41, 2015
s. 33B	ad. No. 104, 1987
	am. No. 85, 1995; No. 24, 2001; No. 82, 2002; No 41, 2015
s 33BA	ad No 71, 2022
s. 33C	ad. No. 34, 2009
s 34	am No 41, 2015
s. 35	am. No. 56, 1975; No 41, 2015
s. 35A	ad. No. 37, 1957
	am. No. 104, 1968; No. 28, 1974; No. 154, 1977; No. 64, 1981; No. 34, 1992; No. 95, 2001; No. 34, 2009; No 41, 2015
s. 36	am. No. 64, 1981
	rs. No. 81, 1982
	am. Nos. 5 and 111, 1990
	rep. No. 34, 1992
	ad. No. 34, 2009
	am No 41, 2015
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

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Provision affected	How affected
	rep. No. 34, 1992
	ad. No. 34, 2009
s. 38	rs. No. 81, 1982
	rep. No. 34, 1992
s. 38A	ad. No. 81, 1982
	rep. No. 34, 1992
s. 38B	ad. No. 81, 1982
	am. No. 23, 1989; No. 111, 1990
	rep. No. 34, 1992
s. 39	am. No. 12, 1923; No. 7, 1934
	rs. No. 64, 1981
	am. No. 23, 1989; No. 111, 1990
	rep. No. 34, 1992
s. 40	am. No. 28, 1966; No. 54, 1967
	rs. No. 64, 1981
	am. No. 81, 1982
	rep. No. 34, 1992
s. 40AA	ad. No. 104, 1968
	am. No. 28, 1974; No. 64, 1981; No. 81, 1982
	rep. No. 34, 1992
s. 40A	ad. No. 54, 1959
	am. No. 28, 1974; No. 64, 1981
	rep. No. 81, 1982
s. 40B	ad. No. 54, 1959
	am. No. 28, 1966; No. 28, 1974
	rs. No. 154, 1977
	am. No. 64, 1981
	rep. No. 81, 1982
s. 41	am. No. 12, 1923
	rep. No. 104, 1968

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Endnote 4—Amendment history

Provision affected	How affected
s. 42	am. No. 108, 1952; No. 37, 1957; No. 28, 1974; Nos. 45, 64, 67 and 157, 1981; No. 137, 1982; No. 76, 1988; No. 174, 1989; Nos. 34 and 207, 1992; No. 150, 1994; No. 85, 1995; No. 79, 1998; No. 95, 2001; No. 32, 2013; No 41, 2015
s. 43	am. No. 108, 1952
	rs. No. 37, 1957
s. 44	am. No. 85, 1995; No 41, 2015
s. 45	am. No. 77, 1975; Nos. 64 and 67, 1981; No. 76, 1988; No. 207, 1992; No. 150, 1994; No. 85, 1995; No 95 and 139, 2013; No 41, 2015
s 46	am No 41, 2015
s 47	am No 41, 2015
s. 48	am. No. 12, 1923; No 41, 2015
Part IV	
Division 1A	
Division 1A heading	ad. No. 54, 1959
s. 49	am. No. 12, 1923
s 49A	ad No 110, 1980
	am No 51, 1982; No 104, 1987; No 8, 2007; No 71, 2022
s 49B	ad No 104, 1987
	am No 71, 2022
s 49C	ad No 73, 2015
Division 1	
Division 1	rs. 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; No 34, 1998; No 24, 2001; No 129, 2005; No 4, 2016; No 1, 2026
s. 51	am. No. 12, 1923
	rs. No. 108, 1952
	am. No. 110, 1980
s 51A	ad No 129, 2005

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Provision affected	How affected
	am No 167, 2012; No 103, 2013; No 98, 2023
s. 52	am. No. 7, 1934
	rep. No. 108, 1952
	ad. No. 147, 2007
ss. 53–56	rep. No. 108, 1952
s. 57	am. No. 12, 1923; No. 7, 1934
	rep. No. 108, 1952
Division 2	
Division 2 heading	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; No 24, 2001; No 82, 2002; No 8, 2007; No 34, 2009; No 71, 2022
s 58A	ad No 104, 1987
	am No 85, 1995; No 137, 1999; No 24, 2001; No 82, 2002; No 109, 2014; No 41, 2015; No 4, 2016; No 3, 2019; No 71, 2022
s. 58B	ad. No. 37, 1990
	am. No. 85, 1995; No. 25, 2000; No. 24, 2001; No. 82, 2002; No. 10, 2003; No 41, 2015; No 4, 2016; No 57, 2019
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; No. 137, 1999
	rep. No. 160, 1999
s. 60	am. No. 12, 1923; No. 108, 1952; No. 37, 1957; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982; No. 111, 1990; No. 85, 1995; No. 24, 2001; No. 82, 2002; No. 8, 2007; No 52, 2013; No 41, 2015
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; No 24, 2001; No 82, 2002; No 8, 2007; No 52, 2013; No 71, 2022

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Endnote 4—Amendment history

Provision affected	How affected
s. 61A	ad. No. 34, 2009
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; Nos. 24 and 95, 2001; No. 82, 2002; No. 8, 2007; No 52, 2013
s. 63	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982; Nos. 24 and 95, 2001; No. 82, 2002; No. 25, 2004; No 52, 2013
Division 3	
Subdivision A	
Subdivision A heading	ad. No. 7, 2000
s. 63A	ad. No. 7, 2000
	am. No. 95, 2001; Nos. 64 and 82, 2002; No 41, 2015
s. 64	rs. No. 12, 1923
	am. No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 51, 1982
	rs. No. 111, 1990
	am. Nos. 34 and 209, 1992; No. 82, 2002; No. 111, 2004
	rs. No. 95, 2001
	am. No. 111, 2004; No. 34, 2009; No 41, 2015
s. 64AA	ad. No. 111, 1990
	am. No. 34, 1992; No. 8, 1994; No. 82, 2002
	rs. No. 95, 2001
	am. No. 34, 2009; No 4, 2015; No 41, 2015
s. 64AAA	ad. No. 95, 2001
	am. No. 25, 2004; No. 34, 2009; No 4, 2015; No 41, 2015
s. 64AAB	ad. No. 95, 2001
	am. No. 33, 2013; No 41, 2015
s. 64AAC	ad. No. 95, 2001
	am. No. 82, 2002; No 41, 2015
s. 64AB	ad. No. 111, 1990

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Provision affected	How affected
	am. Nos. 34 and 209, 1992; No. 85, 1995; No. 3, 1997; No. 7, 2000
	rs. No. 95, 2001
	am. Nos. 64 and 82, 2002; No. 111, 2004; No. 74, 2008; No. 34, 2009; No 33 and 52, 2013; No 41, 2015
s. 64ABAA	ad. No. 95, 2001
	am. No. 82, 2002; No 41, 2015
s. 64ABAB	ad. No. 95, 2001
	am. No. 82, 2002; No. 136, 2003; No. 25, 2004; No 41, 2015
s. 64ABAC	ad. No. 95, 2001
s. 64ABA	ad. No. 209, 1992
	am. No. 64, 2002
	rep. No. 95, 2001
s. 64ABB	ad. No. 3, 1997
	am. No. 25, 2004
	rep. No. 95, 2001
s. 64ABC	ad. No. 3, 1997
	am. No. 7, 2000
	rs. No. 95, 2001
	rep. No. 91, 2005
s. 64ABD	ad. No. 3, 1997
	rep. No. 95, 2001
s. 64AC	ad. No. 111, 1990
	am. No. 34, 1992; No. 82, 2002
	rep. No. 64, 2002
s. 64ACA	ad. No. 64, 2002
	am. No. 111, 2004; No. 85, 2008; No. 103, 2013; No 116, 2014; No 41, 2015
s. 64ACB	ad. No. 64, 2002
	am. No. 85, 2008; No. 33, 2009; No 116, 2014; No 41, 2015
s. 64ACC	ad. No. 64, 2002

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 85, 2008; No 41, 2015
s. 64ACD	ad. No. 64, 2002
	am. No. 85, 2008
s. 64ACE	ad. No. 64, 2002
	am. No. 95, 2001; No. 33, 2013; No 41, 2015
s. 64ADAA	ad. No. 82, 2002
	am No 41, 2015
s. 64AD	ad. No. 111, 1990
	am. No. 209, 1992
	rep. No. 64, 2002
s. 64ADA	ad. No. 95, 2001
	am No 41, 2015
s. 64AE	ad. No. 34, 1992
	am. Nos. 24 and 95, 2001; Nos. 64 and 82, 2002; No. 8, 2010; No 52, 2013
s. 64AF	ad. No. 64, 2002
	am No 41, 2015
s. 64A	ad. No. 51, 1982
	am. No. 24, 2001; No. 82, 2002; No 52, 2013
s. 65	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 28, 1974; No. 64, 1981; No. 81, 1982; No. 24, 2001; No. 82, 2002; No. 8, 2007; No. 63, 2011; No 52, 2013; No 41, 2015
s. 66	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982; No. 82, 2002; No. 8, 2007
s. 67	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982; No. 24, 2001; No. 82, 2002
Division 3A heading	rep. No. 7, 2000
Subdivision B heading	ad. No. 7, 2000
	rep. No. 95, 2001
Division 3A	ad. No. 209, 1992
Subdivision B	rep. No. 95, 2001
s 67A	ad No 209, 1992

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Provision affected	How affected
	rep No 95, 2001
s 67B	ad No 209, 1992
	rep No 95, 2001
s 67C	ad No 209, 1992
	am No 85, 1995
	rep No 95, 2001
s 67D	ad No 209, 1992
	rep No 95, 2001
s 67E	ad No 209, 1992
	rep No 95, 2001
Subdivision C	
Subdivision C	ad. No. 7, 2000
s. 67EA	ad. No. 7, 2000
	am. No. 95, 2001; No. 91, 2005
s 67EB	ad No 7, 2000
	am No 55, 2001; No 95, 2001; No 8, 2007; No 52, 2013; No 41, 2015; No 127, 2021
s. 67EC	ad. No. 7, 2000
	am. No. 95, 2001; No 41, 2015
s. 67ED	ad. No. 7, 2000
	am No 41, 2015
s. 67EE	ad. No. 7, 2000
	am. No. 136, 2012; No 41, 2015
s. 67EF	ad. No. 7, 2000
	am No 41, 2015
s. 67EG	ad. No. 7, 2000
	am. No. 95, 2001; No 41, 2015
s. 67EH	ad. No. 7, 2000
s. 67EI	ad. No. 7, 2000
	am No 52, 2013
s. 67EJ	ad. No. 7, 2000

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Endnote 4—Amendment history

Provision affected	How affected
	am No 41, 2015
s 67EK	ad. No. 7, 2000
	am No 95, 2001; No 41, 2015
s 67EL	ad No 7, 2000
	am No 95, 2001; No 41, 2015
s 67EM	ad No 7, 2000
	am No 95, 2001; No 41, 2015; No 39, 2024
Subdivision D	ad. No. 7, 2000
	rep. No. 95, 2001
ss. 67EN–67ET	ad. No. 7, 2000
	rep. No. 95, 2001
s. 67EU	ad. No. 7, 2000
	am. No. 161, 2001
	rep. No. 95, 2001
Subdivision E	
Subdivision E	ad. No. 82, 2002
s. 67F	ad. No. 82, 2002
	am. No. 82, 2002
s. 67G	ad. No. 82, 2002
	am No 41, 2015
s 67H	ad No 82, 2002
	am No 8, 2007; No 52, 2013; No 41, 2015; No 127, 2021
s 67I	ad. No. 82, 2002
	am No 41, 2015
s 67J	ad No 82, 2002
	am No 41, 2015
s. 67K	ad. No. 82, 2002
	am. No. 82, 2002; No 41, 2015
Division 4	
Subdivision A	
Subdivision A heading	ad No 95, 2001

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Provision affected	How affected
s 68	rs No 54, 1959
	am No 104, 1968
	rs No 81, 1982; No 34, 1992
	am No 95, 2001; No 33, 2013; No 41, 2015; No 131, 2018
s 68A	ad No 95, 2001
s 69	rs No 81, 1982; No 34, 1992
	am No 209, 1992; No 15, 1996; No 82, 2002
	rs No 37, 2012
	am No 33, 2013; No 52, 2013; No 131, 2018; No 92, 2020; No 40, 2023
s. 70	rep. No. 81, 1982
	ad. No. 34, 1992
	am. No. 209, 1992; No. 176, 1999; Nos. 24 and 95, 2001; No. 82, 2002; No 52, 2013; No 41, 2015
s. 71	rs. No. 36, 1910
	am. No. 7, 1934
	rs. No. 64, 1981
	am. No. 81, 1982
	rs. No. 34, 1992
	am. No. 3, 1997; No. 108, 1999; No. 92, 2000
	rs. No. 95, 2001
	am. No. 82, 2002
	rs. No. 25, 2004
	am No 41, 2015
Subdivision AA	
Subdivision AA	ad. No. 25, 2004
s 71AAAA	ad. No. 25, 2004
s 71AAAB	ad No 25, 2004
	am No 41, 2015
s 71AAAC	ad No 25, 2004
	am No 41, 2015

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision AB	
Subdivision AB heading	ad. No. 25, 2004
s 71AAAD	ad No 25, 2004
s 71AAAE	ad No 25, 2004
	am No 46, 2011; No 126, 2015
s 71AAAF	ad. No. 25, 2004
	am No 41, 2015
s 71AAAG	ad No 25, 2004
	am No 41, 2015
s 71AAAH	ad No 25, 2004
	am No 41, 2015
s 71AAAI	ad No 25, 2004
	am No 41, 2015
s 71AAAJ	ad No 25, 2004
s 71AAAK	ad No 25, 2004
	am No 41, 2015
s. 71AAAL	ad. No. 25, 2004
	am. No. 91, 2005; No. 39, 2012; No 41, 2015
s 71AAAM	ad. No. 25, 2004
	am No 41, 2015
s 71AAAN	ad No 25, 2004
s 71AAAO	ad No 25, 2004
	am No 41, 2015
s. 71AAAP	ad. No. 25, 2004
	am. No. 91, 2005; No 41, 2015
s. 71AAAQ	ad. No. 25, 2004
	am No 52, 2013
s. 71AAAR	ad. No. 25, 2004
	am. No. 74, 2008; No 52, 2013
s 71AAAS	ad. No. 25, 2004
	am No 41, 2015

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Provision affected	How affected
s 71AAAT	ad No 25, 2004
	am No 41, 2015
s. 71AAA	ad. No. 95, 2001
	am. No. 25, 2004
	rep. No. 91, 2005
s. 71AAB	ad. No. 95, 2001
	rep. No. 91, 2005
Subdivision B	
Subdivision B heading	ad. No. 95, 2001
s. 71A	ad. No. 104, 1968
	am. No. 64, 1981
	rs. No. 34, 1992
	am. No. 3, 1997
	rs. No. 95, 2001
	am. No. 82, 2002; No. 33, 2013; No 41, 2015
s. 71AA	ad. No. 3, 1997
	am. No. 142, 1999
	rep. No. 95, 2001
s. 71AB	ad. No. 3, 1997
	rep. No. 95, 2001
s 71B	ad No 104, 1968
	am No 28, 1974; No 64, 1981; No 81, 1982
	rs No 34, 1992
	am No 209, 1992; No 8, 1994; No 85, 1995; No 3, 1997; No 142, 1999; No 176, 1999
	rs No 95, 2001
	am No 41, 2015; No 19, 2017
s. 71BA	ad. No. 95, 2001
	am No 41, 2015; No 141, 2015
s. 71C	ad. No. 34, 1992
	rs. No. 95, 2001

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 25, 2004; No. 39, 2012; No 41, 2015
s. 71D	ad. No. 34, 1992
	am. No. 85, 1995
	rs. No. 95, 2001
	am No 41, 2015
s. 71DA	ad. No. 95, 2001
Subdivision C	ad No 95, 2001
	rep No 33, 2013
s 71DB	ad No 95, 2001
	am No 5, 2007
	rep No 33, 2013
s 71DC	ad No 95, 2001
	am No 82, 2002; No 5, 2007
	rep No 33, 2013
s 71DD	ad No 95, 2001
	am No 82, 2002; No 5, 2007
	rep No 33, 2013
s 71DE	ad No 95, 2001
	rep No 33, 2013
s 71DF	ad No 95, 2001
	rs No 82, 2002; No 5, 2007
	rep No 33, 2013
Subdivision D	
Subdivision D	ad No 95, 2001
s 71DG	ad No 95, 2001
	rs No 82, 2002
	am No 5, 2007
	rep No 33, 2013
	ad No 131, 2018
s 71DGA	ad No 5, 2007
	rep No 33, 2013

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Provision affected	How affected
s 71DGB	ad No 5, 2007
	rep No 33, 2013
s 71DH	ad No 95, 2001
	am No 82, 2002; No 41, 2015
s 71DI	ad No 95, 2001
	am No 41, 2015; No 19, 2017
s 71DJ	ad No 95, 2001
	am No 41, 2015
s 71DK	ad No 95, 2001
	am No 41, 2015
s 71DL	ad No 95, 2001
Subdivision E	
Subdivision E heading	ad. No. 95, 2001
s 71E	ad No 34, 1992
	am No 209, 1992; No 85, 1995; No 24, 2001; No 95, 2001; No 82, 2002; No 25, 2004; No 33, 2013; No 41, 2015; No 51, 2024
	ed C182
s. 71F	ad. No. 34, 1992
	am. No. 8, 1994; Nos. 142 and 176, 1999
	rs. No. 95, 2001
	am. No. 136, 2003; No 41, 2015
s. 71G	ad. No. 34, 1992
	am. No. 82, 2002
	rs. No. 95, 2001
	am No 33 and 52, 2013
s. 71H	ad. No. 34, 1992
	am. No. 119, 2003
	rs. No. 95, 2001
	am. No. 74, 2008; No 52, 2013
s. 71J	ad. No. 34, 1992
	rs. No. 142, 1999; No. 95, 2001

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Endnote 4—Amendment history

Provision affected	How affected
	am No 41, 2015
s. 71K	ad. No. 34, 1992
	rs. No. 95, 2001
	am. No. 76, 2006; No. 37, 2012; No 41, 2015
s. 71L	ad. No. 34, 1992
	am. No. 209, 1992; No. 85, 1995
	rs. No. 95, 2001
	am. No. 25, 2004; No. 76, 2006; No. 37, 2012; No. 33, 2013; No 41, 2015
s. 71M	ad. No. 82, 2002
	am No 41, 2015
s. 72	am. No. 12, 1923; No. 111, 1960; No. 104, 1968
	rs. No. 64, 1981
	am. No. 72, 1984; No. 111, 1990; No. 34, 1992; No. 95, 2001; No. 8, 2007
s. 73	am. No. 12, 1923; No. 7, 1934; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
	rs. No. 40, 1985
	am. No. 34, 1992; No. 137, 1999; No. 24, 2001; No. 82, 2002
s. 74	am. No. 28, 1966; No. 54, 1967; No. 64, 1981
	rs. No. 111, 1990
	am. No. 209, 1992; No. 82, 2002
	rs. No. 95, 2001
	am No 41, 2015
s. 74A	ad. No. 209, 1992
	am. No. 3, 1997
	rep. No. 95, 2001
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; No. 95, 2001
s. 77AA	ad. No. 95, 2001

