



# Customs Act 1901

No. 6, 1901

## Compilation No. 129

**Compilation date:** 25 March 2015

**Includes amendments up to:** Act No. 12, 2015

**Registered:** 10 April 2015

This compilation is in 4 volumes

**Volume 1:** sections 1–183U  
Volume 2: sections 183UA–269SL  
Volume 3: sections 269SM–277A  
Schedule  
Volume 4: Endnotes

Each volume has its own contents

**This compilation includes commenced amendments made by Act No. 5, 2015**

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 25 March 2015 (the *compilation date*).

This compilation was prepared on 25 March 2015.

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. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

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.

### 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. For more information on any modifications, see the series page on ComLaw for the compiled law.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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

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

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

***Australian seabed*** means so much of the seabed adjacent to Australia (other than the seabed within the Joint Petroleum Development Area) 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
- (b) in relation to a sea installation—waters comprising all of the adjacent areas and the coastal area.

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

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 71AAD—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*.

**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).

**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*.

**CEO** means the Chief Executive Officer of Customs.

**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](http://www.austlii.edu.au)).

**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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**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 Customs:

- (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** means the Commissioner of the Anti-Dumping Commission continued in existence under section 269SMB.

**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.

**Commission staff member** means a member of the staff assisting the Commissioner as mentioned in subsection 269SMQ(1).

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

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

***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 an Australian resources installation or an Australian sea installation.

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

***customs broker*** means a customs broker within the meaning of Part XI.

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

***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:

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- (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
- (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 Family Court of Australia, in relation to whom a consent under subsection 219RA(1) and a nomination under subsection 219RA(2) are in force; or
- (b) a Judge of the Supreme Court of a State to whom an appropriate arrangement under subsection 11(1) applies; or
- (c) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in paragraph (a) and to whom an appropriate arrangement under subsection 11(2) applies.

**Division 1B Magistrate** means:

- (a) a Magistrate of the Australian Capital Territory; or
- (b) a Magistrate of a State to whom an appropriate arrangement under subsection 11(1) applies; or
- (c) a Magistrate of the Northern Territory to whom an appropriate arrangement under subsection 11(2) applies.

**documents** 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.

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

**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.

**export declaration** means an export declaration communicated to Customs 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 a communication, in respect of an export entry, that is made in the manner, and has the form, specified in regulations made for the purpose of subsection 114C(1).

**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.

**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.

**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 Customs by document or electronically as mentioned in section 71A.

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

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**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.

**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.

**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.

**Joint Petroleum Development Area** has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

**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.

**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.

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

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

***Narcotic-related goods*** means:

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

***narcotic substance*** means a 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 person:

- (a) employed in the Customs; or
- (b) authorised in writing by the CEO under this Act to perform all of the functions of an officer of Customs; or
- (ba) 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 in writing by the CEO under this Act for the purposes of this paragraph, even if the office or position does not come into existence until after the CEO has specified it;

and includes:

- (c) in relation to a provision of a Customs Act—a person:
  - (i) authorised in writing by the CEO under this Act to perform the functions of an officer of Customs under that provision; or
  - (ii) 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 in writing by the CEO under this Act in relation to that provision, even if the office or position does not come into existence until after the CEO has specified it; or
- (d) in relation to a power conferred by a provision of a Customs Act—a person:
  - (i) authorised in writing by the CEO under this Act to perform the functions of an officer of Customs in relation to the exercise of that power; or
  - (ii) 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 in writing by the CEO under this Act in relation to the exercise of that power, even if the office or position does not come into existence until after the CEO has specified it.

***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 resources installation*** means an off-shore installation that:

- (a) is in Australian waters; and

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(b) has been brought into Australian waters from a place outside the outer limits of Australian waters;  
but does not include an Australian resources installation.

**Overseas sea installation** means a sea installation that:

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

but does not include an Australian sea installation.

**Owner** in respect of goods includes any person (other than an officer of Customs) being or holding himself 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 Joint Petroleum Development Area; or

- (b) a resources installation in the Joint Petroleum Development Area;

but does not include:

- (c) any other area of waters outside Australia; or
- (d) any other installation outside Australia; or
- (e) a ship outside Australia; or
- (f) a reef or an uninhabited island outside Australia.

***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 233BABA(2); or
- (c) goods subject to the control of the Customs.

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

**Records offence** means:

- (a) an offence against subsection 240(1) or (4) of this Act;
- (b) an offence against:
  - (i) section 6 of the *Crimes Act 1914*; or
  - (ii) 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 Joint Petroleum Development Area** means a resources installation that is attached to the seabed in the Joint Petroleum Development Area.

**restricted goods** has the meaning given by section 233BABAE.

**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.

**self-assessed clearance declaration** means a declaration given to Customs 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*.

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

**This Act** includes all regulations made thereunder.

**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*.

**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.

Note: This term has a different meaning for the purposes of Division 1B of Part VIII: see section 153UA.



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

**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 that a person or partnership is licensed under section 79 to use for warehousing goods.

**warehouse declaration** means a warehouse declaration communicated to Customs 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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- (1A) If:
- (a) the CEO gives an authorisation under the definition of *authorised officer* in subsection (1); 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 sections of this Act;
- then the authorisation extends to such an office or position that comes into existence after the authorisation is given.
- (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 Schedule 5 or 6 to that Act, that word is taken to be a rate of duty for the purposes of this Act or any other law of the Commonwealth.
- (3D) Unless the contrary intention appears, any words or words and figures, set out in the third column of Schedule 3 or 4 to the *Customs Tariff Act 1995* or in the third column of the table in Schedule 5 or 6 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.

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- (6) A reference in this Act to a resources industry mobile unit shall be read as a reference to:
- (a) a vessel that is used or is to be used wholly or principally in:
    - (i) exploring or exploiting natural resources by drilling the seabed or its subsoil with equipment on or forming part of the vessel or by obtaining substantial quantities of material from the seabed or its subsoil with equipment of that kind; or
    - (ii) operations or activities associated with, or incidental to, activities of the kind referred to in subparagraph (i); or
  - (b) a structure (not being a vessel) that:
    - (i) is able to float or be floated;
    - (ii) is able to move or be moved as an entity from one place to another; and
    - (iii) is used or is to be used off-shore wholly or principally in:
      - (A) exploring or exploiting natural resources by drilling the seabed or its subsoil with equipment on or forming part of the structure or by obtaining substantial quantities of material from the seabed or its subsoil with equipment of that kind; or
      - (B) operations or activities associated with, or incidental to, activities of the kind referred to in sub-subparagraph (A).
- (7) A vessel of a kind referred to in paragraph (6)(a) or a structure of a kind referred to in paragraph (6)(b) shall not be taken not to be a resources industry mobile unit by reason only that the vessel or structure is also used or to be used in, or in any operations or activities associated with, or incidental to, exploring or exploiting resources other than natural resources.
- (8) The reference in subparagraph (6)(a)(ii) to a vessel that is used or is to be used wholly or principally in operations or activities associated with, or incidental to, activities of the kind referred to in

subparagraph (6)(a)(i) shall be read as not including a reference to a vessel that is used or is to be used wholly or principally in:

- (a) transporting persons or goods to or from a resources installation; or
  - (b) manoeuvring a resources installation, or in operations relating to the attachment of a resources installation to the Australian seabed.
- (9) A resources installation shall be taken to be attached to the Australian seabed if:
- (a) the installation:
    - (i) is in physical contact with, or is brought into physical contact with, a part of the Australian seabed; and
    - (ii) is used or is to be used, at that part of the Australian seabed, wholly or principally in or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources; or
  - (b) the installation:
    - (i) is in physical contact with, or is brought into physical contact with, another resources installation that is taken to be attached to the Australian seabed by virtue of the operation of paragraph (a); and
    - (ii) is used or is to be used, at the place where it is brought into physical contact with the other installation, wholly or principally in or in any operations or activities associated with, or incidental to, exploring or exploiting natural resources.
- (9A) If it is necessary to determine whether a resources installation is attached to the seabed in the Joint Petroleum Development Area, subsection (9) has effect as if a reference to the Australian seabed were a reference to the seabed in the Joint Petroleum Development Area.
- (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).