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Provision affected	How affected
	am No 41, 2015
Division 4A	ad. No. 34, 1992
	rep. No. 95, 2001
s. 77A	ad. No. 34, 1992
	am. No. 85, 1995; No. 142, 1999
	rep. No. 95, 2001
s. 77B	ad. No. 34, 1992
	rep. No. 95, 2001
s. 77C	ad. No. 34, 1992
	rs. No. 85, 1995
	rep. No. 95, 2001
s 77D	ad No 85, 1995
	am No 176, 1999; No 82, 2002
	rep No 95, 2001
s 77E	ad No 85, 1995
	am No 176, 1999; No 82, 2002
	rep No 95, 2001
Division 5	
Division 5	ad. No. 25, 2004
s 77EA	ad. No. 25, 2004
	am No 41, 2015
s 77EB	ad No 25, 2004
s 77EC	ad No 25, 2004
	am No 41, 2015
s 77ED	ad No 25, 2004
s 77EE	ad No 25, 2004
s 77EF	ad No 25, 2004
	am No 41, 2015
Part IVA	
Part IVA	ad. No. 3, 1997
s 77F	ad No 3, 1997

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Endnote 4—Amendment history

Provision affected	How affected
	am No 7, 2000; No 95, 2001; No 63, 2011; No 33, 2013; No 41, 2015; No 141, 2015; No 79, 2024
s 77G	ad. No. 3, 1997
	am No 41, 2015
s 77H	ad No 3, 1997
	am No 79, 2024
s 77J	ad No 3, 1997
	am No 41, 2015; No 79, 2024
s 77K	ad No 3, 1997
	am No 55, 2001; No 95, 2001; No 8, 2007; No 52, 2013; No 41, 2015; No 127, 2021; No 79, 2024
s 77L	ad No 3, 1997
	am No 63, 2011; No 41, 2015; No 79, 2024
s 77LA	ad No 95, 2001
	am No 41, 2015; No 79, 2024
s. 77M	ad. No. 3, 1997
	rep. No. 63, 2011
s 77N	ad No 3, 1997
	am No 55, 2001; No 95, 2001; No 52, 2013; No 41, 2015; No 127, 2021; No 79, 2024
s. 77P	ad. No. 3, 1997
	am No 41, 2015
s 77Q	ad No 3, 1997
	am No 63, 2011; No 41, 2015; No 79, 2024
s. 77R	ad. No. 3, 1997
	am. No. 63, 2011; No 52, 2013
s 77S	ad No 3, 1997
	am No 63, 2011; No 79, 2024
s 77T	ad No 3, 1997
	am No 41, 2015; No 79, 2024
s. 77U	ad. No. 3, 1997

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Provision affected	How affected
	am. No. 63, 2011
s 77V	ad No 3, 1997
	am No 63, 2011; No 52, 2013; No 41, 2015; No 79, 2024
s 77VA	ad No 63, 2011
	am No 41, 2015; No 79, 2024
s 77VB	ad No 63, 2011
	am No 41, 2015
s 77VC	ad No 63, 2011
	am No 41, 2015; No 79, 2024
s 77W	ad No 3, 1997
	am No 63, 2011; No 141, 2015; No 79, 2024
s 77X	ad No 3, 1997
	am No 63, 2011; No 41, 2015; No 79, 2024
s 77Y	ad No 3, 1997
	am No 63, 2011; No 52, 2013; No 41, 2015; No 79, 2024
s. 77Z	ad. No. 3, 1997
s 77ZAA	ad No 79, 2024
s 77ZA	ad No 3, 1997
	rs No 79, 2024
Part V	
Part V	rs No 110, 1980
s 78	rs No 110, 1980
	am No 85, 1995; No 8, 2007; No 41, 2015; No 141, 2015; No 51, 2024; No 79, 2024
s 79	am No 54, 1959
	rs No 110, 1980
	am No 5, 1990; No 85, 1995; No 76, 2006; No 41, 2015; No 51, 2024
s 80	rs No 12, 1923; No 110, 1980
	am No 81, 1982; No 85, 1995; No 8, 2007; No 41, 2015; No 141, 2015; No 131, 2018; No 51, 2024

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Endnote 4—Amendment history

Provision affected	How affected
	rs No 79, 2024
s 80A	ad No 33, 2013
	am No 41, 2015; No 79, 2024
s 81	am No 12, 1923
	rs No 110, 1980
	am No 81, 1982; No 210, 1992; No 85, 1995; No 55, 2001; No 82, 2002; No 8, 2007; No 33, 2013; No 52, 2013; No 41, 2015; No 127, 2021; No 51, 2024; No 79, 2024
s 81A	ad No 63, 2011
	am No 33, 2013; No 41, 2015; No 79, 2024
s 81AA	ad No 79, 2024
s 81B	ad No 63, 2011
	am No 41, 2015; No 141, 2015; No 51, 2024; No 79, 2024
s 82	rep No 80, 1950
	ad No 110, 1980
	am No 81, 1982; No 210, 1992; No 85, 1995; No 55, 2001; No 63, 2011; No 52, 2013; No 41, 2015; No 131, 2018; No 127, 2021; No 51, 2024; No 79, 2024
s 82A	ad No 63, 2011
	am No 52, 2013; No 41, 2015; No 79, 2024
s 82B	ad No 63, 2011
	am No 41, 2015; No 79, 2024
s. 82C	ad. No. 63, 2011
	am No 52, 2013
s 83	am No 12, 1923
	rep No 104, 1968
	ad No 110, 1980
	am No 81, 1982; No 10, 1986; No 85, 1995; No 8, 2007; No 63, 2011; No 41, 2015; No 51, 2024; No 79, 2024
s 84	rep No 104, 1968
	ad No 110, 1980

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Provision affected	How affected
	am No 85, 1995; No 8, 2007; No 52, 2013; No 41, 2015; No 51, 2024
	rs No 79, 2024
s 85	rs No 12, 1923; No 110, 1980
	am No 63, 2011
	rs No 141, 2015
	am No 51, 2024; No 79, 2024
s 85A	ad No 141, 2015
	am No 79, 2024
s 86	rep No 104, 1968
	ad No 110, 1980
	am No 81, 1982; No 72, 1984; No 10, 1986; No 85, 1995; No 24, 2001; No 82, 2002; No 8, 2007; No 63, 2011; No 52, 2013; No 41, 2015; No 141, 2015
	ed C142
	am No 51, 2024; No 79, 2024
s 87	rs No 110, 1980
	am No 81, 1982; No 72, 1984; No 85, 1995; No 24, 2001; No 82, 2002; No 8, 2007; No 63, 2011; No 41, 2015; No 51, 2024; No 79, 2024
s 87A	ad No 141, 2015
	am No 79, 2024
s 87B	ad No 51, 2024
	am No 79, 2024
s 87C	ad No 79, 2024
s 88	rep No 104, 1968
	ad No 110, 1980
	am No 51, 2024
	rep No 79, 2024
s. 89	rs. No. 110, 1980
	am. No. 8, 2007
s 90	rep No 21, 1906

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Endnote 4—Amendment history

Provision affected	How affected
	ad No 110, 1980
	am No 81, 1982; No 72, 1984; No 24, 2001; No 82, 2002; No 52, 2013; No 51, 2024; No 79, 2024
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
	am. No. 8, 2007
s. 95	rs. No. 111, 1960; No. 110, 1980
	am. No. 157, 1981
s. 96	am. No. 104, 1968
	rs. No. 110, 1980
s 96A	ad No 81, 1982
	am No 72, 1984; No 175, 1985; No 111, 1990; No 85, 1995; No 24, 2001; No 82, 2002; No 8, 2007; No 63, 2011; No 52, 2013; No 5, 2015; No 4, 2016; No 79, 2024
s 96B	ad No 175, 1985
	am No 111, 1990; No 24, 2001; No 82, 2002; No 63, 2011; No 52, 2013; No 41, 2015; No 4, 2016; No 79, 2024
s. 97	rs. No. 108, 1952
	am. No. 28, 1974
	rs. No. 110, 1980
	am. No. 81, 1982; No. 72, 1984; No. 8, 2007
s 98	rs No 110, 1980
	am No 5, 1990; No 51, 2024
s 99	am No 104, 1968

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Provision affected	How affected
	rs No 110, 1980; No 81, 1982
	am No 111, 1990; No 34, 1992; No 95, 2001; No 41, 2015; No 51, 2024
s 100	rs No 110, 1980
	am No 81, 1982; No 24, 2001; No 82, 2002; No 8, 2007
	rs No 52, 2013
	am No 41, 2015; No 79, 2024
s 101	rs No 110, 1980
	am No 81, 1982; No 24, 2001; No 82, 2002; No 8, 2007; No 52, 2013; No 51, 2024
s. 102	rs. No. 110, 1980
	am. No. 81, 1982; No. 24, 2001; No. 8, 2007; No 52, 2013
s 102A	ad No 95, 2001
	am No 82, 2002; No 41, 2015; No 51, 2024
s 102AA	ad No 79, 2024
s 102AB	ad No 51, 2024
Part VAAA	
Part VAAA	ad No 52, 2013
Division 1	
s 102B	ad No 52, 2013
	am No 41, 2015
s 102BA	ad No 52, 2013
	am No 41, 2015; No 127, 2021
Division 2	
s 102C	ad No 52, 2013
	am No 41, 2015
s 102CA	ad No 52, 2013
	am No 41, 2015
s 102CB	ad No 52, 2013
	am No 41, 2015
s 102CC	ad No 52, 2013

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Provision affected	How affected
	am No 41, 2015
s 102CD	ad No 52, 2013
	am No 41, 2015
s 102CE	ad No 52, 2013
s 102CF	ad No 52, 2013
s 102CG	ad No 52, 2013
	am No 41, 2015
s 102CH	ad No 52, 2013
s 102CI	ad No 52, 2013
s 102CJ	ad No 52, 2013
	am No 41, 2015
s 102CK	ad No 52, 2013
Division 3	
s 102D	ad No 52, 2013
s 102DA	ad No 52, 2013
s 102DB	ad No 52, 2013
	am No 41, 2015
s 102DC	ad No 52, 2013
	am No 41, 2015
s 102DD	ad No 52, 2013
	am No 41, 2015
s 102DE	ad No 52, 2013
Division 4	
s 102E	ad No 52, 2013
	am No 41, 2015
s 102EA	ad No 52, 2013
s 102EB	ad No 52, 2013
	am No 41, 2015
Division 5	
s 102F	ad No 52, 2013
	am No 41, 2015

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Provision affected	How affected
s 102FA	ad No 52, 2013
Part VA	
Part VA heading	rs. No. 84, 2000; No. 76, 2006
Part VA	ad. No. 5, 1990
s. 103	am. No. 28, 1966; No. 54, 1967
	rep. No. 110, 1980
	ad. No. 5, 1990
	am. No. 84, 2000; No. 37, 2012
s. 104	rs. No. 54, 1959
	am. No. 28, 1974
	rep. No. 110, 1980
	ad. No. 5, 1990
	am. No. 34, 1992; No. 84, 2000; No. 33, 2013
s. 105	rs. No. 54, 1959
	rep. No. 110, 1980
	ad. No. 5, 1990
	am. No. 85, 1995; No. 84, 2000; No 41, 2015
s. 105A	ad. No. 76, 2006
	am No 41, 2015
Part VAA	
Part VAA	ad. No. 76, 2006
s 105B	ad No 76, 2006
	am No 41, 2015; No 81, 2015; No 77, 2016; No 120, 2017; No 112, 2018; No 127, 2018; No 108, 2019; No 112, 2021; No 57, 2022; No 59, 2022; No 51, 2024; No 32, 2025
s 105C	ad No 76, 2006
	am No 52, 2013; No 41, 2015; No 81, 2015; No 51, 2024
s 105D	ad No 76, 2006
	am No 39, 2012; No 41, 2015; No 18, 2020
s 105E	ad No 76, 2006
	am No 41, 2015; No 51, 2024

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Endnote 4—Amendment history

Provision affected	How affected
s. 106	rep. No. 110, 1980
Part VB	
Part VB	ad. No. 111, 2004
Division 1	
Subdivision A	
s 106A	ad. No. 111, 2004
s 106B	ad No 111, 2004
	am No 41, 2015
s 106C	ad No 111, 2004
	am No 41, 2015
s 106D	ad No 111, 2004
	am No 41, 2015
Subdivision B	
s 106E	ad. No. 111, 2004
s 106F	ad No 111, 2004
	am No 41, 2015
Subdivision C	
s. 106G	ad. No. 111, 2004
	am. No. 103, 2013; No 41, 2015
s. 106H	ad. No. 111, 2004
	am No 41, 2015
s. 106I	ad. No. 111, 2004
	am No 41, 2015
Division 2	
s. 106J	ad. No. 111, 2004
Part VI	
Division 1AAA	
Division 1AAA	ad No 73, 2015
s 107	rep No 110, 1980
	ad No 73, 2015
s 108	rep No 48, 1963

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Provision affected	How affected
s 109	rep No 110, 1980
s 110	rep No 110, 1980
s 111	rep No 108, 1952
Division 1	
Division 1 heading	ad. No. 111, 1990
s 112	rs No 36, 1910
	am No 19, 1914; No 7, 1934
	rs No 56, 1951
	am No 154, 1977; No 81, 1982; No 24, 1989; No 34, 1992; No 38, 1998; No 24, 2001; No 129, 2005; No 5, 2011; No 103, 2013; No 4, 2016; No 19, 2017; No 1, 2026
s 112A	ad No 36, 1910
	am No 7, 1934
	rep No 56, 1951
	ad No 129, 2005
	am No 167, 2012; No 103, 2013; No 98, 2023
s. 112B	ad. No. 147, 2007
Division 1AA	
Division 1AA	ad. No. 152, 2012
s. 112BA	ad. No. 152, 2012
s. 112BB	ad. No. 152, 2012
s. 112BC	ad. No. 152, 2012
Division 1A	
Division 1A heading	rs No 41, 2015
Division 1A	ad. No. 63, 2011
s 112C	ad No 63, 2011
	am No 41, 2015; No 79, 2024
s. 112D	ad. No. 63, 2011
	am No 52, 2013
Division 2	
Division 2 heading	ad. No. 111, 1990

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision A	
Subdivision A heading	ad. No. 95, 2001
s. 113	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
	rs. No. 111, 1990
	am. No. 95, 2001; No 52, 2013
s. 113AA	ad. No. 95, 2001
	rs. No. 33, 2013
	am No 41, 2015
Subdivision B	
Subdivision B heading	ad. No. 95, 2001
s. 114	am. No. 12, 1923
	rs. No. 54, 1959; No. 104, 1968
	am. No. 107, 1975
	rs. No. 154, 1977
	am. No. 81, 1982; No. 149, 1986
	rs. No. 111, 1990
	am. No. 34, 1992
	rs. No. 95, 2001
	am. No. 136, 2003; No 41, 2015
s. 114A	ad. No. 12, 1923
	am. No. 28, 1966; No. 54, 1967; No. 28, 1974
	rs. No. 154, 1977
	am. No. 81, 1982; No. 39, 1985
	rs. No. 111, 1990; No. 95, 2001
	am No 41, 2015
s. 114B	ad. No. 111, 1990
	am. No. 85, 1995; Nos. 24 and 95, 2001; No. 82, 2002; No 52, 2013; No 41, 2015; No 4, 2016
Subdivision C	ad. No. 95, 2001
	rep. No. 33, 2013
s. 114BA	ad. No. 95, 2001

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Provision affected	How affected
	rep. No. 33, 2013
s. 114BB	ad. No. 95, 2001
	am. No. 82, 2002
	rep. No. 33, 2013
s. 114BC	ad. No. 95, 2001
	am. No. 82, 2002
	rep. No. 33, 2013
Subdivision D	
Subdivision D heading	ad. No. 95, 2001
s. 114C	ad. No. 111, 1990
	am. Nos. 34 and 209, 1992; No. 25, 2001
	rs. No. 95, 2001
	am. No. 82, 2002; No. 33, 2013; No 41, 2015; No 74, 2023
s. 114CA	ad. No. 63, 2011
	am. No. 33, 2013; No 41, 2015
s. 114CB	ad. No. 63, 2011
	am. No. 33, 2013
s. 114CC	ad. No. 63, 2011
s. 114D	ad. No. 111, 1990
	am. No. 209, 1992; No. 25, 2001; No. 82, 2002
	rs. No. 95, 2001
	am. No. 82, 2002; No. 91, 2004; No. 63, 2011; No. 32, 2013; No 41, 2015
s. 114E	ad. No. 95, 2001
	am. No. 25, 2004
s. 114F	ad. No. 95, 2001
	am. No. 136, 2003; No. 25, 2004; No 41, 2015
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

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 64, 1981; No. 81, 1982
	rs. No. 111, 1990
	am. No. 34, 1992; No. 82, 2002
	rs. No. 95, 2001
s. 116	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
	rs. No. 111, 1990
	am. No. 82, 2002
	rs. No. 95, 2001
	am No 52, 2013; No 41, 2015
s. 116A	ad. No. 95, 2001
	rep. No. 33, 2013
s. 117	rs. No. 81, 1982; No. 95, 2001
	am No 41, 2015
s. 117AA	ad. No. 95, 2001
	am. No. 82, 2002; No. 63, 2011; No 41, 2015
s. 117A	ad. No. 111, 1990
	am. No. 34, 1992; No. 85, 1995
	rs. No. 95, 2001
	am No 41, 2015
s. 118	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982; No. 82, 2002
	rs. No. 95, 2001
	am. No. 82, 2002; No. 111, 2004; No 4, 2015; No 41, 2015
s. 118A	ad. No. 82, 2002
	am No 41, 2015
s. 119	rs. No. 12, 1923
	am. No. 48, 1963; No. 28, 1974; No. 154, 1977; No. 64, 1981; No. 10, 1986; No. 111, 1990
	am. No. 34, 1992; No. 85, 1995
	rs. No. 95, 2001

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Provision affected	How affected
	am. No. 82, 2002; No. 25, 2004; No 41, 2015
s 119AA	ad No 82, 2002
	am No 63, 2011; No 41, 2015; No 19, 2017
s 119AB	ad. No. 63, 2011
	am No 41, 2015
s 119AC	ad No 63, 2011
s. 119A	ad. No. 111, 1990
	am. No. 34, 1992
	rs. No. 95, 2001
	am No 41, 2015
s. 119B	ad. No. 111, 1990
	rs. No. 95, 2001
	am. No. 119, 2003; No. 74, 2008; No 52, 2013
s. 119C	ad. No. 111, 1990
	rs. No. 95, 2001
s. 119D	ad. No. 111, 1990
	am. No. 34, 1992
	rs. No. 95, 2001
	am. No. 82, 2002; No. 63, 2011; No 41, 2015
s. 119E	ad. No. 82, 2002
	am No 41, 2015
s. 120	am. No. 12, 1923
	rs. No. 54, 1959
	am. No. 28, 1966; No. 54, 1967; No. 104, 1968; No. 28, 1974; No. 64, 1981; No. 81, 1982; No. 111, 1990; No. 95, 2001; No. 8, 2007
s 121	rep No 111, 1960
s 122	am No 12, 1923; No 108, 1952; No 95, 2001
Division 3 heading	am No 34, 1992
	rep No 95, 2001
Division 3	ad No 111, 1990

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 95, 2001
s 122A	ad No 111, 1990
	am No 85, 1995
	rep No 95, 2001
s 122B	ad No 111, 1990
	rep No 95, 2001
s 122C	ad No 111, 1990
	rep No 95, 2001
s 122D	ad No 111, 1990
	am No 82, 2002
	rep No 95, 2001
s 122E	ad No 111, 1990
	rep No 95, 2001
Division 3A	
Division 3A	ad No 95, 2001
	rs No 41, 2015
s 122F	ad No 95, 2001
	am No 82, 2002; No 41, 2015
s 122G	ad No 95, 2001
s 122H	ad No 95, 2001
	am No 63, 2011; No 41, 2015
s 122J	ad No 95, 2001
s 122K	ad No 95, 2001
s 122L	ad No 95, 2001
s 122M	ad No 95, 2001
s 122N	ad No 95, 2001
s 122P	ad No 95, 2001
s 122Q	ad No 95, 2001
	am No 41, 2015
s 122R	ad No 95, 2001
	am No 13, 2020

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Provision affected	How affected
Division 4	
Division 4 heading	ad. No. 111, 1990
s. 123	am. No. 12, 1923; No. 108, 1952; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 24, 2001; No. 82, 2002; No. 8, 2007; No 52, 2013
s. 124	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982; No. 24, 2001; No. 82, 2002; No. 8, 2007
s. 125	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982; No. 24, 2001; No. 82, 2002
s. 126	am. No. 85, 1995; No. 8, 2007; No 41, 2015; No 74, 2023
Division 4A	
Division 4A	ad. No. 62, 2003
s 126AAA	ad No 120, 2017
s 126AA	ad No 62, 2003
	am No 120, 2017
	rep No 120, 2017
s 126AB	ad No 62, 2003
	am No 120, 2017
s 126AC	ad No 62, 2003
	am No 120, 2017
s 126AD	ad No 62, 2003
	am No 120, 2017
Division 4B	
Division 4B heading	rs No 4, 2021
Division 4B	ad No 120, 2004
s 126AE	ad No 120, 2004
	am No 8, 2010; No 4, 2021
Division 4C	
Division 4C	ad. No. 130, 2004
ss. 126AF–126AI	ad. No. 130, 2004
Division 4D	
Division 4D	ad. No. 166, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s. 126AJA	ad. No. 166, 2006
	am. No. 1, 2012
s. 126AJB	ad. No. 166, 2006
s. 126AJC	ad. No. 166, 2006
s. 126AJD	ad. No. 166, 2006
Division 4DA	
Division 4DA	ad No 108, 2019
s 126AJE	ad No 108, 2019
s 126AJF	ad No 108, 2019
s 126AJG	ad No 108, 2019
s 126AJH	ad No 108, 2019
Division 4E	
Division 4E	ad. No. 127, 2008
ss. 126AKA–126AKD	ad. No. 127, 2008
Division 4EAA	
Division 4EAA	ad No 116, 2024
s 126AKDA	ad No 116, 2024
s 126AKDB	ad No 116, 2024
s 126AKDC	ad No 116, 2024
s 126AKDD	ad No 116, 2024
s 126AKDE	ad No 116, 2024
s 126AKDF	ad No 116, 2024
s 126AKDG	ad No 116, 2024
Division 4EA	
Division 4EA	ad No 112, 2018
s 126AKE	ad No 112, 2018
s 126AKF	ad No 112, 2018
s 126AKG	ad No 112, 2018
s 126AKH	ad No 112, 2018
Division 4EB	
Division 4EB	ad No 127, 2018

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Provision affected	How affected
s 126AKI	ad No 127, 2018
s 126AKJ	ad No 127, 2018
s 126AKK	ad No 127, 2018
s 126AKL	ad No 127, 2018
Division 4F	
Division 4F	ad. No. 172, 2012
s. 126ALA	ad. No. 172, 2012
s. 126ALB	ad. No. 172, 2012
s. 126ALC	ad. No. 172, 2012
s. 126ALD	ad. No. 172, 2012
Division 4FA	
Division 4FA	ad No 108, 2019
s 126ALE	ad No 108, 2019
s 126ALF	ad No 108, 2019
s 126ALG	ad No 108, 2019
s 126ALH	ad No 108, 2019
Division 4G	
Division 4G	ad No 113, 2014
s 126AMA	ad No 113, 2014
s 126AMB	ad No 113, 2014
s 126AMC	ad No 113, 2014
s 126AMD	ad No 113, 2014
Division 4GA	
Division 4GA	ad No 57, 2022
s 126AME	ad No 57, 2022
s 126AMF	ad No 57, 2022
s 126AMG	ad No 57, 2022
s 126AMH	ad No 57, 2022
Division 4H	
Division 4H	ad No 124, 2014
s 126ANA	ad No 124, 2014

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Endnote 4—Amendment history

Provision affected	How affected
s 126ANB	ad No 124, 2014
s 126ANC	ad No 124, 2014
s 126AND	ad No 124, 2014
Division 4J	
Division 4J	ad No 136, 2015
126AOA	ad No 136, 2015
126AOB	ad No 136, 2015
126AOC	ad No 136, 2015
126AOD	ad No 136, 2015
Division 4K	
Division 4K	ad No 108, 2019
s 126APA	ad No 108, 2019
s 126APB	ad No 108, 2019
s 126APC	ad No 108, 2019
s 126APD	ad No 108, 2019
Division 4L	
Division 4L	ad No 112, 2021
s 126AQA	ad No 112, 2021
	am No 116, 2024
s 126AQB	ad No 112, 2021
s 126AQC	ad No 112, 2021
s 126AQD	ad No 112, 2021
s 126AQE	ad No 116, 2024
s 126AQF	ad No 116, 2024
s 126AQG	ad No 116, 2024
Division 4M	
Division 4M	ad No 59, 2022
s 126ARA	ad No 59, 2022
s 126ARB	ad No 59, 2022
s 126ARC	ad No 59, 2022
s 126ARD	ad No 59, 2022

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Provision affected	How affected
Division 4N	
Division 4N	ad No 32, 2025
s 126ASA	ad No 32, 2025
s 126ASB	ad No 32, 2025
s 126ASC	ad No 32, 2025
s 126ASD	ad No 32, 2025
Division 5	
Division 5 heading	ad. No. 111, 1990
s 126A	ad No 104, 1987
	am No 71, 2022
s. 126B	ad. No. 104, 1987
	am. No. 111, 1990
s. 126C	ad. No. 111, 1990
	am. No. 85, 1995; No. 24, 2001; No. 82, 2002; No 52, 2013; No 41, 2015
Part VIA	
Part VIA heading	rs. No. 136, 2003
Part VIA	ad. No. 95, 2001
s. 126D	ad. No. 95, 2001
	am No 41, 2015
s. 126DA	ad. No. 95, 2001
	am. No. 82, 2002; No 41, 2015
s 126DB	ad. No. 136, 2003
	am No 41, 2015
s 126DC	ad No 136, 2003
	am No 41, 2015
s 126DD	ad No 136, 2003
s. 126E	ad. No. 95, 2001
	am. No. 8, 2010; No 31, 2014; No 41, 2015
s 126F	ad. No. 95, 2001
	am No 41, 2015

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Endnote 4—Amendment history

Provision affected	How affected
s 126G	ad No 95, 2001
	am No 41, 2015
s 126H	ad No 41, 2015
Part VII	
Part VII heading	am. No. 12, 1923
Part VII	rs. No. 108, 1952
s 127	am No 12, 1923
	rs No 108, 1952
	am No 104, 1968; No 28, 1974; No 81, 1982; No 111, 1990; No 24, 2001; No 82, 2002; No 52, 2013; No 4, 2015; No 41, 2015; No 79, 2024
s. 128	am. No. 12, 1923
	rs. No. 108, 1952
	am. No. 95, 2001; No 4, 2015
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; No 24, 2001; No 82, 2002; No 8, 2007; No 52, 2013; No 4, 2015; No 41, 2015; No 4, 2016; No 79, 2024
s. 130	rep. No. 45, 1934
	ad. No. 108, 1952
	am. No. 48, 1963
	rs. No. 104, 1968
s. 130A	ad. No. 108, 1952
	am. No. 47, 1953; No. 54, 1959
	rs. No. 104, 1968
	am. No. 28, 1974; No. 64, 1981
s. 130B	ad. No. 48, 1963
	rs. No. 104, 1968
	am. No. 28, 1974; No. 81, 1982; No. 149, 1986; No. 34, 1992; No. 24, 2001; No. 82, 2002; No 52, 2013; No 4, 2016; No 74, 2023
s. 130C	ad. No. 104, 1968

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Provision affected	How affected
	am. No. 81, 1982; No. 111, 1990
s. 131	am. No. 12, 1923
	rep. No. 29, 1965
Part VIII	
Division 1	
s. 131A	ad. No. 7, 1934
	am. No. 162, 1973; No. 64, 1981; No. 39, 1983; No 41, 2015
s. 131AA	ad. No. 37, 1990
	am. No. 25, 2000
	rs. No. 10, 2003; No 57, 2019
s. 131B	ad. No. 81, 1987
s. 132	rs. No. 48, 1963
	am. No. 28, 1974; No. 81, 1982 (as am. by No. 39, 1983); Nos. 34 and 209, 1992; No. 108, 1999; No. 92, 2000; No. 95, 2001; No. 76, 2006
s. 132AA	ad. No. 142, 1999
	am. No. 92, 2000; No. 95, 2001; No. 5, 2007; Nos. 37 and 136, 2012; No. 33, 2013; No 41, 2015
s. 132A	ad. No. 104, 1968
s. 132B	ad. No. 28, 1974
	am. No. 64, 1981; No. 81, 1982; No. 10, 1986; No. 34, 1992; No. 85, 1995; No. 95, 2001; No. 8, 2007; No. 33, 2013; No 41, 2015
s. 132C	ad. No. 28, 1974
	am. No. 10, 1986; No. 85, 1995; No. 8, 2007; No. 5, 2011; No 41, 2015
s. 132D	ad. No. 28, 1974
	am. No. 10, 1986; No. 85, 1995; No. 8, 2007; No 41, 2015
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

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Endnote 4—Amendment history

Provision affected	How affected
s 137	am No 54, 1947
	rep No 12, 1971
	ad No 24, 1989
	am No 85, 1995; No 41, 2015
s 138	rep No 29, 1965
s 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 145	ed C157
s 146	am No 85, 1995
	rep No 25, 2004
s. 147	rep. No. 25, 2004
s. 149	am. No. 12, 1923; No. 81, 1982; No. 111, 1990; No. 142, 1999
s. 150	am. No. 104, 1968; No 41, 2015
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
	rep. No. 8, 1994
s. 151A	ad. No. 22, 1925
	rs. No. 7, 1934
	am. No. 45, 1934; No. 85, 1936
	rs. No. 29, 1965

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Provision affected	How affected
	am. No. 133, 1965
	rs. No. 82, 1965 (as am. by No. 133, 1965)
	am. No. 104, 1968; Nos. 28 and 120, 1974; No. 174, 1976; Nos. 61 and 157, 1981
	rs. No. 115, 1982
	rep. No. 76, 1987
s. 151B	ad. No. 85, 1936
	am. No. 111, 1960
	rep. No. 29, 1965
s. 152	am. No. 56, 1950; No. 107, 1975; No. 15, 1980
s. 153	rep. No. 75, 2008
Division 1AA	
Division 1AA	ad. No. 25, 2004
s 153AA	ad. No. 25, 2004
s 153AB	ad No 25, 2004
s 153AC	ad No 25, 2004
	am No 41, 2015
s 153AD	ad No 25, 2004
Division 1A	
Division 1A	ad. No. 8, 1994
s. 153A	ad. No. 56, 1950
	rs. No. 29, 1965
	am. No. 133, 1965
	rep. No. 41, 1976
	ad. No. 8, 1994
	am. No. 166, 2006
s. 153B	ad. No. 8, 1994
	am. No. 15, 1996; No. 62, 2003; No. 166, 2006
s. 153C	ad. No. 8, 1994
s. 153D	ad. No. 8, 1994
	am. No. 85, 1995; No. 62, 2003; No. 166, 2006

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Endnote 4—Amendment history

Provision affected	How affected
s. 153E	ad. No. 8, 1994
	am. No. 85, 1995; No 41, 2015
ss. 153F–153H	ad. No. 8, 1994
s. 153J	ad. No. 8, 1994
	am. No. 85, 1995
	rep. No. 166, 2006
s. 153K	ad. No. 8, 1994
	am. No. 85, 1995
	rep. No. 166, 2006
s. 153L	ad. No. 8, 1994
	am. No. 85, 1995; No 41, 2015
s. 153LA	ad. No. 85, 1995
	am No 41, 2015
s 153M	ad No 8, 1994
s 153N	ad No 8, 1994
s. 153NA	ad. No. 62, 2003
s 153P	ad. No. 8, 1994
	am. No. 85, 1995; No 41, 2015
s 153Q	ad No 8, 1994
	am No 85, 1995; No 41, 2015
s. 153R	ad. No. 8, 1994
	am. No. 85, 1995; No 41, 2015
s. 153S	ad. No. 8, 1994
s. 153T	ad. No. 8, 1994
	rep. No. 166, 2006
Division 1B	ad No 62, 2003
	rep No 120, 2017
s 153U	ad No 62, 2003
	rep No 120, 2017
s 153UA	ad No 62, 2003
	am No 8, 2010

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Provision affected	How affected
	rep No 120, 2017
s 153UB	ad No 62, 2003
	rep No 120, 2017
s 153UC	ad No 62, 2003
	am No 41, 2015
	rep No 120, 2017
s 153V	ad No 62, 2003
	rep No 120, 2017
s 153VA	ad No 62, 2003
	am No 41, 2015
	rep No 120, 2017
s 153VB	ad No 62, 2003
	rep No 120, 2017
s 153VC	ad No 62, 2003
	am No 41, 2015
	rep No 120, 2017
s 153VD	ad No 62, 2003
	am No 41, 2015
	rep No 120, 2017
s 153VE	ad No 62, 2003
	am No 75, 2008
	rep No 120, 2017
s 153VF	ad No 62, 2003
	rep No 120, 2017
s 153W	ad No 62, 2003
	rep No 120, 2017
s 153WA	ad No 62, 2003
	rep No 120, 2017
s 153WB	ad No 62, 2003
	rep No 120, 2017
s 153WC	ad No 62, 2003

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Provision affected	How affected
	rep No 120, 2017
s 153X	ad No 62, 2003
	rep No 120, 2017
s 153XA	ad No 62, 2003
	rep No 120, 2017
s 153XB	ad No 62, 2003
	rep No 120, 2017
Division 1BA	
Division 1BA	ad No 120, 2017
Subdivision A	
s 153XC	ad No 120, 2017
	am No 74, 2023
s 153XD	ad No 120, 2017
Subdivision B	
s 153XE	ad No 120, 2017
Subdivision C	
s 153XF	ad No 120, 2017
Subdivision D	
s 153XG	ad No 120, 2017
	am No 151, 2018
s 153XH	ad No 120, 2017
Subdivision E	
s 153XI	ad No 120, 2017
Subdivision F	
s 153XJ	ad No 120, 2017
Subdivision G	
s 153XK	ad No 120, 2017
Division 1C	
Division 1C	ad. No. 120, 2004
Subdivision A	
s 153Y	ad No 120, 2004

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Provision affected	How affected
	am No 4, 2021; No 74, 2023
s 153YA	ad No 120, 2004
	am No 5, 2007; No 8, 2010; No 4, 2021
Subdivision B	
s. 153YB	ad. No. 120, 2004
	am. No. 5, 2007
Subdivision C	
s. 153YC	ad. No. 120, 2004
Subdivision D	
Subdivision D	rs No 4, 2021
s 153YD	ad No 120, 2004
	rs No 4, 2021
s 153YE	ad No 120, 2004
	am No 5, 2007
	rep No 4, 2021
s 153YF	ad No 120, 2004
	rep No 4, 2021
Subdivision E	rep No 4, 2021
s 153YG	ad No 120, 2004
	rep No 4, 2021
s 153YH	ad No 120, 2004
	am No 5, 2007
	rep No 4, 2021
s 153YI	ad No 120, 2004
	rep No 4, 2021
Subdivision F	
Subdivision F	rs No 4, 2021
s 153YJ	ad No 120, 2004
	rs No 4, 2021
Subdivision G	
s 153YK	ad No 120, 2004

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Endnote 4—Amendment history

Provision affected	How affected
	am No 4, 2021
Subdivision H	
s. 153YL	ad. No. 120, 2004
	am. No. 5, 2007
Subdivision I	
Subdivision I	ad No 4, 2021
s 153YM	ad No 4, 2021
Division 1D	
Division 1D	ad. No. 130, 2004
Subdivision A	
s 153Z	ad No 130, 2004
	am No 4, 2021; No 74, 2023
s 153ZA	ad No 130, 2004
	am No 8, 2010; No 46, 2011; No 4, 2021
Subdivision B	
s. 153ZB	ad. No. 130, 2004
	am No 151, 2018
Subdivision C	
s 153ZC	ad No 130, 2004
	rs No 4, 2021
s 153ZD	ad No 130, 2004
	am No 151, 2018
	rep No 4, 2021
s 153ZE	ad No 130, 2004
	am No 151, 2018
	rep No 4, 2021
Subdivision D	
Subdivision D	rs No 4, 2021
s 153ZF	ad No 130, 2004
	rs No 4, 2021