- (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.
- (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).
- (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
  - (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

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- (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
  - (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 CEO.
- (1A) In this Act, a reference to an approved statement is a reference to a statement that is approved, by instrument in writing, by the CEO.
- (2) The instrument by which a form or statement is approved under subsection (1) after this section commences is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**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
- (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 CEO 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 CEO; and

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- (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 CEO 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.

**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.

## 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 CEO given under subsection (2).
- (2) The CEO may, by notice in writing given to a person who has applied for permission to cause an overseas resources installation to be attached to the Australian seabed, give the person permission, subject to such conditions (if any) as are specified in the notice, to cause that installation to be so attached.
- (3) A person who has been given permission under subsection (2) shall not refuse or fail to comply with any condition (including a condition imposed or varied under subsection (4)), to which that permission is subject.

Penalty: 100 penalty units.

- (4) Where the CEO has, under subsection (2), given a person permission to cause an overseas resources installation to be attached to the Australian seabed, the CEO may, at any time before that installation is so attached, by notice in writing served on the person:
- (a) revoke the permission;
  - (b) revoke or vary a condition to which the permission is subject;  
or
  - (c) impose new conditions to which the permission is to be subject.

- (5) Without limiting the generality of subsection (2), conditions to which a permission given under that subsection may be subject include:
- (a) conditions relating to matters of quarantine; and
  - (b) conditions requiring the master of an installation to bring the installation to a place specified by the CEO for examination for quarantine purposes before the installation is attached to the Australian seabed.

### **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 CEO given under subsection (2).
- (2) The CEO may, by notice in writing given to a person who has applied for permission to cause an overseas sea installation to be installed in 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 CEO 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 CEO may, at any time before that installation is so installed, by notice in writing served on the person:
- (a) revoke the permission;

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- (b) revoke or vary a condition to which the permission is subject;  
or
  - (c) impose new conditions to which the permission is to be subject.
- (5) Without limiting the generality of subsection (2), conditions to which a permission given under that subsection in relation to a sea installation may be subject include:
- (a) conditions relating to matters of quarantine; and
  - (b) conditions requiring the owner of the installation, to bring the installation to a place specified by the CEO for examination for quarantine purposes before the installation is installed in an adjacent area or a coastal area.

**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;
- shall, subject to subsections (2) and (3), be deemed to be part of Australia.
- (2) A resources installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of the Customs Acts, cease to be part of Australia if:
- (a) the installation is detached from the Australian seabed, or from another resources installation attached to the Australian seabed, for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits); or
  - (b) after having been detached from the Australian seabed otherwise than for the purpose referred to in paragraph (a),



the installation is moved for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits).

- (3) A sea installation that is deemed to be part of Australia because of the operation of this section shall, for the purposes of the Customs Acts, cease to be part of Australia if:
- (a) the installation is detached from its location for the purpose of being taken to a place that is not in an adjacent area or in a coastal area; or
  - (b) after having been detached from its location otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place that is not in an adjacent area or in a coastal area.

## **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**

- (1) The Chief Executive Officer of Customs has the general administration of this Act.

## **8 Collectors of Customs**

- (1) In this Act:
  - (a) a reference to the Collector, or to a Collector, is a reference to:
    - (i) the CEO; or
    - (ii) the Regional Director for a State or Territory; or

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- (iii) any officer doing duty in the matter in relation to which the expression is used; and
  - (b) a reference to the Regional Director, or to a Regional Director, for a State or Territory is a reference to the principal officer of Customs for that State or Territory.
- (2) For the purposes of this Act, a State shall be taken to include:
  - (a) in the case of a State other than the State of Queensland—that part of Australian waters that is within the area described in Schedule 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 the Customs, a part of a State or Territory specified in the Proclamation is attached to an adjoining State or Territory so specified, and a part of a State or Territory so specified shall, for the purposes of this Act, be deemed to be part of the adjoining State or Territory.

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

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- (aa) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that Territory (and are not also Judges of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory) of the functions of a Judge under Subdivision C of Division 1B of Part XII; and
- (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 Magistrates in 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) The Customs shall have a seal, called the Customs Seal, the design of which shall be determined by the CEO.
- (2) The design so determined shall include:
  - (a) the Coat of Arms of the Commonwealth, that is to say, the armorial ensigns and supporters granted to the Commonwealth by Royal Warrant dated 19 September 1912; and
  - (b) the words “Australia—Customs and Border Protection”.
- (3) The Customs Seal shall be kept at such place, and in the custody of such person, as the CEO directs.
- (4) The Customs Seal shall be used as directed by the CEO.

- (5) The CEO, the Regional Director for a State and the Regional Director for the Northern Territory shall each have in his or her custody a stamp, called a Customs stamp, the design of which shall, as nearly as practicable, be the same as the design of the Customs Seal with the addition of:
- (a) in the case of the stamp in the custody of the CEO—the words “Australian Capital Territory”; and
  - (b) in the case of the stamp in the custody of a Regional Director for a State—the name of the State; and
  - (c) in the case of the stamp in the custody of the Regional Director for the Northern Territory—the words “Northern Territory”.
- (6) A Customs stamp shall be used as provided by this Act.
- (7) All courts (whether exercising federal jurisdiction or not) and all persons acting judicially shall take judicial notice of the impression of the Customs Seal, or of the mark of a Customs stamp, on a document or a copy of a document and, in the absence of proof to the contrary, shall presume that impression or mark, as the case may be, was made by proper authority.

#### **14 Customs flag**

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

#### **15 Appointment of ports etc.**

- (1) The CEO may, by notice published in the *Gazette*:
- (a) appoint ports and fix the limits of those ports; and
  - (b) appoint airports and fix the limits of those airports.
- (1A) In deciding whether to appoint a port under subsection (1), the CEO may take into account:

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- (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 CEO may, by notice published in the *Gazette*:
- (a) appoint wharves and fix the limits of those wharves; and
  - (b) appoint boarding stations for the boarding of ships and aircraft by officers.
- (3) A notice under subsection (1) or (2) may provide that a port, airport, wharf or boarding station appointed by the notice is to be a port, airport, wharf or boarding station for limited purposes specified in the notice.

**17 Appointment of sufferance wharfs etc.**

The CEO may by *Gazette* notice:

- (a) Appoint sufferance wharfs in any port.

**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 CEO 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 a Customs officer, produce appropriate identification for the officer's inspection.

- (2) If a person refuses or fails to produce appropriate identification to a Customs officer on request, the officer may, if he or she has reason to believe that the person is a member of the crew of an international ship, request the person to return to the ship forthwith to obtain that identification.
- (3) If a member of the crew of an international ship refuses or fails to produce appropriate identification to a Customs officer, the master of the ship is taken, because of that refusal or failure, to have committed an offence against this Act.

Penalty: 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
  - (b) understand their obligation to carry their identification in a waterfront area and to produce it to Customs officers when requested to do so.
- (5) If:
- (a) a person refuses or fails to produce appropriate identification to a Customs officer on request; and
  - (b) the officer has no reason to believe that the person is a member of an international ship's crew;
- the officer may:
- (c) if the person can otherwise establish his or her identity to the satisfaction of the officer and explain his or her presence in the waterfront area—issue the person with a temporary identification; or
  - (d) if the person is unable to establish his or her identity or to explain his or her presence in the waterfront area—request the person to leave the waterfront area forthwith.
- (6) For the purposes of this section, a temporary identification issued under subsection (5) has effect, until that document expires, as if it were an appropriate identification.

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- (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
  - (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.

## **26 Declaration by youths**

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

## **27 State inspection laws**

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

## **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.

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- (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 Customs 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 Customs 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
  - (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.

## **Part III—Customs control examination and securities generally**

### **30 Customs control of goods**

- (1) Goods shall be subject to the control of the Customs as follows:
- (a) as to goods to which section 68 applies that are unshipped 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

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 CEO may, by notice published in the *Gazette*, declare an area adjacent to the Protected Zone to be an area in the vicinity of the Protected Zone for the purposes of this section.
- (3) The CEO may, by notice published in the *Gazette*, exempt, subject to such conditions (if any) as are specified in the notice, from so

many of the provisions of the Customs Acts as are specified in the notice:

- (a) any Protected Zone ship that arrives at an Australian place on a voyage from a Papua New Guinea place or that leaves an Australian place on a voyage to a Papua New Guinea place, being a ship:
  - (i) on board which there is at least one traditional inhabitant who is undertaking that voyage in connection with the performance of traditional activities in the Protected Zone or in an area in the vicinity of the Protected Zone; and
  - (ii) no person on board which is a person other than:
    - (A) a person referred to in subparagraph (i); or
    - (B) an employee of the Commonwealth, of Queensland or of Papua New Guinea or of an authority of the Commonwealth, of Queensland or of Papua New Guinea who is undertaking that voyage in connection with the performance of his 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 CEO setting out such information as is prescribed, request the CEO to grant an exemption under subsection (5) in relation to the voyage or flight, as the case may be.
- (5) The CEO may, in his 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 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 the control of the Customs 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 the control of Customs**

(1) If:

- (a) a person intentionally moves, alters or interferes with goods that are subject to the control of Customs; 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 the control of Customs; 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 the control of Customs; and
  - (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 the control of Customs; 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 the control of Customs; 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.

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(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.

**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 the control of the Customs

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

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

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

Penalty: 100 penalty units.

- (4) Where the CEO has, under subsection (2), given a person permission to engage in any activities in relation to an Australian resources installation, the CEO may, while that installation remains subject to the control of Customs, by notice in writing served on the person:
- (a) suspend or revoke the permission;
  - (b) revoke or vary a condition to which the permission is subject; or
  - (c) impose new conditions to which the permission is to be subject.

### **33B Sea installations subject to the control of the Customs**

- (1) A person shall not use an Australian sea installation that is subject to the control of the Customs.

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

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

Penalty: 100 penalty units.

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- (4) Where the CEO has, under subsection (2), given a person permission to engage in any activities in relation to an Australian sea installation, the CEO may, while that installation remains subject to the control of the Customs, by notice in writing served on the person:
- (a) suspend or revoke the permission;
  - (b) revoke or vary a condition to which the permission is subject; or
  - (c) impose new conditions to which the permission is to be subject.

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

**35 Goods imported by post**

Goods imported by post shall be subject to the control of the Customs 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 the control of the Customs:

- (a) fails to keep those goods safely; or
- (b) when so requested by a Collector, does not account for those goods to the satisfaction of a Collector 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 the control of the Customs 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 the control of the Customs are, by authority of a permission given under section 71E, removed to a place other than a warehouse; and
- (b) the person to whom the permission was given fails to keep those goods safely or, when so requested by a Collector, does not account for the goods to the satisfaction of a Collector 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 the control of the Customs; 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: 500 penalty units.

- (2) A person commits an offence if:
- (a) goods are subject to the control of the Customs; 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 the control of the Customs; 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 the control of the Customs; 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 the control of the Customs; 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 the control of the Customs; 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

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 Customs shall have the right to require and take securities for compliance with this Act, for compliance with conditions or requirements to which the importation or exportation of goods is subject and generally for the protection of the revenue of the Customs, and pending the giving of the required security in relation to any goods subject to the control of the Customs may refuse to deliver the goods or to give any authority to deal with the goods.
- (1A) The right of the Customs under subsection (1) to require and take a security includes the right to require and take securities for payment of any penalty that a person may become liable to pay to the Commonwealth under the *Customs Undertakings (Penalties) Act 1981*.
- (1B) The right of the Customs under subsection (1) to require and take a security includes the right to require and take securities in respect

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of any interim duty that may be payable on goods under the *Customs Tariff (Anti-Dumping) Act 1975* but no such security shall be required or taken under this Act:

- (a) on an application under section 269TB of this Act in respect of the goods to which the application relates before the time at which the Commissioner 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 Customs may require and take securities in respect of any interim duty that may be payable under the *Customs Tariff (Anti-Dumping) Act 1975* on the goods or on like goods imported into Australia.

- (1D) The right of the Customs under subsection (1) to require and take a security includes the right to require and take a security in respect of any interim duty that may be payable under the *Customs Tariff (Anti-Dumping) Act 1975* on goods the subject of an application under subsection 269ZE(1) of this Act.
- (2) The right of the Customs under subsection (1) to require and take securities includes the right to require and take a security for a purpose or purposes for which security may be taken under that subsection and for a purpose or purposes for which security may be taken under section 16 of the *Excise Act 1901-1957* and the succeeding provisions of this Part apply to and in relation to such a security in the same manner as they apply to and in relation to any other security required and taken under subsection (1).
- (3) The rights of the Customs under this section may be exercised by a Collector on behalf of the Customs.

**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 bonds may be given**

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

**45 Cancellation of bonds**

- (1) All Customs securities may after the expiration of 3 years from the date thereof or from the time specified for the performance of the conditions thereof be cancelled by the CEO.
- (2) A security taken in respect of any interim duty that may become payable on goods under section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975*, being a security taken before the publication 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 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 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 sureties

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 Customs security

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

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

#### **48 Effect of Customs security**

- (1) Whenever any such Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.
- (2) If it appears to the Court that a non-compliance with a Customs security has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability by reason of:
  - (a) an extension of time or other concession;
  - (b) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or
  - (c) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

## Part IV—The importation of goods

### Division 1A—Preliminary

#### 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 shall be read as not including a reference to an overseas resources installation or to an overseas sea 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;

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

- (2) Where:

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

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(b) an overseas sea installation is brought to a place in Australia and is to be taken from that place into an adjacent area or into a coastal area for the purposes of being installed in that area; the installation and any goods on the installation at the time when it is brought to that place shall, for the purpose of the Customs Acts, be deemed to have been imported into Australia at the time when the installation is brought to that place.

## Division 1—Prohibited imports

### 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

foregoing, the surrender of a licence or permission to import goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to import goods; and

- (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for a failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against subsection (4) in respect of the failure.
- (3A) Without limiting the generality of subparagraph (3)(b)(ii), a condition referred to in that subparagraph may be a condition that, before the expiration of a period specified in the permission or that period as extended with the approval of the Collector, that person, or, if that person is a natural person who dies before the expiration of that period or that period as extended, as the case may be, the legal personal representative of that person, shall export, or cause the exportation of, the goods from Australia.
- (4) A person is guilty of 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.

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

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- (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 is guilty of 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.