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Provision affected	How affected
Subdivision E	
s 153ZG	ad No 130, 2004
	am No 4, 2021
Subdivision F	
s. 153ZH	ad. No. 130, 2004
Subdivision G	
Subdivision G	ad No 4, 2021
s 153ZI	ad No 4, 2021
Division 1E	
Division 1E	ad. No. 166, 2006
Subdivision A	
s 153ZIA	ad No 166, 2006
	am No 1, 2012; No 172, 2012; No 4, 2021; No 74, 2023
s 153ZIB	ad No 166, 2006
	am No 8, 2010; No 46, 2011; No 1, 2012; No 4, 2021
Subdivision B	
Subdivision B heading	rs. No. 1, 2012
s. 153ZIC	ad. No. 166, 2006
	am. No. 1, 2012
Subdivision C	
s. 153ZID	ad. No. 166, 2006
Subdivision D	
s 153ZIE	ad No 166, 2006
	rs No 4, 2021
s 153ZIF	ad No 166, 2006
	am No 4, 2021
Subdivision E	
s. 153ZIG	ad. No. 166, 2006
Subdivision F	
s. 153ZIH	ad. No. 166, 2006
	am No 41, 2015

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision G	
Subdivision G	ad. No. 166, 2006
	rep. No. 166, 2006 (s. 153ZIJ)
	ad. No. 1, 2012 (as am. by No. 172, 2012)
s. 153ZII	ad. No. 166, 2006
	rep. No. 166, 2006 (s. 153ZIJ)
s. 153ZIJ	ad. No. 166, 2006
	rep. No. 166, 2006 (s. 153ZIJ)
	ad. No. 1, 2012 (as am. by No. 172, 2012)
Subdivision H	
s. 153ZIK	ad. No. 166, 2006
Subdivision I	
Subdivision I	ad No 4, 2021
s 153ZIKA	ad No 4, 2021
Division 1EA	
Division 1EA	ad No 108, 2019
Subdivision A	
s 153ZIL	ad No 108, 2019
s 153ZIM	ad No 108, 2019
Subdivision B	
s 153ZIN	ad No 108, 2019
Subdivision C	
s 153ZIO	ad No 108, 2019
Subdivision D	
s 153ZIP	ad No 108, 2019
s 153ZIQ	ad No 108, 2019
Subdivision E	
s 153ZIR	ad No 108, 2019
Subdivision F	
s 153ZIS	ad No 108, 2019

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Provision affected	How affected
Subdivision G	
s 153ZIT	ad No 108, 2019
Division 1F	
Division 1F	ad. No. 127, 2008
Subdivision A	
s 153ZJA	ad No 127, 2008
	am No 4, 2021; No 74, 2023
s 153ZJB	ad No 127, 2008
	am No 151, 2018; No 4, 2021
Subdivision B	
s. 153ZJC	ad. No. 127, 2008
	am No 151, 2018
Subdivision C	
s. 153ZJD	ad. No. 127, 2008
	am No 151, 2018
Subdivision D	
s 153ZJE	ad No 127, 2008
	am No 151, 2018
	rs No 4, 2021
s 153ZJF	ad No 127, 2008
	am No 4, 2021
Subdivision E	
s. 153ZJG	ad. No. 127, 2008
Subdivision F	
s. 153ZJH	ad. No. 127, 2008
Subdivision G	
s. 153ZJI	ad. No. 127, 2008
Subdivision H	
Subdivision H	ad No 4, 2021
s 153ZJJ	ad No 4, 2021

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Endnote 4—Amendment history

Provision affected	How affected
Division 1G	
Division 1G	ad. No. 97, 2009
Subdivision A	
s. 153ZKA	ad. No. 97, 2009
	am No 151, 2018; No 74, 2023
s 153ZKB	ad No 97, 2009
	am No 46, 2011; No 151, 2018; No 116, 2024
Subdivision B	
s 153ZKC	ad No 97, 2009
	am No 151, 2018; No 116, 2024
Subdivision C	
s 153ZKD	ad No 97, 2009
	am No 151, 2018; No 116, 2024
Subdivision D	
s 153ZKE	ad No 97, 2009
	rs No 151, 2018
	am No 116, 2024
s 153ZKF	ad No 97, 2009
	rep No 151, 2018
s 153ZKG	ad No 97, 2009
	am No 151, 2018
s 153ZKH	ad No 97, 2009
	am No 151, 2018
Subdivision E	
s. 153ZKI	ad. No. 97, 2009
Subdivision F	
s 153ZKJ	ad No 97, 2009
	am No 116, 2024
Subdivision G	
Subdivision G	ad No 151, 2018
s 153ZKJA	ad No 151, 2018

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Provision affected	How affected
Division 1GA	
Division 1GA	ad No 112, 2018
Subdivision A	
s 153ZKK	ad No 112, 2018
s 153ZKL	ad No 112, 2018
	am No 116, 2024
Subdivision B	
s 153ZKM	ad No 112, 2018
Subdivision C	
s 153ZKN	ad No 112, 2018
Subdivision D	
s 153ZKO	ad No 112, 2018
	am No 116, 2024
s 153ZKP	ad No 112, 2018
Subdivision E	
s 153ZKQ	ad No 112, 2018
Subdivision F	
s 153ZKR	ad No 112, 2018
Subdivision G	
s 153ZKS	ad No 112, 2018
Division 1GB	
Division 1GB	ad No 127, 2018
Subdivision A	
s 153ZKT	ad No 127, 2018
s 153ZKU	ad No 127, 2018
Subdivision B	
s 153ZKV	ad No 127, 2018
Subdivision C	
s 153ZKW	ad No 127, 2018
Subdivision D	
s 153ZKX	ad No 127, 2018

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Endnote 4—Amendment history

Provision affected	How affected
s 153ZKY	ad No 127, 2018
Subdivision E	
s 153ZKZ	ad No 127, 2018
Subdivision F	
s 153ZKZA	ad No 127, 2018
Subdivision G	
s 153ZKZB	ad No 127, 2018
Division 1H	
Division 1H	ad No 172, 2012
Subdivision A	
s 153ZLA	ad No 172, 2012
	am No 4, 2021; No 74, 2023
s 153ZLB	ad No 172, 2012
	am No 126, 2015; No 4, 2021; No 116, 2024
Subdivision B	
s 153ZLC	ad No 172, 2012
	am No 151, 2018
Subdivision C	
s 153ZLD	ad No 172, 2012
	am No 151, 2018
Subdivision D	
s 153ZLE	ad No 172, 2012
	am No 151, 2018
	rs No 4, 2021
	am No 116, 2024
s 153ZLF	ad No 172, 2012
	am No 4, 2021
s 153ZLG	ad No 172, 2012
Subdivision E	
s 153ZLH	ad No 172, 2012

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Provision affected	How affected
Subdivision F	
s 153ZLI	ad No 172, 2012
Subdivision G	
Subdivision G	ad No 4, 2021
s 153ZLJ	ad No 4, 2021
Division 1HA	
Division 1HA	ad No 108, 2019
Subdivision A	
s 153ZLJ (second occurring)	ad No 108, 2019
	renum
	ed C172
s 153ZLJA (prev s 153ZLJ second occurring)	am No 74, 2023
s 153ZLK	ad No 108, 2019
Subdivision B	
s 153ZLL	ad No 108, 2019
Subdivision C	
s 153ZLM	ad No 108, 2019
Subdivision D	
s 153ZLN	ad No 108, 2019
s 153ZLO	ad No 108, 2019
Subdivision E	
s 153ZLP	ad No 108, 2019
s 153ZLQ	ad No 108, 2019
Subdivision F	
s 153ZLR	ad No 108, 2019
Division 1J	
Division 1J	ad No 113, 2014
Subdivision A	
s 153ZMA	ad No 113, 2014
	am No 74, 2023

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Endnote 4—Amendment history

Provision affected	How affected
s 153ZMB	ad No 113, 2014
	am No 126, 2015; No 4, 2021
Subdivision B	
s 153ZMC	ad No 113, 2014
Subdivision C	
s 153ZMD	ad No 113, 2014
Subdivision D	
s 153ZME	ad No 113, 2014
	rs No 4, 2021
s 153ZMF	ad No 113, 2014
	am No 4, 2021
Subdivision E	
s 153ZMG	ad No 113, 2014
Subdivision F	
s 153ZMH	ad No 113, 2014
s 153ZMI	ad No 113, 2014
s 153ZMJ	ad No 4, 2021
Division 1JA	
Division 1JA	ad No 57, 2022
Subdivision A	
s 153ZMK	ad No 57, 2022
s 153ZML	ad No 57, 2022
Subdivision B	
s 153ZMM	ad No 57, 2022
Subdivision C	
s 153ZMN	ad No 57, 2022
s 153ZMO	ad No 57, 2022
Subdivision D	
s 153ZMP	ad No 57, 2022
Subdivision E	
s 153ZMQ	ad No 57, 2022

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Provision affected	How affected
Subdivision F	
s 153ZMR	ad No 57, 2022
Division 1K	
Division 1K	ad No 124, 2014
Subdivision A	
Subdivision A	ad No 124, 2014
s 153ZNA	ad No 124, 2014
	am No 151, 2018; No 74, 2023
s 153ZNB	ad No 124, 2014
	am No 126, 2015; No 151, 2018
Subdivision B	
Subdivision B	ad No 124, 2014
s 153ZNC	ad No 124, 2014
Subdivision C	
Subdivision C	ad No 124, 2014
s 153ZND	ad No 124, 2014
Subdivision D	
Subdivision D	ad No 124, 2014
s 153ZNE	ad No 124, 2014
	rs No 151, 2018
s 153ZNF	ad No 124, 2014
	am No 151, 2018
s 153ZNG	ad No 124, 2014
Subdivision E	
Subdivision E	ad No 124, 2014
s 153ZNH	ad No 124, 2014
Subdivision F	
Subdivision F	ad No 151, 2018
s 153ZNI	ad No 151, 2018
Division 1L	
Division 1L	ad No 136, 2015

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision A	
s 153ZOA	ad No 136, 2015
	am No 151, 2018
s 153ZOB	ad No 136, 2015
	am No 136, 2015; No 151, 2018
Subdivision B	
s 153ZOC	ad No 136, 2015
Subdivision C	
s 153ZOD	ad No 136, 2015
Subdivision D	
s 153ZOE	ad No 136, 2015
	rs No 151, 2018
s 153ZOF	ad No 136, 2015
	am No 151, 2018
Subdivision E	
s 153ZOG	ad No 136, 2015
Subdivision F	
s 153ZOH	ad No 136, 2015
Subdivision G	
s 153ZOI	ad No 136, 2015
Subdivision H	
Subdivision H	ad No 151, 2018
s 153ZOJ	ad No 151, 2018
Division 1M	
Division 1M	ad No 108, 2019
Subdivision A	
s 153ZPA	ad No 108, 2019
	am No 74, 2023
s 153ZPB	ad No 108, 2019
Subdivision B	
s 153ZPC	ad No 108, 2019

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Provision affected	How affected
Subdivision C	
s 153ZPD	ad No 108, 2019
Subdivision D	
s 153ZPE	ad No 108, 2019
s 153ZPF	ad No 108, 2019
Subdivision E	
s 153ZPG	ad No 108, 2019
Subdivision F	
s 153ZPH	ad No 108, 2019
Subdivision G	
s 153ZPI	ad No 108, 2019
Division 1N	
Division 1N	ad No 112, 2021
Subdivision A	
s 153ZQA	ad No 112, 2021
s 153ZQB	ad No 112, 2021
	am No 116, 2024
Subdivision B	
s 153ZQC	ad No 112, 2021
Subdivision C	
s 153ZQD	ad No 112, 2021
Subdivision D	
s 153ZQE	ad No 112, 2021
	am No 116, 2024
s 153ZQF	ad No 112, 2021
s 153ZQG	ad No 112, 2021
s 153ZQH	ad No 112, 2021
Subdivision E	
s 153ZQI	ad No 112, 2021
Subdivision F	
s 153ZQJ	ad No 112, 2021

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Endnote 4—Amendment history

Provision affected	How affected
Division 1P	
Division 1P	ad No 59, 2022
Subdivision A	
s 153ZRA	ad No 59, 2022
s 153ZRB	ad No 59, 2022
Subdivision B	
s 153ZRC	ad No 59, 2022
Subdivision C	
s 153ZRD	ad No 59, 2022
Subdivision D	
s 153ZRE	ad No 59, 2022
s 153ZRF	ad No 59, 2022
Subdivision E	
s 153ZRG	ad No 59, 2022
Subdivision F	
s 153ZRH	ad No 59, 2022
Subdivision G	
s 153ZRI	ad No 59, 2022
Division 1Q	
Division 1Q	ad No 32, 2025
Subdivision A	
s 153ZSA	ad No 32, 2025
s 153ZSB	ad No 32, 2025
Subdivision B	
s 153ZSC	ad No 32, 2025
Subdivision C	
s 153ZSD	ad No 32, 2025
Subdivision D	
s 153ZSE	ad No 32, 2025
s 153ZSF	ad No 32, 2025
s 153ZSG	ad No 32, 2025

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Provision affected	How affected
Subdivision E	
s 153ZSH	ad No 32, 2025
Subdivision F	
s 153ZSI	ad No 32, 2025
Subdivision G	
s 153ZSJ	ad No 32, 2025
Division 2	
Division 2	rs. No. 157, 1981; No. 23, 1989
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
	am. No. 142, 1999; No. 82, 2002; No. 144, 2008; No. 33, 2013; No 41, 2015
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

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 72, 1984
	rs. No. 23, 1989
	am. No. 148, 2003
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
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

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Provision affected	How affected
	rs. No. 23, 1989
s 161E	ad. No. 23, 1989
s 161F	ad No 23, 1989
s 161G	ad No 23, 1989
	am No 41, 2015
s 161H	ad No 23, 1989
s 161J	ad. No. 23, 1989
	am. No. 85, 1995; No 41, 2015
s 161K	ad No 23, 1989
	am No 85, 1995; No 41, 2015
s. 161L	ad. No. 23, 1989
	am. No. 85, 1995; No. 75, 2008; No 41, 2015
Division 3	
Division 3 heading	am. No. 108, 1982
	rs. No. 75, 2008
s. 162	am. No. 7, 1934; No. 56, 1950
	rs. No. 108, 1952
	am. No. 28, 1974; No. 64, 1981; No. 39, 1985; No. 34, 1986; No. 85, 1995; No. 176, 1999; No. 156, 2000; No. 39, 2012; No 41, 2015
s 162A	ad No 48, 1963
	am No 14, 1968; No 28, 1974; No 64, 1981; No 81, 1982; No 39, 1985; No 34, 1986; No 85, 1995; No 109, 1999; No 176, 1999; No 156, 2000; No 39, 2012; No 41, 2015; No 19, 2017
s. 162AA	ad. No. 109, 1999
	am No 41, 2015
s 162B	ad No 104, 1968
	am No 28, 1974; No 81, 1982; No 23, 1989; No 109, 1999; No 19, 2017
s. 163	am. No. 6, 1930; No. 7, 1934; No. 108, 1952; No. 47, 1953; No. 104, 1968
	rs. No. 12, 1971

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 165, 1984; No. 81, 1987; No. 34, 1992; No. 3, 1997; Nos. 139 and 142, 1999; No. 95, 2001; No. 25, 2004; No 109, 2014; No 41, 2015
s. 164	rep. No. 12, 1971
	ad. No. 108, 1982
	am. Nos. 39 and 101, 1983; No. 175, 1985; No. 81, 1987; No. 99, 1988; Nos. 24 and 78, 1989; No. 5, 1990; No. 34, 1992; No. 209, 1992 (as am. by No. 8, 1994); No. 113, 1993; No. 85, 1995; No. 87, 1995 (as am. by No. 21, 1996); No. 97, 1997; No. 8, 1998; Nos. 87, 177 and 181, 1999; No. 91, 2000; Nos. 25 and 165, 2001; No. 46, 2002
	rep. No. 54, 2003
s. 164A	ad. No. 45, 1949
	rep. No. 12, 1971
	ad. No. 40, 1985
	rep. No. 175, 1985
	ad. No. 81, 1987
	am. No. 34, 1992
	rs. No. 97, 1997
	am. No. 25, 2001
	rep. No. 54, 2003
s. 164AA	ad. No. 81, 1987
	am. No. 78, 1989; No. 34, 1992
	rs. No. 97, 1997
	am. No. 25, 2001
	rep. No. 54, 2003
s. 164AB	ad. No. 97, 1997
	am. No. 25, 2001
	rep. No. 54, 2003
s. 164AC	ad. No. 97, 1997
	am. Nos. 24 and 25, 2001; No. 46, 2002
	rep. No. 54, 2003

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Provision affected	How affected
s. 164AD	ad. No. 97, 1997
	am. No. 25, 2001
	rep. No. 54, 2003
s. 164AE	ad. No. 97, 1997
	am. No. 25, 2001
	rep. No. 54, 2003
s 164AF (prev s 165A)	am No 25, 2001
	rep No 54, 2003
s. 164B	ad. No. 56, 1950
	am. No. 10, 1986; No. 85, 1995; No. 8, 2007; No 41, 2015
s 165	am No 104, 1968; No 81, 1982; No 108, 1982; No 78, 1989; No 85, 1995; No 97, 1997; No 95, 2001; No 54, 2003
	rs No 75, 2008
	am No 41, 2015; No 3, 2019
s. 165A	ad. No. 75, 2008
	am No 41, 2015
s. 165A	ad. No. 78, 1989
	am. No. 113, 1993; No. 85, 1995; No. 97, 1997
Renumbered s. 164AF	No. 97, 1997
s 166	am No 41, 2015
Division 4	
s. 167	rs. No. 36, 1910
	am. No. 12, 1923; No. 48, 1963; No. 28, 1974; No. 64, 1981; No. 78, 1989; Nos. 34 and 209, 1992; No. 95, 2001; No. 75, 2008; No. 33, 2013; No 41, 2015
Part IX	
s. 168	rs. No. 108, 1952; No. 104, 1968; No. 139, 1999
	am No 109, 2014
s. 169	rep. No. 12, 1923
s. 170	am. No. 108, 1952
	rep. No. 54, 1959
ss. 171–174	rep. No. 54, 1959

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Provision affected	How affected
Part X	
s 175	am No 12, 1923; No 108, 1952
	rs No 81, 1982
	am No 72, 1984; No 137, 1999; No 160, 1999; No 24, 2001; No 8, 2007; No 4, 2015; No 41, 2015; No 4, 2016; No 71, 2022
Part XA	
Part XA	ad No 73, 2015
Division 1	
s. 176	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981
	rep. No. 81, 1982
	ad No 73, 2015
Division 2	
Subdivision A	
Subdivision A heading	rs No 19, 2017
s 176A	ad No 73, 2015
	am No 19, 2017
s 176B	ad No 73, 2015
Subdivision B	
Subdivision B	rep No 19, 2017
s 177	am No 12, 1923
	rep No 81, 1982
	ad No 73, 2015
	rep No 19, 2017
Subdivision C	
s 178	rep. No. 81, 1982
	ad No 73, 2015
s 178A	ad No 73, 2015
Division 3	
s 178B	ad No 73, 2015
Division 4	
s 179	rep No 81, 1982