**51A Certain controlled substances taken to be prohibited imports**

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

## **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.



- (5) Conditions to which a permission under subsection (2) may be subject include conditions relating to matters occurring while the ship or aircraft is at the place to which the permission relates.
- (6) A reference in this section to a ship or aircraft entering, or being brought to, a place other than a port or airport shall be read as including a reference to the ship or aircraft being brought to a ship that is at an Australian resources installation or an Australian sea installation.

### **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;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;are each guilty of an offence against this section.
- (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

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- (ii) a resources installation attached to the Australian seabed;  
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;
- are each guilty of 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;  
whether or not in the course of a longer journey; and
  - (b) has not been available for questioning in Australia for the purposes of this Act after leaving the installation and before arriving in the place;
- then:
- (c) that person;
  - (d) the owner of the installation; and
  - (e) the owner and person in charge of a ship or aircraft on which the person travelled from the installation to the place;
- are each guilty of an offence against this section.
- (5) Subject to subsection (6), where goods:
- (a) are sent from:
    - (i) a sea installation installed in an adjacent area or in a coastal area; or

- (ii) a resources installation attached to the Australian seabed;  
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;
- are each guilty of 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;
  - (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 CEO, and was carried out in accordance with the conditions (if any) specified in that authorisation.
- (7) Subsection (6) shall not be taken to limit by implication any defence that would, but for the subsection, be available to a person charged with an offence against this section.
- (8) For the purposes of this section:
- (a) a person shall not be taken to travel from or to an external place or an installation because only of having been in an aircraft flying over, or on a landing place in, the place or installation; and

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- (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 East Timor.

- (2) Subject to subsection (6), where a person travels from an external place to a resources installation in the Joint Petroleum Development Area (whether or not in the course of a longer journey) without entering either Australia or East Timor:
  - (a) that person; and
  - (b) the owner of the installation; and
  - (c) the owner and person in charge of the ship or aircraft on which the person arrives at the installation;are each guilty of an offence against this section.
- (3) Subject to subsection (6), where goods are taken from an external place to a resources installation in the Joint Petroleum Development Area (whether or not previously brought to that place from another place) without being taken into either Australia or East Timor:
  - (a) the owner of the goods at the time of their arrival at the installation; and
  - (b) the owner of the installation; and
  - (c) the owner and person in charge of the ship or aircraft on which the goods arrive at the installation;are each guilty of an offence against this section.
- (4) Subject to subsection (6), where a person travels from a resources installation in the Joint Petroleum Development Area to an external

place (whether or not in the course of a longer journey) without entering either Australia or East Timor:

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

are each guilty of an offence against this section.

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

- (a) the person who sends the goods; and
- (b) the owner of the installation; and
- (c) the owner and person in charge of the ship or aircraft on which the goods leave the installation;

are each guilty of an offence against this section.

- (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 CEO and was carried out in accordance with the conditions (if any) specified in the authorisation.

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

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- (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 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 CEO, in writing, as an airport at which that aircraft, or a class of aircraft in which that aircraft is included, may land on arriving in Australia from a place outside Australia.

Penalty: 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.

## **61 Facility for boarding**

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

Penalty: 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.

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- (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.

**62 Ships to come quickly to place of unloading**

- (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*.

## 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.

**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:

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- (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 CEO 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));
- (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 Customs, 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 Customs 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.
- (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

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- (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.
- (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

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

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- (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 Customs, 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 CEO 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) 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 Customs 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



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- (c) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and
  - (d) contain such information as is required by the form; and
  - (e) be signed in a manner specified in the form.
- (7) An electronic report must communicate such information as is set out in an approved statement.
  - (8) The CEO 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.

**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 Customs, 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.

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- (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 CEO 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
  - (c) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and
  - (d) contain such information as is required by the form; and
  - (e) be signed in a manner specified in the form.
- (6) An electronic report must communicate such information as is set out in an approved statement.
- (7) The CEO may approve different forms for documentary reports, and different statements for electronic reports, to be made under

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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 Customs 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 Customs, 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.
- (4) A report must be made before the latest time by which a cargo report may be made.
- (5) The CEO 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.

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- (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 Customs 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.
- (2) The operator must report to Customs, 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.

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- (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 CEO 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 Customs, 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
  - (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 Customs, in accordance with this section, particulars of all goods that the cargo

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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
  - (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 CEO may approve different statements for the cargo reports to be made in different circumstances or by different kinds of cargo reporters.

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(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.

(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;

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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.
- (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:



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*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 Customs by the operator of the aircraft under section 64AAC must communicate electronically to Customs 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 Customs by the operator of the ship under section 64AAC must communicate electronically to Customs 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 Customs by the operator of the ship under section 64AAC must communicate electronically to Customs 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 Customs 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

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- (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 CEO may approve different statements for the outturn reports to be made by stevedores, depot operators, or persons in charge of Customs places.
- (7) The CEO or 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 Customs 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.
- (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 Customs**

- (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 Customs 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

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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.
- (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.

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- (3) In the case of cargo (not in containers) unloaded from a ship at a wharf, the stevedore must communicate the outturn report to Customs 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 Customs:
- (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
    - (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;

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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 an 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 report to Customs 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 (and the obligation in subsection (11)) 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 to the Migration Department.

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 CEO has, in writing, approved an electronic system for the operator for the purposes of this subsection;

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- (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 CEO 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*.

- (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.

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

*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 CEO 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.

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*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.

*Obligation to pass information on to Migration Department*

- (11) As soon as practicable after information is reported under this section, Customs must provide the information to the Department administered by the Minister who administers the *Migration Act 1958*.

*Purpose for which information obtained*

- (12) Information obtained by Customs:
- (a) under this section; or
  - (b) under subsection 245L(6) of the *Migration Act 1958*;
- is taken to be obtained by Customs 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 first or any subsequent port or airport of the voyage or flight) must, in accordance with this section, report to Customs 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 (and the obligation in subsection (8)) 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 to the Migration Department.



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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 Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport at which the ship or aircraft is expected to arrive.

*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 CEO 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

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kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.

*Obligation to pass information on to Migration Department*

- (8) As soon as practicable after information is reported under this section, Customs must provide the information to the Department administered by the Minister who administers the *Migration Act 1958*.

*Purpose for which information obtained*

- (9) Information obtained by Customs:
- (a) under this section; or
  - (b) under subsection 245L(6) of the *Migration Act 1958*;
- is taken to be obtained by Customs 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 to the Migration Department**

- (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 Customs 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 Customs when it is received by Customs.
- (2) For the purposes of this Act, a report that is sent electronically to Customs under section 64, 64AA, 64AAA, 64AAB, 64AAC, 64AB, 64ABAA, 64ACA or 64ACB is taken to have been communicated to Customs when an acknowledgment of the report is sent to the person identified in the report as the person sending it.

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**64ADAA Requirements for communicating to Customs electronically**

A communication that is required or permitted by this Subdivision to be made to Customs 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) The CEO or 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
  - (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 CEO to allow authorised officers ongoing access to the operator's passenger information in a particular manner and form; and
- (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).

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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
  - (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
- (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.

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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.

**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 at the Customs house nearest to the place where the ship was lost or wrecked or at the chief Customs house of the State where the ship was lost or wrecked.

Penalty: 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, as far as it may be possible for him or her to do so, at the Customs House nearest to the place where the aircraft was lost or wrecked.

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*).

- (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*.

**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 CEO must not register a person as a special reporter if:
- (b) the applicant does not satisfy Customs as mentioned in subsection (2) in relation to low value cargo of that kind; or
  - (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 CEO 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 CEO's opinion:
- (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.
- (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 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

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- (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 CEO 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 CEO because of a breach of any condition to which the registration of the company as a special reporter was subject; and
  - (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 CEO 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
  - (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.

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- (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 Customs when the application is first received by an officer of Customs designated by the CEO to receive such applications.
- (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 CEO 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 CEO must make a decision within 60 days after:
  - (a) if paragraph (b) does not apply—the lodgment of the application; and
  - (b) if the CEO 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 CEO decides to register the applicant in relation to low value cargo of the kind referred to in the application, the CEO must register 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 CEO decides not to register the applicant in respect of low value cargo of that kind referred to in the application, the CEO must notify the applicant, in writing, of that decision setting out the reasons for so deciding.
- (5) If, in considering the application, the CEO decides that he or she needs further information on any matter dealt with in the application:
  - (a) the CEO may, by notice in writing to the applicant, require the applicant to provide such additional information relating

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to that matter as the CEO specifies within a period specified in the notice; and

- (b) unless the information is given to the CEO 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 CEO 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;
  - (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 Customs under section 64AB; and
  - (b) for 2 years after the date that an abbreviated cargo report covering a consignment is transmitted to Customs, 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
  - (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 CEO 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 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 Customs.
- (5) The special reporter must, despite providing Customs with the capacity to download information referred to in subsection (4),

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electronically transfer that information, or a part of that information, to Customs at any reasonable time as required by 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 CEO, in writing, of that expiration or termination or of that breach or alleged breach.

**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 CEO 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 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 CEO 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 CEO 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

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- (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 CEO 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 CEO must, having regard to the terms of the application and, where additional information is supplied under subsection (12), to the additional information, decide whether or not to renew the registration of the applicant in relation to low value cargo of that kind.
- (6) The CEO 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 CEO 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 CEO decides to renew the registration of a special reporter in relation to low value cargo of a particular kind, the CEO 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 CEO decides not to renew the registration of a special reporter in relation to low value cargo of a particular kind, the CEO

must notify the applicant for renewal, in writing, of that decision setting out the reasons for so deciding.

- (10) If the CEO 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 CEO 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
  - (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 CEO decides that he or she needs further information on any matter dealt with in the application:
- (a) the CEO may, by notice in writing to the applicant, require the applicant to provide such additional information relating to the matter as the CEO specifies within a period specified in the notice; and
  - (b) unless the information is given to the CEO within that period—the applicant is taken to have withdrawn the application.

### **67EL CEO to allocate a special identifying code for each special reporter**

If the CEO registers an applicant as a special reporter in respect of low value cargo of a particular kind, the CEO 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.

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**67EM Cancellation of registration as special reporter**

- (1) The CEO may, at any time, give to a special reporter a notice of intention to cancel the special reporter's registration if the CEO 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
  - (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 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 CEO 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 CEO 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 CEO considers appropriate, if,

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having regard to any statements made by the special reporter in response to the notice, the CEO is satisfied that at least one of the grounds specified in the notice exists at the time of the decision.

- (5) If the CEO decides to cancel the registration within the 14 days, the registration is cancelled:
  - (a) if paragraph (b) does not apply—28 days after the CEO’s decision; or
  - (b) if the special reporter applies to the Administrative Appeals Tribunal for a review of the CEO’s decision—when the Tribunal affirms the CEO’s decision.
- (6) The CEO must, by notice in writing, cancel a registration if the CEO 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).

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- (2) An application must:
- (a) be in writing; and
  - (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 CEO must register an applicant as a re-mail reporter if:
- (a) the applicant applies under section 67F; and
  - (b) the CEO 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 CEO 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 CEO may request, in writing, the applicant to provide additional information specified in the request within a specified period.
- (3) The CEO 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 CEO receiving the information.
- (4) The CEO must:
- (a) notify the applicant in writing of his or her decision; and



- (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 CEO 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 CEO 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 CEO 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 CEO 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
  - (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
  - (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 the CEO of certain matters**

A re-mail reporter must notify the CEO in writing if:

- (a) an event or circumstance occurs after the reporter's registration which section 67H would require the CEO 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
  - (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 CEO may impose a new condition on a re-mail reporter's registration by notifying the reporter in writing of the condition.

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- (2) The CEO 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 CEO 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 CEO 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 CEO must notify the reporter in writing of the cancellation of the registration.

## **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 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.
- (3) If the owner of goods to which this section applies does not enter the goods under subsection (2) for home consumption or for warehousing, the owner must enter the goods for home consumption or 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.

- (3A) An entry of goods for home consumption is made by communicating to Customs an import declaration in respect of the goods.
- (3B) An entry of goods for warehousing is made by communicating to Customs 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 transshipment**

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**

- (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;
- without entering them for that purpose:
- (c) in respect of a recurring 7 day period; or

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- (d) in respect of a calendar month if:
  - (i) the person is a small business entity or included in a class prescribed by the regulations; or
  - (ii) the like customizable 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.
- (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.
- (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 customizable 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.
- (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;
  - (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 a small 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

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subparagraph (1)(d)(ii)—any condition prescribed by the regulations;

- (e) if a person ceases to be a small business entity—the condition that the person advise the Collector, in writing, of that fact as soon as practicable after ceasing to be a small 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) and (d)—see also subsection (9).

- (9) Despite paragraphs (8)(a), (b), (c) and (d), 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.

- (13) If:
- (a) a person is a small 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; and
  - (c) the person advises the Collector, in writing, that the person ceases to be a small 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.

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- (2) A person who has imported or proposes to import goods referred to in paragraph (a) of the definition of *special clearance goods* may apply to Customs at any time, in writing, for permission to deliver the goods into home consumption without entering them for that purpose.
- (3) A person who has imported goods referred to in paragraph (b) or (c) of the definition of *special clearance goods* may apply to Customs, in writing, for permission to deliver the goods into home consumption without entering them for that purpose:
  - (a) if the goods become subject to Customs control outside the hours of business for dealing with import entries; and
  - (b) the application is made before those hours of business resume.
- (4) Subject to subsection (5), an officer of Customs may, on receipt of an application under subsection (2) or (3), by notice in writing:
  - (a) grant permission for the goods to which the application relates to be delivered into home consumption without entering them for that purpose; or
  - (b) refuse to grant such a permission and set out in the notice the reasons for so refusing.
- (5) A permission granted in respect of goods is subject to any condition, specified in the permission, that Customs considers appropriate.
- (6) Where an application is made in respect of perishable food, an officer of Customs must not grant the permission unless he or she is satisfied that, if he or she refused to do so, the food would be of little or no commercial value when the hours of business for dealing with import entries resumed.
- (7) Where permission is granted in respect of goods, the person to whom the permission is granted must:
  - (a) give Customs a return, within 7 days of the delivery of the goods into home consumption, providing particulars in accordance with section 71K or 71L in relation to the goods; and

- (b) at the time when the return is given to Customs, pay any duty 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 an officer of Customs is satisfied that a person to whom a permission has been granted under this section has failed to comply with any of the conditions to which the permission is subject, the officer may, at any time before goods are delivered into home consumption, by notice in writing, revoke the permission and set out in the notice the reasons for that revocation.
- (9) In this section, a reference to the hours of business for dealing with import entries is a reference 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 Customs.

## **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 Customs under this section in the circumstances mentioned in those sections.

### *Authority to deal granted under this section*

- (2) Customs 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) Customs 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, Customs must, having regard to information about the goods given under subsection (1) and (if any) section 196C:

- (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 Customs 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) Customs 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) Customs 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 *Legislative Instruments 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 *Legislative Instruments 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 Customs 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 Customs.
- (3) A self-assessed clearance declaration may be communicated together with a cargo report.