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Provision affected	How affected
	ad No 73, 2015
	am No 19, 2017
Part XB	
Part XB	ad No 66, 2023
Division 1	
s 179A	ad No 66, 2023
s 179B	ad No 66, 2023
Division 2	
s 179C	ad No 66, 2023
s 179D	ad No 66, 2023
Division 3	
s 179E	ad No 66, 2023
s 179F	ad No 66, 2023
s 179G	ad No 66, 2023
s 179H	ad No 66, 2023
s 179J	ad No 66, 2023
Division 4	
s 179K	ad No 66, 2023
s 179L	ad No 66, 2023
Part XI	
Part XI heading	rs. No. 142, 1999
Division 1	
Division 1	ad. No. 54, 1959
	rs. No. 110, 1980
s. 179A	ad. No. 54, 1959
	am. No. 28, 1974
	rep. No. 110, 1980
s. 180	am. No. 54, 1959
	rs. No. 110, 1980
	am. No. 81, 1982; No. 24, 1989; No. 85, 1995; No. 142, 1999; No 41, 2015; No 141, 2015

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Provision affected	How affected
Division 2	
Division 2 heading	ad. No. 54, 1959
	rs No 110, 1980
Division 2	rs. No. 110, 1980
s. 181	rs. No. 110, 1980
	am. No. 81, 1982; No. 10, 1986; No. 85, 1995; No. 142, 1999; Nos. 24 and 95, 2001; No. 82, 2002; No. 8, 2007; No 52, 2013; No 41, 2015; No 4, 2016
s. 182	rs. No. 110, 1980
	am. No. 81, 1982; No. 142, 1999
s. 183	rs. No. 110, 1980
	am. No. 81, 1982; No. 142, 1999; No. 8, 2007
s. 183A	ad. No. 54, 1959
	am. No. 28, 1974
	rs. No. 110, 1980
	am. No. 81, 1982; No. 142, 1999
Division 3	
Division 3 heading	rs. No. 142, 1999
Division 3	ad. No. 54, 1959
	rs. No. 110, 1980
s 183B	ad No 54, 1959
	am No 216, 1973; No 28, 1974
	rs No 110, 1980
	am No 81, 1982; No 142, 1999; No 8, 2007; No 79, 2024
s 183C	ad No 54, 1959
	am No 216, 1973
	rs No 110, 1980
	am No 85, 1995; No 142, 1999; No 41, 2015; No 79, 2024
s 183CA	ad No 110, 1980
	am No 81, 1982; No 85, 1995; No 142, 1999; No 8, 2007; No 41, 2015; No 141, 2015; No 79, 2024

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Provision affected	How affected
s. 183CB	ad. No. 110, 1980
	am. No. 85, 1995; No. 142, 1999; No. 8, 2007; No 41, 2015
s 183CC	ad No 110, 1980
	am No 81, 1982; No 10, 1986; No 210, 1992; No 85, 1995; No 142, 1999; No 55, 2001; No 8, 2007; No 52, 2013; No 41, 2015; No 127, 2021; No 79, 2024
s 183CCA	ad No 79, 2024
s 183CD	ad No 110, 1980
	rs No 81, 1982
	am No. 85, 1995; No 142, 1999; No 8, 2007; No 75, 2008; No 79, 2024
s. 183CE	ad. No. 110, 1980
	rs. No. 81, 1982
	am. No. 85, 1995; No. 142, 1999; No. 8, 2007; No 41, 2015
s 183CF	ad No 110, 1980
	am No 81, 1982; No 85, 1995; No 142, 1999; No 8, 2007; No 41, 2015; No 79, 2024
s 183CG	ad No 110, 1980
	am No 81, 1982; No 210, 1992; No 85, 1995; No 142, 1999; No 55, 2001; No 8, 2007; No 52, 2013; No 41, 2015; No 127, 2021; No 79, 2024
s 183CGA	ad No 52, 2013
	am No 41, 2015; No 79, 2024
s 183CGB	ad No 52, 2013
	am No 41, 2015; No 79, 2024
s 183CGC	ad No 52, 2013
s. 183CH	ad. No. 110, 1980
	am. No. 142, 1999
s. 183CJ	ad. No. 110, 1980
	am. No. 81, 1982; No. 10, 1986; No. 24, 1989; No. 85, 1995; No. 142, 1999; No. 8, 2007; No 52, 2013; No 41, 2015
s 183CJA	ad No 141, 2015

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Endnote 4—Amendment history

Provision affected	How affected
s 183CK	ad No 110, 1980
	am No 85, 1995; No 142, 1999; No 8, 2007; No 41, 2015; No 79, 2024
s. 183CL	ad. No. 110, 1980
	am. No. 142, 1999
	rep No 141, 2015
s. 183CM	ad. No. 110, 1980
	am. No. 81, 1982; No. 85, 1995; No. 142, 1999; No 41, 2015
s 183CN	ad No 110, 1980
	am No 81, 1982; No 85, 1995; No 142, 1999; No 8, 2007; No 41, 2015; No 79, 2024
s 183CP	ad No 110, 1980
	am No 81, 1982; No 85, 1995; No 142, 1999; No 41, 2015; No 79, 2024
Division 4	
Division 4 heading	rs No 79, 2024
Division 4	ad. No. 110, 1980
s 183CQ	ad No 110, 1980
	am No 81, 1982; No 10, 1986; No 24, 1989; No 85, 1995; No 142, 1999; No 8, 2007; No 52, 2013; No 41, 2015; No 141, 2015; No 79, 2024
s 183CR	ad No 110, 1980
	am No 72, 1984; No 10, 1986; No 24, 1989; No 85, 1995; No 142, 1999; No 8, 2007; No 41, 2015; No 79, 2024
s 183CS	ad No 110, 1980
	am No 81, 1982; No 72, 1984; No 10, 1986; No 85, 1995; No 142, 1999; No 8, 2007; No 41, 2015; No 79, 2024
s 183CSA	ad No 79, 2024
s. 183CT	ad. No. 110, 1980
	am. No. 81, 1982; No. 142, 1999
s 183CU	ad No 110, 1980
	am No 142, 1999

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Provision affected	How affected
	rep No 79, 2024
Division 5	
Division 4 heading	rep. No. 110, 1980
Division 5 heading	ad. No. 110, 1980
	rs. No. 142, 1999
Division 4	ad. No. 54, 1959
s. 183D	ad. No. 54, 1959
	am. No. 216, 1973; No. 28, 1974
	rs. No. 110, 1980
	am. No. 10, 1986; No. 24, 1989; No. 85, 1995; No. 142, 1999; No. 8, 2007; No 41, 2015
s. 183DA	ad. No. 110, 1980
	am. Nos. 80 and 81, 1982; No. 10, 1986; No. 85, 1995; No. 152, 1997; No. 142, 1999; No. 8, 2007; No 41, 2015
s. 183DB	ad. No. 110, 1980
	am. No. 81, 1982; No. 43, 1996; No. 8, 2007
s. 183DC	ad. No. 110, 1980
	am. No. 81, 1982; No. 10, 1986; No. 85, 1995; No. 152, 1997; No. 8, 2007; No 41, 2015
s. 183DD	ad. No. 110, 1980
	am. Nos. 80 and 81, 1982; No. 10, 1986; No. 85, 1995; No 41, 2015
s 183E	ad No 54, 1959
	am No 110, 1980
s 183F	ad No 54, 1959
	am No 110, 1980
s 183G	ad No 54, 1959
	am No 110, 1980
s 183H	ad No 54, 1959
	am No 110, 1980
s 183J	ad No 54, 1959

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Endnote 4—Amendment history

Provision affected	How affected
	am No 28, 1974; No 110, 1980; No 152, 1997; No 142, 1999; No 8, 2007; No 79, 2024
s 183K	ad No 54, 1959
	am No 110, 1980; No 152, 1997; No 8, 2007; No 79, 2024
s 183L	ad No 54, 1959
	am No 64, 1981; No 8, 2007
	rep No 79, 2024
s. 183M	ad. No. 54, 1959
	am. No. 28, 1974
	rep. No. 110, 1980
s. 183N	ad. No. 54, 1959
	am. No. 110, 1980; No. 8, 2007
s. 183P	ad. No. 54, 1959
	am. No. 28, 1966; No. 110, 1980; No. 24, 2001; No. 82, 2002; No. 8, 2007
s 183Q	ad No 54, 1959
	am No 28, 1974
	rs No 110, 1980
	am No 81, 1982; No 8, 2007; No 66, 2023
s. 183R	ad. No. 54, 1959
	am. No. 216, 1973; No. 110, 1980; No. 152, 1997; No. 142, 1999; No. 8, 2007
s. 183S	ad. No. 54, 1959
	am. No. 110, 1980; No. 10, 1986; No. 85, 1995; No. 142, 1999; No 41, 2015
s. 183T	ad. No. 54, 1959
	am. No. 110, 1980; No. 8, 2007
s. 183U	ad. No. 54, 1959
	am. No. 110, 1980
Division 6	
Division 6	ad No 79, 2024
s 183UAA	ad No 79, 2024

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Provision affected	How affected
Part XII	
Division 1	
Division 1 heading	rs No 41, 2015
Subdivision A	
Subdivision A	ad. No. 85, 1995
s 183UA	ad No 85, 1995
	am No 3, 1997; No 137, 1999; No 137, 2000; No 25, 2001; No 161, 2001; No 64, 2002; No 82, 2002; No 54, 2003; No 129, 2005; No 3, 2007; No 74, 2008; No 34, 2009; No 24, 2012; No 152, 2012; No 16, 2013; No 33, 2013; No 103, 2013; No 116, 2014; No 4, 2015; No 5, 2015; No 12, 2015; No 41, 2015; No 26, 2016; No 89, 2018; No 148, 2018; No 71, 2022; No 50, 2024; No 51, 2024; No 11, 2025; No 60, 2025
s. 183UB	ad. No. 85, 1995
s. 183UC	ad. No. 85, 1995
	am. No. 103, 2013; No 41, 2015
s. 183UD	ad. No. 64, 2002
Subdivision B	
Subdivision B heading	ad. No. 85, 1995
s. 184	am. No. 12, 1923; No. 108, 1952
	rs. No. 64, 1981 (as am. by No. 51, 1982)
	am. No. 81, 1982
	rep. No. 160, 1999
s. 184A	ad. No. 160, 1999
	am. Nos. 24 and 126, 2001; No. 25, 2004; No. 129, 2005; No. 3, 2007; No. 34, 2009
	rep No 16, 2013
s 184B	ad No 160, 1999
	am No 34, 2009
	rep No 16, 2013
s 184C	ad No 160, 1999
	am No 34, 2009

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 16, 2013
s. 184D	ad. No. 160, 1999
	am. No. 24, 2001; No. 129, 2005; No. 3, 2007; No. 34, 2009
	rep No 16, 2013
s. 185	am. No. 12, 1923; No. 7, 1934; No. 108, 1952; No. 28, 1966; No. 54, 1967
	rs. No. 64, 1981 (as am. by No. 51, 1982)
	am. No. 85, 1995; Nos. 137 and 160, 1999; Nos. 24 and 126, 2001; No. 25, 2004; No. 129, 2005; No. 3, 2007; No. 74, 2008; No. 34, 2009
	rep No 16, 2013
s. 185A	ad. No. 160, 1999; No 74, 2008
	am. No. 34, 2009
	rep No 16, 2013
s. 185AA	ad. No. 126, 2001
	am. No. 74, 2008
	rep No 16, 2013
s. 185AAA	ad. No. 74, 2008
	rep No 16, 2013
s. 185AB	ad. No. 126, 2001
	rep No 16, 2013
s. 185B	ad. No. 160, 1999
	am. No. 126, 2001; No. 64, 2002; No. 129, 2005; No. 3, 2007
	rep No 16, 2013
s. 186	am. No. 137, 1999; No. 64, 2002; No 41, 2015
s 186AA	ad No 4, 2015
	am No 41, 2015
s. 186A	ad. No. 137, 1999
	am. No. 160, 1999; No. 144, 2005; No 4, 2015
s. 186B	ad. No. 137, 1999
s 187	am No 12, 1923; No 64, 1981

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Provision affected	How affected
	rs No 51, 1982
	am No 104, 1987; No 24, 1989; No 111, 1990; No 160, 1999; No 16, 2013; No 41, 2015; No 71, 2022
s. 188	am. No. 12, 1923; No. 28, 1966; No. 54, 1967; No. 64, 1981; Nos. 51 and 81, 1982; No. 24, 2001; No. 82, 2002; No 52, 2013
s. 189	am. No. 12, 1923; No. 64, 1981; No. 51, 1982
s. 189A	ad. No. 160, 1999
	am. No. 64, 2002; No 16, 2013; No 41, 2015
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; No. 24, 2001; No. 82, 2002; No 52, 2013; No 41, 2015
s. 192	am. No. 12, 1923; No. 108, 1952; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982; No. 24, 2001; No. 82, 2002; No 52, 2013; No 4, 2016
s. 193	am. No. 64, 2002; No. 8, 2007
	rs. No. 34, 2009
s. 194	am. No. 64, 1981; No. 8, 2007
	rs. No. 34, 2009
	am No 41, 2015
s 195	am No 36, 1910; No 12, 1923
	rs No 110, 1980
	am No 51, 1982; No 104, 1987; No 79, 1990; No 24, 2001; No 82, 2002; No 8, 2007; No 52, 2013; No 71, 2022
s. 195A	ad. No. 111, 2004
s. 196	am. No. 36, 1910; No. 61, 1981; No. 175, 1985
	rep. No. 79, 1990
s. 196C	ad. No. 64, 1981
	am. No. 34, 1992; Nos. 24 and 95, 2001; No. 82, 2002; No. 8, 2007
s. 197	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
	rs. No. 209, 1992; No. 85, 1995

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Provision affected	How affected
	am. No. 137, 1999; No. 111, 2004; No 52, 2013; No 41, 2015; No 4, 2016
s. 197A	ad. No. 111, 1960
	am. No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 81, 1982
	rep. No. 85, 1995
Subdivision C	
Subdivision C heading	ad No 85, 1995
s 198	am No 14, 1968; No 216, 1973; No 19, 1979
	rs No 85, 1995
	am No 25, 2001; No 136, 2001; No 86, 2002; No 34, 2009; No 41, 2015; No 148, 2018
s 199	am No 36, 1910; No 66, 1954; No 37, 1957
	rs No 48, 1963
	am No 14, 1968; No 28, 1974
	rs No 85, 1995
	am No 86, 2002; No 34, 2009; No 148, 2018
s 199A	ad No 148, 2018
s 199B	ad No 148, 2018
s 200	am No 12, 1923
	rs No 85, 1995
	am No 161, 2001; No 148, 2018
s 201	am No 12, 1923
	rs No 85, 1995
	am No 161, 2001; No 41, 2015
s 201AA	ad No 148, 2018
s 201A	ad No 161, 2001
	am No 148, 2018
s 201B	ad No 161, 2001
	am No 148, 2018
s 202	am No 28, 1966; No 54, 1967; No 64, 1981; No 81, 1982
	rs No 85, 1995

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Provision affected	How affected
	am No 161, 2001; No 148, 2018
s 202A	ad No 85, 1995
	am No 161, 2001; No 148, 2018
s 202B	ad No 148, 2018
Subdivision D	
Subdivision D heading	ad No 85, 1995
s 203	am No 12, 1923
	rs No 64, 1981; No 85, 1995
	am No 136, 2001; No 82, 2002; No 119, 2003; No 5, 2007; No 74, 2008; No 34, 2009; No 52, 2013
s 203A	ad No 34, 1986
	renum No 85, 1995
s 203A	ad No 85, 1995
	am No 64, 2002; No 34, 2009
s 203B	ad No 85, 1995
	am No 137, 1999
s 203C	ad No 85, 1995
	am No 43, 1996; No 137, 1999
s 203CA	ad No 82, 2002
	am No 16, 2013
s 203CB	ad No 82, 2002
	am No 16, 2013
s 203D	ad No 85, 1995
	am No 137, 1999; No 82, 2002
	ed C140
	am No 67, 2016 (amdt never applied (Sch 1 item 16))
Subdivision DA	
Subdivision DA	ad No 64, 2002
s 203DA	ad No 64, 2002
	am No 144, 2005
s 203DB	ad No 64, 2002

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Provision affected	How affected
Subdivision E	
Subdivision E heading	ad No 85, 1995
s 203E	ad No 85, 1995
s 203F	ad No 85, 1995
s 203G	ad No 85, 1995
	am No 64, 2002; No 34, 2009
s 203H	ad No 85, 1995
	am No 41, 2003
s 203HA	ad No 34, 2009
s 203J	ad No 85, 1995
s 203K	ad No 85, 1995
	am No 64, 2002; No 148, 2018
s 203L	ad No 85, 1995
s 203M	ad No 85, 1995
	am No 136, 2001; No 64, 2002; No 31, 2014; No 148, 2018
s 203N	ad No 85, 1995
s 203P	ad No 85, 1995
s 203Q	ad No 85, 1995
	am No 24, 2001
Subdivision F	
Subdivision F heading	ad No 85, 1995
	rs No 82, 2002
s 203R	ad No 85, 1995
	am No 23, 2000; No 82, 2002
s 203S	ad No 85, 1995
	am No 23, 2000; No 82, 2002
Subdivision G	
Subdivision G heading	ad No 85, 1995
	rs No 137, 1999; No 82, 2002
s 203SA	ad No 64, 2002
s 203T (prev s 203A)	am No 41, 2015

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Provision affected	How affected
s 204	rs No 110, 1980; No 64, 1981
	am No 34, 1986
	rs No 85, 1995
	am No 82, 2002
s 205	am No 12, 1923; No 48, 1963; No 14, 1968
	rs No 64, 1981
	am No 81, 1982
	rs No 85, 1995
	am No 137, 1999; No 82, 2002
s 205A	ad No 85, 1995
	am No 74, 2008; No 4, 2015
s 205B	ad No 85, 1995
	am No 137, 1999; No 82, 2002; No 74, 2008; No 52, 2013; No 4, 2015; No 41, 2015; No 79, 2024
s 205C	ad No 85, 1995
	am No 137, 1999; No 82, 2002; No 74, 2008; No 4, 2015
s 205D	ad No 85, 1995
	am No 23, 2000; No 25, 2001; No 82, 2002; No 74, 2008; No 52, 2013; No 4, 2015; No 12, 2015
s 205E	ad No 85, 1995
	am No 137, 1999; No 23, 2000; No 82, 2002; No 12, 2015
s 205EA	ad No 12, 2015
	am No 41, 2015
s 205EB	ad No 12, 2015
s 205EC	ad No 12, 2015
s 205F	ad No 85, 1995
	am No 4, 2015; No 12, 2015
s 205G	ad No 85, 1995
s 206	am No 12, 1923; No 14, 1968
	rs No 64, 1981
	am No 81, 1982

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Provision affected	How affected
	rs No 85, 1995
	am No 137, 1999; No 82, 2002; No 5, 2007; No 12, 2015; No 41, 2015; No 76, 2019; No 50, 2024; No 11, 2025
s 207	am No 110, 1980; No 64, 1981
	rs No 64, 1981; No 85, 1995
	am No 137, 1999; No 160, 1999; No 82, 2002; No 16, 2013
s. 208	am. No. 12, 1923
	rs. No. 64, 1981
	am. No. 81, 1982; No. 85, 1995
	rs. No. 85, 1995
	am No 41, 2015
s. 208A	ad. No. 64, 1981
	am. No. 157, 1981; No. 81, 1982; No. 182, 1994
	rep. No. 85, 1995
s. 208B	ad. No. 64, 1981
	rep. No. 85, 1995
s. 208C	ad. No. 64, 1981
	am. No. 85, 1995
s 208D	ad No 64, 1981
	am No 120, 1991; No 164, 1992; No 85, 1995; No 137, 1999; No 160, 1999; No 82, 2002; No 16, 2013; No 12, 2015; No 41, 2015
s 208DA	ad No 120, 1991
	am No 81, 1982; No 164, 1992; No 85, 1995; No 20, 1997; No 152, 1997; No 137, 1999; No 146, 1999; No 82, 2002; No 86, 2002; No 8, 2005; No 31, 2018; No 3, 2019
s. 208E	ad. No. 64, 1981
	am. No. 85, 1995
s. 209	rs. No. 110, 1980
	am. No. 81, 1982; No. 24, 1989; No. 111, 1990; No. 85, 1995; No. 8, 1998; No. 64, 2002; No. 25, 2004; No. 8, 2007
s 209A	ad No 85, 1995

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Provision affected	How affected
	am No 82, 2002
Subdivision GA	
Subdivision GA	ad No 64, 2002
s 209B	ad No 64, 2002
s 209C	ad No 64, 2002
s 209D	ad No 64, 2002
s 209E	ad No 64, 2002
s 209F	ad No 64, 2002
s 209G	ad No 64, 2002
s 209H	ad No 64, 2002
s 209I	ad No 64, 2002
s 209J	ad No 64, 2002
	am No 41, 2015
s 209K	ad No 64, 2002
	am No 41, 2015
s 209L	ad No 64, 2002
Subdivision GB	
Subdivision GB	ad No 74, 2008
s 209M	ad No 74, 2008
s 209N	ad No 74, 2008
	am No 41, 2015
s 209P	ad No 74, 2008
s 209Q	ad No 74, 2008
s 209R	ad No 74, 2008
	am No 41, 2015
Subdivision GC	
Subdivision GC	ad No 74, 2008
s 209S	ad No 74, 2008
s 209T	ad No 74, 2008
s 209U	ad No 74, 2008
	am No 41, 2015

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Endnote 4—Amendment history

Provision affected	How affected
s 209V	ad No 74, 2008
s 209W	ad No 74, 2008
s 209X	ad No 74, 2008
	am No 41, 2015
s 209Y	ad No 74, 2008
s 209Z	ad No 74, 2008
	am No 41, 2015
s 209ZA	ad No 74, 2008
	am No 41, 2015
s 209ZB	ad No 74, 2008
s 209ZC	ad No 74, 2008
Subdivision H	
Subdivision H heading	ad No 85, 1995
	rs No 34, 2009
Subdivision H	rs No 34, 2009
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; No 23, 2000; No 64, 2002; No 82, 2002; No 129, 2005; No 3, 2007; No 8, 2007; No 147, 2007
	rs No 34, 2009
	am No 34, 2009; No 146, 2012; No 12, 2015; No 89, 2018
s 210A	ad No 34, 2009
s 210B	ad No 34, 2009
s 211	rep No 54, 1959
	ad No 34, 2009
s 211A	ad No 34, 2009
s 212	am No 8, 2007
	rs No 34, 2009
s 213	am No 8, 2007
	rs No 34, 2009

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Provision affected	How affected
Subdivision HA	
Subdivision HA	ad No 64, 2002
s 213A	ad No 64, 2002
	am No 41, 2015
s 213B	ad No 64, 2002
	am No 5, 2007; No 41, 2015
s 214	am No 12, 1923; No 56, 1950; No 48, 1963; No 28, 1966; No 54, 1967; No 14, 1968; No 28, 1974; No 64, 1981
	rep No 85, 1995
Subdivision J	
Subdivision J heading	ad No 85, 1995
	rs No 95, 2001; No 120, 2004
s 214AA	ad No 23, 1989
	am No 5, 1990; No 34, 1992; No 8, 1994; No 85, 1995
	rs No 95, 2001
s 214AB	ad No 23, 1989
	am No 5, 1990; No 8, 1994; No 85, 1995
	rs No 95, 2001
	am No 41, 2015
s 214AC	ad No 23, 1989
	am No 85, 1995
	rs No 95, 2001
	am No 41, 2015
s 214ACA	ad No 95, 2001
s 214AD	ad No 95, 2001
	am No 41, 2015
s 214AE	ad No 95, 2001
	am No 63, 2002; No 41, 2015
s 214AF	ad No 95, 2001
	am No 41, 2015
s 214AG	ad No 95, 2001

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Endnote 4—Amendment history

Provision affected	How affected
s 214AH	ad No 95, 2001
	am No 82, 2002
s 214AI	ad No 95, 2001
s 214AJ	ad No 95, 2001
s 214A	ad No 108, 1982
	am No 39, 1983; No 2, 1984; No 5, 1990; No 34, 1992
	rep No 97, 1997
s 214B	ad No 2, 1984
	am No 5, 1990; No 24, 2001; No 82, 2002; No 8, 2007
Subdivision JA	
Subdivision JA	ad. No. 120, 2004
s. 214BAA	ad. No. 120, 2004
s. 214BAB	ad. No. 120, 2004
	am. No. 8, 2010
s 214BAC	ad. No. 120, 2004
	am No 41, 2015
s 214BAD	ad No 120, 2004
	am No 41, 2015
s 214BAE	ad No 120, 2004
s 214BAF	ad No 120, 2004
s 214BAG	ad No 120, 2004
s 214BAH	ad No 120, 2004
s 214BAI	ad No 120, 2004
s 214BAJ	ad No 120, 2004
s 214BAK	ad No 120, 2004
s 214BAL	ad No 120, 2004
Subdivision K	
Subdivision K heading	ad. No. 85, 1995
s. 214BA	ad. No. 85, 1995
	am No 59, 2015
s. 216	am. No. 64, 1981

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Provision affected	How affected
	rep. No. 81, 1982
s. 217	am. No. 8, 2007; No 41, 2015
s 218	am No 41, 2015
s 218A	ad No 23, 2000
	am No 41, 2015; No 4, 2016
s 219	rep No 41, 2015
Division 1A	ad No 92, 1979
	rep No 152, 2004
s 219A	ad No 92, 1979
	am No 180, 1979; No 66, 1988; No 11, 1990; No 85, 1995; No 160, 1997; No 137, 1999; No 135, 2001; No 67, 2002; No 82, 2002; No 86, 2002; No 125, 2002
	rep No 152, 2004
s 219AA	ad No 11, 1990
	am No 67, 2002
	rep No 152, 2004
s 219AB	ad No 11, 1990
	rep No 82, 1991
	ad No 160, 1997
	rep No 152, 2004
s 219B	ad No 92, 1979
	am No 116, 1979; No 180, 1979; No 66, 1988; No 121, 1988; No 11, 1990; No 160, 1997; No 136, 2001; No 125, 2002
	rep No 152, 2004
s 219C	ad No 92, 1979
	am No 81, 1982; No 160, 1997; No 136, 2001
	rep No 152, 2004
s 219D	ad No 92, 1979
	am No 180, 1979
	rs No 66, 1988
	rep No 152, 2004

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Provision affected	How affected
s 219E	ad No 92, 1979
	am No 180, 1979; No 66, 1988
	rep No 152, 2004
s 219F	ad No 92, 1979
	am No 116, 1979; No 180, 1979; No 66, 1988; No 11, 1990; No 160, 1997; No 161, 1999
	rep No 152, 2004
s 219G	ad No 92, 1979
	am No 180, 1979; No 81, 1982; No 66, 1988; No 11, 1990
	rep No 152, 2004
s 219H	ad No 92, 1979
	am No 180, 1979; No 66, 1988; No 160, 1997
	rep No 152, 2004
s 219J	ad No 92, 1979
	rep No 180, 1979
s 219K	ad No 92, 1979
	am No 180, 1979; No 66, 1988 (as am by No 120, 1988); No 160, 1997
	rep No 152, 2004
Division 1B	
Division 1B	ad No 79, 1990
Subdivision A	
s 219L	ad No 79, 1990
	am No 137, 1999; No 160, 1999; No 74, 2008; No 16, 2013
s 219M	ad No 79, 1990
	am No 85, 1995; No 137, 1999; No 160, 1999; No 74, 2008; No 41, 2015
s 219N	ad No 79, 1990
	rs No 137, 1999
s 219NA	ad No 137, 1999
	am No 160, 1999; No 82, 2002

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Provision affected	How affected
	rep No 74, 2008
s 219P	ad No 79, 1990
	am No 137, 1999; No 160, 1999
Subdivision B	
s 219Q	ad No 79, 1990
	am No 85, 1995; No 137, 1999; No 41, 2015
s 219R	ad No 79, 1990
	am No 34, 1992; No 85, 1995; No 137, 1999; No 23, 2000; No 78, 2011; No 41, 2015
s 219RAA	ad No 23, 2000
	am No 78, 2011; No 41, 2015
s 219RAB	ad No 23, 2000
	rep No 78, 2011
s 219RAC	ad No 23, 2000
	rep No 78, 2011
s 219RAD	ad No 23, 2000
	rep No 78, 2011
s 219RAE	ad No 23, 2000
	rep No 78, 2011
s 219RAF	ad No 23, 2000
	rep No 78, 2011
Subdivision C	
s 219RA	ad No 82, 1991
	am No 13, 2021
s 219S	ad No 79, 1990
	am No 78, 2011
s 219SA	ad No 78, 2011
s 219SB	ad No 78, 2011
	am No 41, 2015
s 219T	ad No 79, 1990
	am No 85, 1995; No 78, 2011; No 41, 2015

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Provision affected	How affected
s 219U	ad No 79, 1990
	am No 85, 1995; No 41, 2015
s 219V	ad No 79, 1990
	am No 85, 1995; No 78, 2011; No 41, 2015
s 219W	ad No 79, 1990
s 219X	ad No 79, 1990
	am No 85, 1995; No 41, 2015
s 219Y	ad No 79, 1990
	am No 85, 1995; No 41, 2015
s 219Z	ad No 79, 1990
	am No 78, 2011
Subdivision CA	
Subdivision CA	ad No 78, 2011
s 219ZAA	ad No 78, 2011
s 219ZAB	ad No 78, 2011
	am No 41, 2015
s 219ZAC	ad No 78, 2011
	am No 41, 2015
s 219ZAD	ad No 78, 2011
s 219ZAE	ad No 78, 2011
Subdivision D	
s 219ZA	ad No 79, 1990
	am No 85, 1995; No 41, 2015
s 219ZB	ad No 79, 1990
s 219ZC	ad No 79, 1990
	am No 85, 1995; No 137, 1999; No 41, 2015
s 219ZD	ad No 79, 1990
s 219ZE	ad No 79, 1990
	am No 137, 1999; No 160, 1999; No 74, 2008; No 78, 2011
Subdivision E	
s 219ZF	ad No 79, 1990

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Provision affected	How affected
	am No 78, 2011
s 219ZG	ad No 79, 1990
s 219ZH	ad No 79, 1990
	am No 85, 1995; No 41, 2015
	ed C140
s 219ZJ	ad No 79, 1990
Division 1BA	
Division 1BA	ad. No. 111, 2004
Subdivision A	
s. 219ZJA	ad. No. 111, 2004
	am. No. 3, 2010; No 116, 2014
s. 219ZJAA	ad. No. 111, 2004
Subdivision B	
s 219ZJB	ad No 111, 2004; No 144, 2008
	am No 116, 2014
s 219ZJC	ad No 111, 2004; No 144, 2008
	am No 129, 2005; No 116, 2014
s 219ZJCA	ad No 116, 2014
Subdivision C	
s. 219ZJD	ad. No. 111, 2004
	am No 116, 2014
s. 219ZJE	ad. No. 111, 2004
	am. No. 103, 2013; No 41, 2015
s. 219ZJF	ad. No. 111, 2004
	am No 116, 2014
s. 219ZJG	ad. No. 111, 2004
s. 219ZJH	ad. No. 111, 2004
s. 219ZJI	ad. No. 111, 2004
s. 219ZJJ	ad. No. 111, 2004
	am No 116, 2014

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Endnote 4—Amendment history

Provision affected	How affected
Division 1C	
Division 1C	ad No 79, 1990
s 219ZK	ad No 79, 1990
s 219ZL	ad No 79, 1990
	rs No 82, 1991
	am No 160, 1997; No 137, 1999; No 8, 2007; No 26, 2016; No 13, 2021; No 4, 2026
Division 2	
s. 220	am. No. 12, 1923
s. 221	am. No. 216, 1973; No. 19, 1979; No. 8, 2007
s. 222	am. No. 8, 2007
s. 224	am. No. 8, 2007
s. 225	am. No. 64, 1981
s 226	am No 7, 1934; No 42, 1960; No 48, 1963; No 28, 1974; No 64, 1981; No 66, 2023
s. 227	am. No. 216, 1973; No. 19, 1979
Division 3	
Division 3	ad. No. 129, 2005
s. 227AA	ad. No. 129, 2005
	am. No. 3, 2007
Part XIIA	
Part XIIA heading	rs No 34, 2009
Part XIIA	ad No 137, 1999
s 227A	ad No 137, 1999
	am No 34, 2009
s 227B	ad No 137, 1999
	am No 34, 2009
s 227C	ad No 137, 1999
s 227D	ad No 137, 1999
	rs No 34, 2009
s 227E	ad No 137, 1999

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Provision affected	How affected
	am No 24, 2001; No 34, 2009; No 52, 2013
s 227F	ad No 137, 1999
	am No 34, 2009; No 41, 2015; No 67, 2016
s 227G	ad No 137, 1999
	am No 34, 2009; No 41, 2015
Part XIII	
Division 1	
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; No. 160, 1999; No. 34, 2009; No 16, 2013; No 116, 2014; No 41, 2015; No 60, 2025
s. 228A	ad. No. 51, 1982
	am. No. 104, 1987; No. 85, 1995; No 41, 2015
s 228B	ad No 104, 1987
	am No 85, 1995; No 41, 2015
s 228C	ad No 71, 2022
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; No 5, 1990; No 6, 1990; No 111, 1990; No 85, 1995; No 64, 2002; No 8, 2007; No 152, 2012; No 33, 2013; No 41, 2015; No 107, 2017; No 164, 2018
s 229A	ad No 154, 1977
	am No 92, 1979; No 110, 1980; No 64, 1981; No 85, 1995; No 8, 1998; No 129, 2005; No 8, 2007
s. 230	am. No. 92, 1979
Division 2	
s. 231	rs. No. 7, 1934
	am. No. 54, 1967; No. 134, 1971; No. 28, 1974; No. 64, 1981; No. 81, 1982; No. 24, 2001; No. 129, 2005; No. 3, 2007; No 4, 2016
s. 232	am. No. 7, 1934; No. 64, 1981

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Provision affected	How affected
	rep. No. 137, 2000
s. 232A	ad. No. 7, 1934
	am. No. 54, 1959; No. 48, 1963; No. 28, 1966; No. 54, 1967; No. 64, 1981; No. 137, 2000; No. 24, 2001; No. 82, 2002; No 4, 2016
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; No 64, 1981; No 152, 1981; No 48, 1982; No 81, 1982; No 24, 2001; No 136, 2001; No 5, 2007; No 8, 2007; No 41, 2015; No 4, 2016
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; No 24, 2001; No 129, 2005; No 3, 2007; No 8, 2007; No 4, 2016
s 233AB	ad No 81, 1982
	am No 23, 2000; No 82, 2002
s 233AC	ad No 24, 2001
	rep No 129, 2005
s 233B	ad No 36, 1910
	am No 12, 1923; No 54, 1967; No 134, 1971; No 28, 1974; No 92, 1979; No 64, 1981; No 149, 1986; No 111, 1990; No 24, 2001; No 127, 2004
	rep No 129, 2005
s 233BAA	ad No 23, 2000
	am No 24, 2001; No 82, 2002; No 4, 2016; No 61, 2016
s 233BAB	ad No 23, 2000
	am No 24, 2001; No 82, 2002; No 127, 2004; No 12, 2015; No 4, 2016; No 61, 2016; No 72, 2019
s 233BABAA	ad No 147, 2007
s 233BABAB	ad No 147, 2007
s 233BABAC	ad No 147, 2007

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Provision affected	How affected
s 233BABAD	ad No 146, 2012
	am No 89, 2018; No 131, 2018; No 82, 2026
s 233BABAE	ad No 33, 2013
s 233BABAF	ad No 52, 2013
	am No 41, 2015
s 233BABA	ad No 5, 2007
	am No 33, 2013
s 233BAC	ad No 23, 2000
	am No 147, 2007
s 233BA	ad No 24, 1989
	am No 111, 1990; No 85, 1995; No 23, 2000; No 129, 2005; No 147, 2007; No 41, 2015
	ed C140
s 233C	ad No 147, 2007
s 234	am No 12, 1923; No 28, 1966; No 54, 1967; No 154, 1977; No 64, 1981; No 81, 1982; No 24, 1989; No 111, 1990; No 34, 1992; No 85, 1995; No 97, 1997; No 167, 1997; No 109, 1999; No 142, 1999; No 24, 2001; No 25, 2001; No 95, 2001; No 63, 2002; No 82, 2002; No 54, 2003; No 136, 2003; No 76, 2006; No 75, 2008; No 37, 2012; No 52, 2013; No 41, 2015; No 4, 2016
s 234AA	ad No 110, 1980
	am No 40, 1985; No 64, 2002; No 33, 2013; No 41, 2015
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; No 24, 2001; No 64, 2002; No 82, 2002; No 5, 2007; No 33, 2013; No 52, 2013; No 41, 2015
	ed C140
s 234AB	ad No 40, 1985
	am No 24, 2001; No 64, 2002; No 82, 2002; No 33, 2013; No 52, 2013
s 234ABA	ad No 64, 2002
	am No 64, 2004
s 234AC	ad No 111, 1990