**71AAAG Customs' response if a self-assessed clearance declaration is communicated separately from a cargo report**

- (1) If a self-assessed clearance declaration is communicated to Customs but not together with a cargo report, Customs 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 Customs to identify the self-assessed clearance declaration to which the advice is a response; and
  - (b) must contain:

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- (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 Customs' 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, Customs 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 Customs gives a self-assessed clearance declaration advice in response to a self-assessed clearance declaration, Customs 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 Customs from authorising the delivery of goods into home consumption while certain duty etc. payable on the goods is outstanding.

Note 2: Customs 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).

*If declaration is communicated together with a cargo report*

- (2) If Customs receives a self-assessed clearance declaration together with a cargo report, Customs must communicate electronically:

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- (a) if Customs 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 Customs from authorising the delivery of goods into home consumption while certain duty etc. payable on the goods is outstanding.

Note 2: Customs 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.

**71AAAK No authority to deal with specified low value goods while subject to a direction to hold or further examine**

Customs is not required to grant an authority to deal with specified low value goods at any time while the goods are subject to a

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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) Customs 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;
    - (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) Customs 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 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

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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 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) Customs 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.
- (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), Customs

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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), Customs 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), Customs must not grant an authority to deal with the goods unless the requirement has been 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 Customs.
- (6) If:
  - (a) a self-assessed clearance declaration is communicated to Customs; 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

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- (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 CEO 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*.

**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 Customs for certain purposes not to constitute withdrawal**

Any annotation of a self-assessed clearance declaration that is made by Customs as a result of the acceptance by Customs 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 Customs**

- (1) The CEO 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.
- (2) For the purposes of this Act, a self-assessed clearance declaration is taken to have been communicated to Customs electronically:
  - (a) when a self-assessed clearance declaration advice is communicated by Customs 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 Customs together with a cargo report—when Customs communicates electronically to the person who made the declaration an acknowledgment of the declaration.

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- (3) For the purposes of this Act, a withdrawal of a self-assessed clearance declaration is taken to have been communicated to Customs electronically when an acknowledgment of the withdrawal is communicated by Customs 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 Customs 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 Customs:
  - (a) by giving or sending it to an officer doing duty in relation to import declarations; or
  - (b) by leaving it at a place that has been allocated for lodgment of import declarations in a Customs Office;at the place at which the goods are to be delivered for home consumption.
- (5) If the information communicated to Customs 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 Customs; and
- (b) before the time when the declaration is, or is so taken to have been, communicated to Customs, 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 Customs; and
- (b) at the time when the declaration is, or is so taken to have been, communicated to Customs, 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).

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**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 Customs 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.

**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 by Customs of the declaration.
- (2) The amount of the warehoused goods declaration fee is:
  - (a) if the import declaration is made electronically—\$23.20 or, if another amount (not exceeding \$34.80) is prescribed by the regulations, the amount so prescribed; or
  - (b) if the import declaration is made by document—\$60.00 or, if another amount (not exceeding \$90.00) 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 Customs, Customs 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 in a Customs office that has been allocated for collection of such advices; and
  - (b) must contain:
    - (i) a statement to the effect that the goods are cleared for home consumption; 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 Customs 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.

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- (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;

Customs must:

- (c) if the advice was given under subsection (2)—give the person to whom the advice was given an authority, in writing, to take the goods into home consumption; 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.
- (5) Customs 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) Customs 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 Customs 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) Customs must give an authority under subsection (4) in relation to goods if:
- (a) that subsection would require Customs 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 GST, luxury car tax or 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.
  - (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
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- (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.
- (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 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 Customs, by document or electronically, for permission to examine the goods in the presence of an officer.
- (2) A documentary application must be communicated to Customs 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:

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- (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 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 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**

**71DH Making a warehouse declaration**

- (1) A warehouse declaration is a communication to Customs 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 Customs:
  - (a) by giving or sending it to an officer doing duty in relation to warehouse declarations; or
  - (b) by leaving it at a place that has been allocated for lodgment of warehouse declarations in a Customs Office;  
at the place at which the goods are to be delivered for warehousing.
- (5) If the information communicated to Customs 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 Customs; and
  - (b) before the time when the declaration is, or is so taken to have been, communicated to Customs, the goods to which the declaration relates have been imported or have been brought to the first port or airport in Australia at which any goods are to be discharged;

the goods are taken to have been entered for warehousing.

- (8) If:
- (a) a warehouse declaration is, or is taken under section 71L to have been, communicated to Customs; and
  - (b) at the time when the warehouse declaration is, or is so taken to have been, communicated to Customs, 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 Customs 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.

#### **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 Customs, Customs must give a warehouse

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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 in a Customs office that has been allocated for collection of such advices; and
  - (b) must contain:
    - (i) a statement to the effect that the goods are cleared for 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 Customs 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
    - (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;Customs must:
  - (c) if the advice was given under subsection (2)—give the person to whom the advice was given an authority, in writing, to take the goods into 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) Customs 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 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

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- (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.
- (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 Customs, by document or electronically, for permission to examine the goods in the presence of an officer.
- (2) A documentary application must be communicated to Customs 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.
- (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.

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- (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.
- (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
  - (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 Application for movement permission**

- (1) Where particular goods, or goods of a particular kind, are, or after their importation will be, subject to Customs control, application may be made to Customs, by document or 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 Customs by giving it to an officer doing duty in relation to import entries or to the movement of goods subject to Customs control.
- (2A) 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:
  - (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 CEO 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 Customs, 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
  - (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.
- (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.

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- (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).
- (4) Where goods are moved to a place other than a warehouse in accordance with a permission under subsection (3), an officer of Customs may, at any time while the goods remain under Customs control, direct in writing that they be moved from that place to a warehouse specified in the direction within a period specified in the direction.
- (5) If goods are not moved in accordance with such a direction, an officer of Customs may arrange for the goods to be moved to the warehouse specified in the direction or to any other warehouse.
- (6) Where an officer of Customs has arranged for goods to be moved to a warehouse, Customs has a lien on the goods for any expenses incurred in connection with their removal to the warehouse and for any warehouse rent and charges incurred in relation to the goods.

**71F Withdrawal of import entries**

- (1) At any time after an import entry is communicated to Customs and before the goods to which it relates are dealt with in accordance with the entry, a withdrawal of the entry may be communicated to Customs by document or electronically.
- (2) If, at any time after a person has communicated an import entry to Customs 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 Customs 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 Customs.
- (7) If:
- (a) an import entry is communicated to Customs; 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:
    - (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 CEO 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).

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**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
  - (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 Customs for certain purposes not to constitute withdrawal**

Any annotation of an import entry that is made by Customs as a result of the acceptance by Customs 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 Customs 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 Customs 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 CEO 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 Customs electronically**

- (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 Customs electronically must communicate such information as is set out in an approved statement.
- (2) The CEO 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 Customs electronically when an import entry advice, or an acknowledgment of the withdrawal or the return, is communicated by Customs electronically to the person identified in the import entry, withdrawal or return as the person sending it.

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- (4) A movement application that is communicated to Customs 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 Customs electronically when an acknowledgment of the application is communicated by Customs electronically to the person identified in the application as the person sending it.

**71M Requirements for communicating to Customs electronically**

A communication that is required or permitted by this Division to be made to Customs 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
  - (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.