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Provision affected	How affected
	am No 34, 1992; No 209, 1992; No 82, 2002
	rep No 95, 2001
s 235	rep No 48, 1963
	ad No 54, 1967
	am No 134, 1971; No 28, 1974
	rs No 154, 1977
	am No 92, 1979; No 81, 1982; No 165, 1984; No 111, 1990; No 23, 2000; No 24, 2001; No 82, 2002
	rep No 129, 2005
s 236	am No 24, 2001
s 237	am No 24, 2001
s 238	am No 28, 1966; No 54, 1967; No 61, 1981
	rep No 81, 1982
s 240	am No 64, 1981
	rep No 81, 1982
	ad No 23, 1989
	am No 111, 1990; No 8, 1994; No 85, 1995; No 95, 2001; No 76, 2006; No 136, 2012; No 52, 2013; No 41, 2015
s 240A	ad No 34, 1992
	am No 85, 1995; No 97, 1997; No 25, 2001
	rep No 54, 2003
s 240AA	ad No 95, 2001
s 240AB	ad No 95, 2001
	am No 136, 2003; No 25, 2004; No 52, 2013; No 41, 2015
s 240AC	ad No 95, 2001
s 240B	ad No 34, 1992
	rep No 95, 2001
s 241	rep No 81, 1982
	ad No 111, 1990
	am No 34, 1992
	rep No 95, 2001

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Provision affected	How affected
s 242	am No 64, 1981
	rep No 81, 1982
s 243	am No 133, 1965; No 28, 1974
	rep No 81, 1982
Division 3	
Division 3	ad No 92, 1979
s 243A	ad No 92, 1979
	am No 180, 1979; No 13, 1980; No 64, 1981; No 80, 1982; No 108, 1989; No 120, 1991; No 152, 1997; No 80, 2004; No 129, 2005; No 8, 2007
s 243AB	ad No 108, 1989
	am No 144, 2008
s 243B	ad No 92, 1979
	am No 64, 1981; No 108, 1989; No 85, 1995; No 8, 2007; No 41, 2015
s 243C	ad No 92, 1979
	am No 180, 1979; No 108, 1989; No 28, 1991; No 8, 2007
	ed C140
s 243CA	ad No 108, 1989
	am No 85, 1995; No 41, 2015
s 243D	ad No 92, 1979
s 243E	ad No 92, 1979
	am No 180, 1979; No 13, 1980; No 64, 1981; No 81, 1982; No 108, 1989; No 123, 1991; No 85, 1995; No 8, 2007; No 41, 2015
s 243F	ad No 92, 1979
	am No 13, 1980; No 64, 1981; No 81, 1982; No 120, 1988; No 108, 1989; No 123, 1991; No 85, 1995; No 41, 2015
s 243G	ad No 92, 1979
	am No 13, 1980; No 64, 1981
	rs No 108, 1989

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Provision affected	How affected
	am No 120, 1991; No 164, 1992; No 85, 1995; No 152, 1997; No 86, 2002; No 8, 2005; No 41, 2015
s 243H	ad No 92, 1979
	am No 13, 1980; No 108, 1989; No 8, 2007
s 243J	ad No 92, 1979
	am No 13, 1980; No 108, 1989; No 8, 2007
s 243K	ad No 92, 1979
	am No 13, 1980
	rs No 108, 1989
	am No 85, 1995; No 24, 2001; No 41, 2015; No 4, 2016
s 243L	ad No 92, 1979
	am No 13, 1980; No 64, 1981; No 108, 1989; No 85, 1995; No 41, 2015
s 243M	ad No 92, 1979
	rs No 13, 1980
	am No 108, 1989; No 120, 1991
s 243N	ad No 92, 1979
	am No 13, 1980; No 108, 1989
s 243NA	ad No 141, 1987
s 243NB	ad No 141, 1987
s 243P	ad No 92, 1979
	am No 13, 1980
	rs No 108, 1989
	am No 86, 2002; No 8, 2005
s 243Q	ad No 92, 1979
	am No 13, 1980
	rs No 108, 1989
s 243R	ad No 92, 1979
	am No 8, 2007
s 243S	ad No 92, 1979

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Provision affected	How affected
Division 4	
Division 4 heading	rs No 95, 2001
Division 4	ad No 24, 1989
s 243SA	ad No 95, 2001
	am No 82, 2002; No 111, 2004; No 52, 2013; No 41, 2015
s 243SB	ad No 95, 2001
	am No 25, 2004; No 52, 2013; No 79, 2024
s 243SC	ad No 95, 2001
s 243T	ad No 24, 1989
	am No 34, 1992; No 85, 1995
	rs No 95, 2001
	am No 136, 2003; No 74, 2008; No 52, 2013
s 243U	ad No 24, 1989
	am No 5, 1990; No 85, 1995
	rs No 95, 2001
	am No 136, 2003; No 74, 2008; No 52, 2013
s 243V	ad No 24, 1989
	am No 34, 1992
	rs No 95, 2001
	am No 136, 2003; No 52, 2013
s 243W	ad No 95, 2001
	am No 41, 2015
Division 5	
Division 5	ad No 95, 2001
	rs No 52, 2013
Subdivision A heading	ad No 74, 2008
	rep No 52, 2013
s 243X	ad No 95, 2001
	am No 82, 2002; No 25, 2004; No 74, 2008; No 34, 2009; No 63, 2011
	rs No 52, 2013

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Provision affected	How affected
s 243XA	ad No 95, 2001
	am No 74, 2008; No 103, 2013
	rep No 52, 2013
s 243Y	ad No 95, 2001
	am No 74, 2008
	rs No 52, 2013
	am No 4, 2015; No 41, 2015
s 243Z	ad No 95, 2001
	am No 74, 2008; No 34, 2009
	rs No 52, 2013
s 243ZA	ad No 95, 2001
	am No 74, 2008
	rep No 52, 2013
s 243ZB	ad No 95, 2001
	am No 74, 2008
	rep No 52, 2013
s 243ZC	ad No 95, 2001
	am No 74, 2008
	rep No 52, 2013
s 243ZD	ad No 95, 2001
	am No 74, 2008
	rep No 52, 2013
s 243ZE	ad No 95, 2001
	am No 74, 2008
	rep No 52, 2013
Subdivision B	ad No 74, 2008
	rep No 52, 2013
s 243ZF	ad No 74, 2008
	rep No 52, 2013
s 243ZG	ad No 74, 2008
	rep No 52, 2013

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Provision affected	How affected
s 243ZH	ad No 74, 2008
	rep No 52, 2013
s 243ZI	ad No 74, 2008
	rep No 52, 2013
s 243ZJ	ad No 74, 2008
	rep No 52, 2013
s 243ZK	ad No 74, 2008
	rep No 52, 2013
s 243ZL	ad No 74, 2008
	rep No 52, 2013
s 243ZM	ad No 74, 2008
	rep No 52, 2013
s 243ZN	ad No 74, 2008
	rep No 52, 2013
s 243ZO	ad No 74, 2008
	rep No 52, 2013
Part XIV	
s 244	am No 108, 1952; No 92, 1979
	rs No 25, 2001
	am No 54, 2003; No 41, 2015
s 245	am No 28, 1966; No 216, 1973; No 19, 1979; No 64, 1981
	rs No 81, 1982
	am No 24, 1989; No 5, 1990; No 85, 1995; No 23, 2000; No 82, 2002; No 41, 2015
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

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Provision affected	How affected
s 249	am No 64, 1981
s 250	am No 81, 1982
s 250A	ad No 36, 1910
	am No 8, 2007; No 41, 2015
s 251	am No 81, 1982
s 253	am No 10, 1986; No 85, 1995; No 8, 2007; No 41, 2015
s 255	rs No 12, 1923
	ed C140
s 256	am No 14, 1968; No 85, 1995; No 41, 2015
	ed C140
s 257	rep No 81, 1982
	ad No 40, 1985
	am No 5, 2015
s 258	rep No 37, 1957
s 258A	ad No 7, 1934
	rep No 37, 1957
s 259	am No 8, 2007; No 41, 2015
s 260	rep No 37, 1957
s 261	am No 41, 2015
s 262	rep No 85, 1995
s 263	rs No 48, 1963
	am No 216, 1973; No 28, 1974
s 264	am No 64, 1981; No 81, 1982; No 10, 1986; No 85, 1995; No 41, 2015
Part XV	
Part XV heading	rs No 40, 1985
Part XV	rep No 110, 1980
	ad No 45, 1981
s 265	am No 36, 1910
	rep No 110, 1980
	ad No 45, 1981

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Provision affected	How affected
	am No 19, 1983; No 40, 1985
s 266	rep No 110, 1980
	ad No 45, 1981
	am No 157, 1981; No 40, 1985
s 267	rep No 110, 1980
	ad No 45, 1981
	am No 76, 1987; No 24, 1989; No 85, 1995; No 15, 1996; No 41, 2015
s 268	am No 28, 1966; No 54, 1967
	rep No 110, 1980
	ad No 45, 1981
	am No 39, 1985; No 40, 1985; No 85, 1995; No 41, 2015
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; No 85, 1995; No 41, 2015
s 269A	ad No 45, 1981
Part XVA	
Part XVA	ad No 19, 1983
	rs No 89, 1992
Division 1	
s 269B	ad No 19, 1983
	am No 39, 1985; No 34, 1986; No 76, 1987
	rs No 89, 1992
	am No 85, 1995; No 15, 1996; No 30, 1996; No 41, 2015
s 269C	ad No 19, 1983
	am No 39, 1985; No 34, 1986
	rs No 89, 1992; No 30, 1996
s 269D	ad No 19, 1983

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Endnote 4—Amendment history

Provision affected	How affected
	am No 39, 1985; No 76, 1987
	rs No 89, 1992
	am No 85, 1995; No 41, 2015; No 19, 2017
s 269E	ad No 19, 1983
	am No 39, 1985; No 34, 1986; No 5, 1990
	rs No 89, 1992
	am No 30, 1996; No 19, 2017
Division 2	
s 269F	ad No 19, 1983
	am No 39, 1985
	rs No 89, 1992
	am No 85, 1995; No 30, 1996; No 79, 1998; No 31, 2014; No 41, 2015
s 269FA	ad No 30, 1996
	am No 41, 2015
s 269G	ad No 19, 1983
	am No 39, 1985
	rs No 89, 1992
	am No 85, 1995; No 41, 2015
s 269H	ad No 39, 1985
	rs No 89, 1992
	am No 85, 1995; No 30, 1996; No 41, 2015
s 269HA	ad No 85, 1995
	am No 41, 2015
s 269J	ad No 19, 1983
	am No 39, 1985; No 149, 1986
	rs No 89, 1992
	am No 85, 1995; No 41, 2015
s 269K	ad No 19, 1983
	am No 39, 1985
	rs No 89, 1992

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Provision affected	How affected
	am No 85, 1995; No 30, 1996; No 41, 2015
s 269L	ad No 19, 1983
	am No 39, 1985
	rs No 89, 1992
	am No 85, 1995; No 30, 1996; No 13, 2014; No 41, 2015
s 269M	ad No 19, 1983
	rs No 89, 1992
	am No 85, 1995; No 30, 1996; No 41, 2015
s 269N	ad No 19, 1983
	am No 39, 1985; No 5, 1990
	rs No 89, 1992
	am No 85, 1995; No 30, 1996; No 41, 2015; No 39, 2024
Division 3	
s 269P	ad No 19, 1983
	am No 39, 1985; No 40, 1985; No 10, 1986; No 5, 1990
	rs No 89, 1992
	am No 85, 1995; No 30, 1996; No 41, 2015
s 269Q	ad No 19, 1983
	rs No 89, 1992
	am No 85, 1995; No 41, 2015
s 269R	ad No 19, 1983
	am No 39, 1985
	rs No 89, 1992
	am No 85, 1995; No 41, 2015
s 269S	ad No 19, 1983
	am No 39, 1985; No 99, 1988
	rs No 89, 1992
	am No 30, 1996
s 269SA	ad No 89, 1992
	am No 85, 1995; No 30, 1996; No 41, 2015

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Endnote 4—Amendment history

Provision affected	How affected
Division 4	
s 269SB	ad No 89, 1992
	am No 85, 1995; No 30, 1996; No 79, 1998; No 31, 2014; No 41, 2015
s 269SC	ad No 89, 1992
	am No 8, 1994; No 85, 1995; No 30, 1996; No 140, 2003; No 41, 2015; No 126, 2015
s 269SD	ad No 89, 1992
	am No 85, 1995; No 30, 1996; No 140, 2003; No 119, 2006; No 41, 2015; No 126, 2015; No 39, 2024
s 269SE	ad No 89, 1992
	am No 85, 1995; No 30, 1996; No 119, 2006; No 41, 2015
s 269SF	ad No 89, 1992
	am No 85, 1995; No 41, 2015
s 269SG	ad No 89, 1992
	am No 8, 1994; No 30, 1996
Division 5	
s 269SH	ad No 89, 1992
	am No 8, 1994; No 85, 1995; No 41, 2015
s 269SHA	ad No 30, 1996
	am No 5, 2011; No 41, 2015; No 39, 2024
s 269SJ	ad No 89, 1992
	am No 85, 1995; No 30, 1996; No 41, 2015
s 269SK	ad No 89, 1992
	am No 85, 1995; No 41, 2015
s 269SL	ad No 89, 1992
	rep No 10, 2015
Part XVB	
Part XVB	ad No 2, 1984
s 269SM	ad No 79, 1998
	am No 119, 2003; No 196, 2012; No 205, 2012; No 32, 2013

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Provision affected	How affected
Division 1A	
Division 1A	ad No 32, 2013
Subdivision A	
s 269SMA	ad No 32, 2013
	am No 139, 2013
Subdivision B	
s 269SMB	ad No 32, 2013
	rs No 139, 2013
s 269SMC	ad No 32, 2013
s 269SMD	ad No 32, 2013
s 269SME	ad No 32, 2013
Subdivision C	
s 269SMF	ad No 32, 2013
s 269SMG	ad No 32, 2013
s 269SMH	ad No 32, 2013
s 269SMI	ad No 32, 2013
s 269SMJ	ad No 32, 2013
s 269SMK	ad No 32, 2013
s 269SML	ad No 32, 2013
	rs No 62, 2014
s 269SMM	ad No 32, 2013
s 269SMN	ad No 32, 2013
s 269SMO	ad No 32, 2013
	am No 62, 2014
s 269SMP	ad No 32, 2013
	rep No 139, 2013
Subdivision D	
s 269SMQ	ad No 32, 2013
	am No 139, 2013
Subdivision E	
Subdivision E	ad No 139, 2013

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Endnote 4—Amendment history

Provision affected	How affected
s 269SMR	ad No 139, 2013
Subdivision F	
Subdivision F heading	rs No 42, 2015
Subdivision F	ad No 139, 2013
s 269SMS	ad No 139, 2013
	am No 42, 2015
Subdivision G	
Subdivision G	ad No 139, 2013
s 269SMT	ad No 139, 2013
	am No 41, 2015
Division 1	
Division 1 heading	ad No 174, 1989
	rs No 32, 2013
s 269SN	ad No 79, 1998
	am No 32, 2013
s 269T	ad No 2, 1984
	rs No 76, 1988
	am No 174, 1989; No 5, 1990; No 111, 1990; No 82, 1991; No 89, 1992; No 207, 1992 (as am by No 8, 1994); No 150, 1994; No 85, 1995; No 79, 1998; No 119, 2003; No 123, 2011; No 124, 2011; No 196, 2012; No 205, 2012; No 206, 2012; No 32, 2013; No 95, 2013; No 41, 2015; No 42, 2015; No 71, 2022
s 269TAAA	ad No 70, 1990
	am No 79, 1998
	rs No 166, 2006
s 269TAAB	ad No 150, 1994
s 269TAAC	ad No 150, 1994
	am No 123, 2011; No 196, 2012
s 269TAACA	ad No 206, 2012
	am No 32, 2013
s 269TAAD	ad No 150, 1994
s 269TAA	ad No 174, 1989

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Endnote 4—Amendment history

Provision affected	How affected
	am No 79, 1998; No 144, 2008; No 95, 2013
s 269TAB	ad No 174, 1989
	am No 150, 1994; No 79, 1998; No 119, 2017
s 269TAC	ad No 174, 1989
	am No 150, 1994; No 79, 1998; No 26, 1999; No 119, 2003; No 206, 2012; No 32, 2013; No 42, 2015
s 269TACAA	ad No 196, 2012
s 269TACAB	ad No 196, 2012
s 269TACA	ad No 207, 1992
s 269TACB	ad No 150, 1994
	am No 79, 1998; No 196, 2012; No 42, 2015
s 269TACC	ad No 150. 1994
	rs No 196, 2012
s 269TACD	ad No 196, 2012
s 269TAD	ad No 174, 1989
	rep No 207, 1992
s 269TAE	ad No 174, 1989
	am No 150, 1994; No 119, 2003; No 123, 2011; No 196, 2012; No 139, 2013
s 269TAF	ad No 174, 1989
	rs No 150, 1994
	am No 79, 1998; No 32, 2013; No 42, 2015
s 269TAG	ad No 174, 1989
	rep No 150, 1994
	ad No 79, 1998
s 269TAH	ad No 174, 1989
	am No 207, 1992
	rep No 150, 1994
	ad No 139, 2013
s 269TAJ	ad No 174, 1989
	am No 150, 1994; No 79, 1998

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 79, 1998
s 269TA	ad No 76, 1988
	am No 85, 1995; No 32, 2013; No 10, 2015; No 42, 2015
Division 2	
Division 2 heading	ad No 174, 1989
	am No 85, 1995; No 32, 2013
s 269TBA	ad No 79, 1998
	am No 32, 2013; No 41, 2015
s 269TB	ad No 76, 1988
	am No 89, 1992; No 150, 1994; No 79, 1998; No 119, 2003; No 32, 2013; No 139, 2013; No 31, 2014; No 42, 2015
s 269TC	ad No 76, 1988
	am No 174, 1989; No 89, 1992; No 207, 1992; No 150, 1994; No 85, 1995; No 79, 1998; No 119, 2003; No 196, 2012; No 205, 2012; No 32, 2013; No 139, 2013; No 42, 2015
s 269TD	ad No 76, 1988
	am No 207, 1992; No 150, 1994; No 85, 1995
	rs No 79, 1998
	am No 32, 2013; No 139, 2013; No 41, 2015; No 42, 2015
s 269TDAA	ad No 79, 1998
	am No 32, 2013; No 139, 2013; No 42, 2015
s 269TDA	ad No 150, 1994
	am No 79, 1998; No 196, 2012; No 205, 2012; No 32, 2013; No 42, 2015
s 269TE	ad No 76, 1988
	am No 82, 1991; No 89, 1992; No 207, 1992; No 85, 1995
	rs No 79, 1998
	am No 196, 2012; No 32, 2013
s 269TEA	ad No 79, 1998
	am No 205, 2012; No 32, 2013; No 139, 2013
s 269TEB	ad No 79, 1998
	am No 32, 2013

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Provision affected	How affected
Division 3	
Division 3 heading	ad No 174, 1989
s 269TF	ad No 76, 1988
	am No 150, 1994; No 85, 1995
	rs No 79, 1998
	am No 32, 2013
s 269TG	ad No 174, 1989
	am No 89, 1992; No 207, 1992; No 150, 1994; No 85, 1995; No 79, 1998; No 26, 1999; No 196, 2012; No 32, 2013; No 95, 2013
s 269TH	ad No 174, 1989
	am No 207, 1992; No 150, 1994; No 85, 1995; No 79, 1998; No 26, 1999; No 196, 2012; No 32, 2013
s 269TJ	ad No 174, 1989
	am No 89, 1992; No 207, 1992; No 150, 1994; No 85, 1995; No 79, 1998; No 26, 1999; No 32, 2013; No 95, 2013
s 269TJA	ad No 89, 1992
	am No 150, 1994
s 269TK	ad No 174, 1989
	am No 207, 1992; No 150, 1994; No 85, 1995; No 79, 1998; No 26, 1999; No 32, 2013
s 269TL	ad No 174, 1989
	am No 150, 1994; No 79, 1998; No 32, 2013
s 269TLA	ad No 123, 2011
	am No 32, 2013; No 95, 2013
s 269TM	ad No 174, 1989
	am No 82, 1991; No 89, 1992; No 207, 1992; No 42, 2015
s 269TN	ad No 174, 1989
	am No 207, 1992; No 150, 1994; No 79, 1998; No 95, 2013; No 41, 2015
s 269TP	ad No 174, 1989
s 269U	ad No 2, 1984

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Endnote 4—Amendment history

Provision affected	How affected
	am No 39, 1985; No 76, 1988; No 174, 1989; No 85, 1995; No 79, 1998 (as am by No 9, 2006); No 8, 2007; No 103, 2010; No 32, 2013; No 139, 2013
Division 4	
Division 4	ad No 207, 1992
s 269UA	ad No 79, 1998
s 269V	ad No 2, 1984
	rep No 76, 1988
	ad No 207, 1992
	am No 85, 1995; No 79, 1998; No 119, 2003; No 32, 2013
s 269W	ad No 207, 1992
	am No 150, 1994; No 85, 1995; No 79, 1998; No 119, 2003; No 32, 2013; No 139, 2013; No 31, 2014; No 42, 2015
s 269X	ad No 207, 1992
	am No 85, 1995; No 79, 1998; No 119, 2003; No 205, 2012; No 32, 2013
	am No 32, 2013
s 269Y	ad No 207, 1992
	am No 85, 1995; No 79, 1998; No 63, 2002; No 119, 2003; No 123, 2011; No 205, 2012; No 32, 2013
s 269YA	ad No 119, 2003
	am No 205, 2012; No 32, 2013; No 139, 2013
Division 5	
Division 5	ad No 207, 1992
	rs No 79, 1998
s 269Z	ad No 207, 1992
	am No 85, 1995
	rs No 79, 1998
	am No 32, 2013
s 269ZA	ad No 207, 1992
	rs No 79, 1998
	am No 124, 2011; No 32, 2013

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Provision affected	How affected
s 269ZB	ad No 207, 1992
	am No 85, 1995
	rs No 79, 1998
	am No 124, 2011; No 139, 2013; No 31, 2014; No 42, 2015
s 269ZC	ad No 207, 1992
	am No 85, 1995
	rs No 79, 1998
	am No 124, 2011; No 205, 2012; No 32, 2013; No 139, 2013; No 42, 2015
s 269ZCA	ad No 124, 2011
	am No 32, 2013; No 139, 2013
s 269ZCB	ad No 124, 2011
	am No 139, 2013; No 42, 2015
s 269ZCC	ad No 124, 2011
	am No 32, 2013; No 139, 2013; No 42, 2015
s 269ZD	ad No 207, 1992
	rs No 79, 1998
	am No 124, 2011; No 205, 2012; No 32, 2013; No 139, 2013; No 42, 2015
s 269ZDA	ad No 79, 1998
	am No 124, 2011; No 205, 2012; No 32, 2013; No 139, 2013
s 269ZDB	ad No 79, 1998
	am No 123, 2011; No 124, 2011; No 136, 2012; No 32, 2013; No 42, 2015
Division 5A	
Division 5A	ad No 196, 2012
s 269ZDBA	ad No 196, 2012
	am No 32, 2013
s 269ZDBB	ad No 196, 2012
	am No 95, 2013
s 269ZDBC	ad No 196, 2012

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Endnote 4—Amendment history

Provision affected	How affected
	am No 32, 2013; No 95, 2013
s 269ZDBD	ad No 196, 2012
	am No 95, 2013; No 139, 2013; No 42, 2015
s 269ZDBE	ad No 196, 2012
	am No 32, 2013; No 95, 2013; No 139, 2013; No 42, 2015
s 269ZDBEA	ad No 95, 2013
s 269ZDBF	ad No 196, 2012
	am No 32, 2013; No 95, 2013; No 139, 2013; No 42, 2015
s 269ZDBG	ad No 196, 2012
	am No 32, 2013; No 95, 2013; No 139, 2013; No 42, 2015
s 269ZDBH	ad No 196, 2012
	am No 32, 2013; No 42, 2015
Division 6	
Division 6 heading	rs No 79, 1998
Division 6	ad No 150, 1994
s 269ZDC	ad No 79, 1998
	am No 119, 2003
s 269ZE	ad No 150, 1994
	am No 79, 1998; No 119, 2003; No 196, 2012; No 32, 2013; No 42, 2015
s 269ZF	ad No 150, 1994
	am No 79, 1998; No 139, 2013; No 31, 2014; No 42, 2015
s 269ZG	ad No 150, 1994
	am No 79, 1998; No 123, 2011; No 32, 2013; No 42, 2015
s 269ZH	ad No 150, 1994
	am No 79, 1998; No 32, 2013; No 139, 2013; No 41, 2015; No 42, 2015
Division 6A	
Division 6A	ad No 79, 1998
s 269ZHA	ad No 79, 1998
	am No 32, 2013

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Provision affected	How affected
s 269ZHB	ad No 79, 1998
	am No 119, 2003; No 32, 2013; No 42, 2015
s 269ZHC	ad No 79, 1998
	am No 139, 2013; No 31, 2014; No 42, 2015
s 269ZHD	ad No 79, 1998
	am No 205, 2012; No 32, 2013; No 139, 2013; No 31, 2014; No 42, 2015
s 269ZHE	ad No 79, 1998
	am No 205, 2012; No 32, 2013; No 139, 2013; No 42, 2015
s 269ZHF	ad No 79, 1998
	am No 205, 2012; No 206, 2012; No 32, 2013; No 139, 2013
s 269ZHG	ad No 79, 1998
	am No 123, 2011; No 206, 2012; No 32, 2013; No 42, 2015
Division 7	
Division 7	ad No 150, 1994
s 269ZHH	ad No 79, 1998
	am No 205, 2012; No 32, 2013
s 269ZHI	ad No 79, 1998
	rs No 205, 2012
	am No 196, 2012; No 32, 2013; No 95, 2013
s 269ZI	ad No 150, 1994
	am No 15, 1996; No 79, 1998; No 32, 2013; No 42, 2015
s 269ZJ	ad No 150, 1994
	am No 79, 1998; No 63, 2002; No 196, 2012; No 32, 2013
Division 8	
Division 8 heading	rs No 205, 2012
Division 8	ad No 79, 1998
s 269ZK	ad No 79, 1998
	rs No 205, 2012
s 269ZL	ad No 79, 1998
	rs No 205, 2012

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Provision affected	How affected
s 269ZM	ad No 79, 1998
	rs No 205, 2012
s 269ZN	ad No 79, 1998
	rs No 205, 2012
	am No 32, 2013
s 269ZO	ad No 79, 1998
	rs No 205, 2012
s 269ZOA	ad No 79, 1998
	rep No 205, 2012
s 269ZP	ad No 79, 1998
	rs No 205, 2012
	am No 139, 2013
s 269ZQ	ad No 79, 1998
	rs No 205, 2012
s 269ZR	ad No 79, 1998
	rs No 205, 2012
s 269ZS	ad No 79, 1998
	am No 46, 2011
	rs No 205, 2012
s 269ZT	ad No 79, 1998
	rs No 205, 2012
s 269ZTA	ad No 205, 2012
s 269ZTB	ad No 205, 2012
s 269ZTC	ad No 205, 2012
s 269ZTD	ad No 205, 2012
s 269ZU	ad No 79, 1998
	am No 5, 2011; No 205, 2012; No 32, 2013; No 139, 2013
s 269ZV	ad No 79, 1998
	am No 205, 2012
Division 9	
Division 9 heading	rs No 205, 2012

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Provision affected	How affected
Division 9	ad No 79, 1998
Subdivision A	
s 269ZW	ad No 79, 1998
	rs No 205, 2012
	am No 32, 2013
s 269ZX	ad No 79, 1998
	am No 119, 2003; No 196, 2012; No 205, 2012; No 32, 2013
s 269ZXA	ad No 79, 1998
	rep No 205, 2012
s 269ZY	ad No 79, 1998
	rs No 205, 2012
	am No 32, 2013; No 42, 2015
s 269ZYA	ad No 205, 2012
s 269ZYB	ad No 205, 2012
s 269ZZ	ad No 79, 1998
	am No 205, 2012
Subdivision B	
s 269ZZA	ad No 79, 1998
	am No 196, 2012; No 205, 2012
s 269ZZB	ad No 79, 1998
	rs No 205, 2012
	am No 32, 2013
s 269ZZC	ad No 79, 1998
s 269ZZD	ad No 79, 1998
	rs No 205, 2012
	am No 196, 2012; No 42, 2015
s 269ZZE	ad No 79, 1998
	am No 205, 2012; No 42, 2015
s 269ZZF	ad No 79, 1998
	rep No 205, 2012
	ad No 42, 2015

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Endnote 4—Amendment history

Provision affected	How affected
s 269ZZG	ad No 79, 1998
	rs No 205, 2012
	am No 42, 2015
s 269ZZH	ad No 79, 1998
	am No 205, 2012
s 269ZZHA	ad No 42, 2015
s 269ZZI	ad No 79, 1998
	am No 205, 2012; No 42, 2015
s 269ZZJ	ad No 79, 1998
	rs No 205, 2012
	am No 42, 2015
s 269ZZK	ad No 79, 1998
	am No 196, 2012; No 205, 2012; No 32, 2013; No 95, 2013; No 42, 2015
s 269ZZL	ad No 79, 1998
	am No 119, 2003; No 123, 2011
	rs No 205, 2012
	am No 32, 2013
s 269ZZM	ad No 79, 1998
	am No 123, 2011; No 205, 2012; No 42, 2015
Subdivision C	
Subdivision C heading	am No 32, 2013
s 269ZZN	ad No 79, 1998
	am No 119, 2003; No 32, 2013; No 95, 2013; No 42, 2015
s 269ZZO	ad No 79, 1998
	am No 119, 2003; No 95, 2013; No 42, 2015
s 269ZZP	ad No 79, 1998
	am No 32, 2013
s 269ZZQ	ad No 79, 1998
	am No 205, 2012; No 42, 2015
s 269ZZQAA	ad No 42, 2015

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Provision affected	How affected
s 269ZZQA	ad No 205, 2012
	am No 42, 2015
s 269ZZR	ad No 79, 1998
	am No 205, 2012
s 269ZZRA	ad No 42, 2015
s 269ZZRB	ad No 42, 2015
s 269ZZRC	ad No 42, 2015
s 269ZZS	ad No 79, 1998
	am No 205, 2012; No 32, 2013; No 42, 2015
s 269ZZT	ad No 79, 1998
	am No 205, 2012; No 32, 2013; No 95, 2013; No 42, 2015
s 269ZZU	ad No 79, 1998
	am No 205, 2012; No 32, 2013; No 42, 2015
s 269ZZUA	ad No 119, 2003
	am No 205, 2012; No 32, 2013; No 42, 2015
s 269ZZV	ad No 79, 1998
	am No 205, 2012; No 32, 2013
Subdivision D	
s 269ZZW	ad No 79, 1998
s 269ZZX	ad No 79, 1998
	am No 205, 2012; No 42, 2015
s 269ZZY	ad No 79, 1998
	am No 205, 2012
Part XVC	
Part XVC	ad No 205, 2012
s 269ZZYA	ad No 205, 2012
s 269ZZYB	ad No 205, 2012
s 269ZZYC	ad No 205, 2012
s 269ZZYD	ad No 205, 2012
	am No 139, 2013; No 41, 2015
s 269ZZYE	ad No 205, 2012

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Provision affected	How affected
	am No 139, 2013; No 41, 2015
s 269ZZYF	ad No 205, 2012
	am No 139, 2013; No 41, 2015
s 269ZZYG	ad No 205, 2012
	am No 139, 2013; No 41, 2015
s 269ZZYH	ad No 139, 2013
	am No 41, 2015
Part XVI	
Part XVI heading	am No 108, 1952
	rs No 95, 2001; No 33, 2013
s 270	am No 36, 1910; No 12, 1923; No 28, 1966; No 54, 1967; No 64, 1981; No 152, 1981; No 48, 1982; No 81, 1982; No 175, 1985; No 24, 1989; No 34, 2009; No 41, 2015; No 141, 2015
s 271	rep No 12, 1923
	ad No 108, 1952
	rs No 47, 1953
	am No 29, 1965; No 39, 1985; No 85, 1995; No 41, 2015
s 272	rep No 9, 1910
	ad No 47, 1953
	am No 29, 1965; No 39, 1985; No 85, 1995; No 41, 2015
s 273	rep No 9, 1910
	ad No 47, 1953
	am No 29, 1965; No 39, 1985; No 85, 1995; No 8, 2007; No 41, 2015
s 273A	ad No 47, 1953
	am No 39, 1985; No 85, 1995; No 41, 2015
s 273B	ad No 47, 1953
	am No 103, 2013
s 273C	ad No 47, 1953
s 273D	ad No 47, 1953
s 273E	ad No 47, 1953

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Provision affected	How affected
	rep No 29, 1965
s 273EA	ad No 42, 1960
	am No 48, 1963; No 28, 1974; No 64, 1981; No 66, 2023
s 273EB	ad No 95, 2001
	am No 82, 2002
	rep No 33, 2013
s 273F	ad No 47, 1953
	am No 29, 1965; No 39, 1983; No 76, 1987; No 8, 1994; No 15, 1996
Part XVII	
s 273G	ad No 92, 1979
s 273GAA	ad No 72, 1984
	am No 34, 1992; No 85, 1995; No 142, 1999; No 25, 2001; No 54, 2003; No 8, 2007; No 136, 2012; No 41, 2015; No 51, 2024; No 79, 2024
s 273GAB	ad No 155, 2000
	am No 33, 2009; No 41, 2015
s 273GA	ad No 110, 1980
	am No 157, 1981; No 81, 1982; No 108, 1982; No 19, 1983; No 72, 1984; No 39, 1985; No 175, 1985; No 10, 1986; No 81, 1987; No 104, 1987; No 23, 1989; No 24, 1989; No 78, 1989; No 111, 1990; No 34, 1992; No 89, 1992; No 209, 1992; No 85, 1995; No 30, 1996; No 3, 1997; No 97, 1997; No 7, 2000; No 84, 2000; No 25, 2001; No 95, 2001; No 82, 2002; No 25, 2004; No 119, 2006; No 8, 2007; No 75, 2008; No 63, 2011; No 37, 2012; No 136, 2012; No 33, 2013; No 52, 2013; No 41, 2015; No 73, 2015; No 19, 2017; No 3, 2019; No 39, 2024; No 79, 2024
s 273H	ad No 110, 1980
	rs No 115, 1982
	am No 72, 1984; No 10, 1986; No 76, 1987; No 85, 1995; No 15, 1996; No 41, 2015; No 39, 2024
s 273HA	ad No 15, 1996
	rep No 41, 2015

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Provision affected	How affected
s 273J	ad No 72, 1984
	rep No 136, 2012
s 273JA	ad No 40, 1985
	rep No 136, 2012
s 273JB	ad No 25, 2001
	rep No 54, 2003
s 273K	ad No 72, 1984
	am No 40, 1985; No 136, 2012; No 39, 2024
s 273L	ad No 8, 1994
	am No 41, 2015
	rs No 1, 2026
s 273M	ad No 1, 2026
s 274	am No 12, 1923; No 56, 1950; No 14, 1968; No 10, 1986; No 5, 1990; No 111, 1990; No 85, 1995; No 41, 2015; No 115, 2024
s 275	am No 12, 1923; No 56, 1950; No 110, 1980; No 5, 1990; No 111, 1990; No 85, 1995; No 41, 2015; No 115, 2024
s 275A	ad No 48, 1963
	am No 28, 1966; No 14, 1968; No 28, 1974; No 64, 1981; No 81, 1982; No 85, 1995; No 24, 2001; No 82, 2002; No 8, 2007; No 41, 2015; No 61, 2016
s 276	am No 81, 1982
s 277	am No 12, 1923; No 36, 1978; No 81, 1982; No 5, 2011
s 277A	ad No 51, 1982
s 278	ad No 7, 1934
	rep No 80, 1950
	ad No 104, 1968
	rep No 137, 1999
	ad No 3, 2019
s 279	ad No 3, 2019
Schedules heading	ed C141
Schedule I	
Schedule I	am No 28, 1974; No 154, 1977; No 41, 2015

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Provision affected	How affected
	ed C155
Schedule II	rep No 12, 1923
Schedule III	am No 14, 1968; No 28, 1974; No 154, 1977; No 110, 1980
	rep No 85, 1995
Schedule IV	am No 12, 1923; No 66, 1954; No 37, 1957; No 48, 1963; No 28, 1974; No 154, 1977; No 110, 1980
	rep No 85, 1995
Schedule V	ad No 12, 1923
	am No 56, 1950; No 48, 1963; No 28, 1974; No 154, 1977
	rep No 85, 1995
Schedule VI	ad No 134, 1971
	rs No 154, 1977; No 111, 1990
	am No 133, 2004
	rep No 129, 2005
Schedule VII	ad No 41, 1976
	rep No 157, 1981
	ad No 8, 1994
	rep No 166, 2006
Schedule VIII	ad No 92, 1979
	rep No 111, 1990

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