### **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.

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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;

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 Customs 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 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 Customs 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

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- (b) whether a report of the arrival of the ship or aircraft has been made and, if so, the time of arrival;  
Customs may comply with the request.
- (2) If goods have been entered for home consumption or warehousing, Customs may, at the request of the owner of the goods, inform the owner of the stage reached by Customs 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, Customs may, at the request of the owner of the goods, inform the owner of the stage reached by Customs in its consideration of the application.
- (4) If goods have been entered for export by the making of an export declaration, Customs may, at the request of the owner of the goods, inform the owner of the stage reached by Customs 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 Customs under section 117A, Customs may, at the request of the owner of the goods, inform the owner of the stage reached by Customs in preparing to give a submanifest number in respect of the submanifest.



## **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 Customs 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 Customs**

If the Minister orders Customs to detain goods under section 77EA, Customs 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.

- (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 Customs 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.

## 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 Depot Licensing Charges Act 1997* and payable as set out in section 77H.

***depot licence charge*** means the depot licence charge imposed by the *Customs Depot 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 Depot Licensing Charges Act 1997* and payable as set out in section 77LA of this Act.

***International Mail Centre*** means a place approved in writing by the CEO under this section 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.

- (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

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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).

**77G Depot licences**

- (1) Subject to this Part, the CEO 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 the control of the Customs 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 the control of the Customs under section 30;
  - (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.
- (2) The 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) subject to subsection (3), be accompanied by a depot licence application charge.
- (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).

**77J CEO may require applicant to supply further information**

- (1) The CEO may, by written notice given to an applicant for a depot licence, require the applicant to supply further information in relation to the application within the period that is specified in the notice.
- (2) The CEO may extend the specified period if the applicant, in writing, requests the CEO to do so.
- (3) If the applicant:
  - (a) fails to supply the further information within the specified period, or that period as extended under subsection (2); but
  - (b) supplies the information at a subsequent time;the CEO must not take the information into account in determining whether to grant the depot licence.

**77K Requirements for grant of depot licence**

- (1) The CEO must not grant a depot licence if, in the CEO's opinion:
  - (a) if the applicant is a natural person—the applicant is not a fit and proper person to hold a depot licence; or
  - (b) if the applicant is a partnership—any of the partners is not a fit and proper person to be a member of a partnership holding a depot licence; or
  - (c) if the applicant is a company—any director, officer or shareholder of a company who would participate in the management or control of the place proposed to be covered by the licence (the *proposed depot*) is not a fit and proper person so to participate; or
  - (d) an employee of the applicant who would participate in the management or control of the proposed depot is not a fit and proper person so to participate; or
  - (e) if the applicant is a company—the company is not a fit and proper company to hold a depot licence; or
  - (f) if the applicant is a natural person or a company—the applicant would not be in a position to occupy and control the proposed depot if the licence were granted; or
  - (g) if the applicant is a partnership—none of the members of the partnership would be in a position to occupy and control the proposed depot if the licence were granted; 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
  - (i) the records that would be kept in relation to the proposed depot would not be suitable to enable Customs adequately to audit those records.
- (2) The CEO 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 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 CEO must, in deciding whether a company is a fit and proper company for the purposes of paragraph (1)(e), have regard to:
- (a) any conviction of the company 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 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
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- (e) whether the company has executed under Part 5.3A of that Act a deed of company arrangement that has not yet terminated; and
  - (g) whether the company is being wound up.
- (4) The CEO may refuse to grant a depot licence if, in the CEO's 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 Customs 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 CEO must not grant the licence unless the applicant has, at the proposed depot, facilities that would enable the applicant to communicate with Customs electronically.

**77L Granting of a depot licence**

- (1) The CEO 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 CEO requires further information relating to the application to be supplied by the applicant under section 77J and the applicant supplied the information in accordance with that section—the receipt of the information.
- (2) If the CEO has not made a decision whether or not to grant a depot licence within 60 days under subsection (1), the CEO is taken to have refused the application.

**77LA Variation of places covered by depot licence**

- (1) The CEO 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.
- (2) The 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) be accompanied by payment of the depot licence variation charge.
- (3) The CEO 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 CEO allows.
- (4) The CEO 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 the CEO's 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 Customs adequately to audit those records.
- (5) The CEO must not grant an application for the substitution of the description of a place not currently described in the licence if, in
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the CEO's opinion, the place would be too remote from the nearest place where officers who regularly perform their functions for Customs would be able conveniently to check whether the Customs Acts are being complied with at the place.

- (6) The CEO 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 CEO 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 CEO has not made the decision whether or not to grant the application within the period applicable under subsection (6), the CEO is taken to have refused the application.

**77N Conditions of a depot licence—general**

- (1) A depot licence is subject to the conditions set out in subsections (2) to (10).
- (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 CEO 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;
  - (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;
- (d) a person who participates in the management or control of 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
  - (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 in:
- (a) a matter affecting the physical security of the depot; or
  - (b) the keeping of records in relation to the depot;
- unless the holder has given to the CEO 30 days' notice of the proposed change.
- (3) The holder of the licence must pay to Customs 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.
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- (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 the control of the Customs; or
  - (b) which an authorised officer has reasonable grounds to believe are subject to the control of the Customs.
- (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 the control of the Customs.
- (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 Customs 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).
- (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 CEO, 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 The CEO may impose additional conditions to which a depot licence is subject***Imposition of additional conditions*

- (1) The CEO may, at any time, impose additional conditions to which a depot licence is subject if the CEO 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.
- (1A) If the CEO imposes conditions under subsection (1) when granting the depot licence, the CEO must specify the conditions in the licence.
- (1B) If the CEO imposes conditions under subsection (1) after the depot licence has been granted:
- (a) the CEO 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 CEO considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

*Variation of imposed conditions*

- (2) The CEO may, by written notice to the holder of the licence, vary conditions imposed under subsection (1) in relation to that 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 CEO 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.

**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.



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- (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 90 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).

**77T Renewal of depot licences**

- (1) The CEO must, before the end of a financial year, notify each holder of a depot licence of the terms of this section.
- (2) If the holder pays a depot licence charge for the renewal of the licence before the end of the financial year, the licence is renewed for another period of 12 months at the end of the financial year.
- (3) If the holder fails to pay the charge before the end of the financial year, a Collector may, until the charge is paid or the end of 90 days immediately following the end of the financial year (whichever

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occurs first), refuse to permit goods that are subject to the control of the Customs to be received into the depot.

- (4) If the holder pays the charge within 90 days immediately following the end of the financial year, the licence is taken to have been renewed for another period of 12 months at the end of the financial year.
- (5) If the holder fails to pay the charge within 90 days immediately following the end of the financial year, the licence expires at the end of that period of 90 days.
- (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 CEO may give a notice under this subsection to the holder of a depot licence if:
  - (a) the CEO 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

- (ii) if the licence is held by a natural person—the person is not a fit and proper person to hold a depot licence; or
  - (iii) if 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 depot licence; or
  - (iv) if the licence is held by a company—a director, officer or shareholder of the company who participates in the management or control of the depot is not a fit and proper person so to participate; or
  - (v) an employee of the holder of the licence who participates in the management or control of the depot is not a fit and proper person so to participate; or
  - (vi) if the licence is held by a company—the company is not a fit and proper company to hold a depot licence; or
  - (vii) a condition to which the licence is subject has not been complied with; or
  - (viii) a licence charge payable in respect of the grant of the depot remains unpaid more than 30 days after the grant of the licence; or
- (b) the CEO 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.
- (2) In deciding whether a person is a fit and proper person for the purposes of subparagraphs (1)(a)(ii) to (v), the CEO 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:

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- (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)(a)(vi), the CEO must have regard to:
- (a) the matters referred to in paragraphs 77K(3)(c) to (g); and
  - (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.
- (4) The notice under subsection (1) must be in writing and must be:
  - (a) served, either personally or by post, on the holder of the depot licence; or
  - (b) served personally on a person who, at the time of service, apparently participates in the management or control of the depot.
- (5) 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 served, give to the CEO at an address specified in the notice a written statement showing cause why the licence should not be cancelled; and
  - (b) may, if it appears to the CEO to be necessary 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.
- (6) If the notice under subsection (1) states that the depot licence is suspended, the licence is suspended on and from the service 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:

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- (a) the CEO 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.

**77VA Depot must not be used if depot licence is suspended etc.**

*Offence*

- (1) If a depot licence is suspended under section 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 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 the control of Customs 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 in a prescribed manner 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 Customs, in respect of the services of officers required as the result of the suspension, such fee as the CEO determines having regard to the cost of the services.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (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 CEO:

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

Note: For the cancellation of depot licences, see section 77VC.

### **77VC Cancellation of depot licences**

- (1) The CEO may, by notice in writing, cancel a depot licence if the CEO is satisfied of any matter mentioned in subparagraphs 77V(1)(a)(i) to (viii), or of the matter mentioned in paragraph 77V(1)(b), in relation to the licence.
- (2) The CEO must, by notice in writing, cancel a depot licence if the CEO 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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- (3) A notice under subsection (1) or (2) must be:
  - (a) served, either personally or by post, on the holder of the depot licence; or
  - (b) served personally on a person who, at the time of service, apparently participates in the management or control of the depot.
- (4) If a depot licence is cancelled under this section, the CEO must, by notice published in a newspaper circulating in the locality in which the depot is situated, inform the owners of goods in the depot of the cancellation and the date of the cancellation.
- (5) If a depot licence is cancelled under this section, the person or partnership who held the licence before the cancellation must return the licence to Customs within 30 days after the cancellation.

**77W Refund of depot licence charge on cancellation of a depot licence**

- (1) If:
    - (a) a depot licence is cancelled 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 Depot 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.

**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 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 the control of the Customs 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 the control of the Customs (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

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- 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
  - (h) by notice in writing to the former holder, require the former holder to pay to Customs, 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 CEO 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 Customs in respect of the cost of the removal such fees as the CEO determines having regard to that cost.
- (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 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
- (b) a person participating in the management or control of the depot;

in relation to goods in the depot that are subject to the control of the Customs (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.
- (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.

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.

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**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.

**77ZA Service of notice**

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

## **Part V—Warehouses**

### **78 Interpretation**

- (1) In this Part, unless the contrary intention appears:

*place* includes an area, a building and a part of a building.

*warehouse*, in relation to a warehouse licence, means the warehouse to which the licence relates.

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

- (2) A reference in this Part to the CEO shall be read as including a reference to a Regional Director for a State or Territory.
- (3) For the purposes of this Part, a person shall be taken to participate in the management or control of a warehouse if:
- (a) he or she has authority to direct the operations of the warehouse or to direct activities in the warehouse, the removal of goods from the warehouse, or another important part of the operations of the warehouse; or
  - (b) he or she 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 CEO may grant a person or partnership a licence in writing, to be known as a warehouse licence, to use a place described in the licence for warehousing goods.
- (2) A warehouse licence may be a licence to use a place for warehousing goods generally, goods included in a specified class or specified classes of goods or goods other than goods included in a specified class or specified classes of goods.

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- (3) A warehouse licence may authorize blending or packaging, processing, manufacture of excisable goods, trading or other activities specified in the licence to be carried on in the warehouse.

**80 Applications for warehouse licences**

An application for a warehouse licence shall:

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

**80A CEO may require applicant to supply further information**

- (1) The CEO may, by written notice given to an applicant for a warehouse licence, require the applicant to supply further information in relation to the application within the period that is specified in the notice.
- (2) The CEO may extend the specified period if the applicant, in writing, requests the CEO to do so.
- (3) If the applicant:
  - (a) fails to supply the further information within the specified period, or that period as extended under subsection (2); but
  - (b) supplies the information at a later time;the CEO must not take the information into account in determining whether to grant the warehouse licence.

**81 Requirements for grant of warehouse licence**

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

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- (2) The CEO shall, in determining whether a person is a fit and proper person for the purposes of paragraph (1)(a), (b), (c) or (d), have regard to:
- (a) any conviction of the person for an offence against this Act committed within the 10 years immediately preceding the making of the application; 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 CEO shall, in determining whether a company is a fit and proper company for the purposes of paragraph (1)(da), have regard to:
- (a) any conviction of the company of an offence against this Act committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company; 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
  - (e) whether the company is being wound up.

### **81A Grant of a warehouse licence**

- (1) If an application for a warehouse licence is made, the CEO 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 CEO, under section 80A, requires the applicant to supply further information in relation to the application and the applicant supplies the information in accordance with that section—the receipt of the information.
- (2) If the CEO 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 CEO is taken to have refused the application at the end of that period.

### **81B Variation of the place covered by a warehouse licence**

- (1) The CEO may, on application by the holder of a warehouse licence, vary the licence by:
  - (a) omitting the description of the place that is described in the licence and substituting a description of another place; or
  - (b) altering the description of the place that is described in the licence.
- (2) The application 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.
- (3) The CEO 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 CEO allows.
- (4) If an application for the variation of a warehouse licence is made under subsection (1), the CEO must not grant the application if, in the CEO's opinion:
- (a) the physical security of the place whose description is to be substituted, or of the place that would have the altered description, 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 the place, if the variation were made, 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 the place, if the variation were made, would not be suitable to enable Customs adequately to audit those books or records.
- (5) The CEO must not grant an application under subsection (1) for the substitution of the description of a place in a warehouse licence if, in the CEO's opinion, the place would be too remote from the nearest place where officers, who regularly perform their functions

for Customs, would be able conveniently to check whether the Customs Acts are being complied with at the place.

- (6) If an application is made under subsection (1), the CEO 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 CEO 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 CEO 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 CEO is taken to have refused the application at the end of that period.

## **82 Conditions of warehouse licences**

- (1) A warehouse licence is subject to the condition that, if:
- (a) a person not described in the application for the licence as participating in the management or control of the warehouse commences so to participate; 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;
    - (iii) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;

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- (iv) the company executes a deed of company arrangement under Part 5.3A of that Act;
  - (v) the company begins to be wound up; or
  - (c) a person who participates in the management or control of the warehouse, the holder of the licence or, in the case of a licence held by a partnership, a member of the partnership:
    - (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); or
  - (d) there is a substantial change in a matter affecting the physical security of the warehouse; or
  - (e) there is a substantial change in plant or equipment used in relation to goods in the warehouse; or
  - (f) there is a substantial change in the keeping of accounts or records kept in relation to the warehouse;
- the holder of the licence shall, within 30 days after the occurrence of the event referred to in whichever of the preceding paragraphs applies, give the CEO particulars in writing of that event.
- (3) A warehouse licence is subject to such other conditions (if any) as are specified in the licence that the CEO 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 the warehouse; and

- (b) conditions limiting the operations that may be performed upon, or in relation to, goods in the warehouse.
- (5) The CEO may, upon application by the holder of a warehouse licence and production of the licence, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.
- (6) Subsection (5) does not limit section 82B.

**82A The CEO may impose additional conditions to which a warehouse licence is subject**

- (1) The CEO may, at any time, impose additional conditions to which the licence is subject if the CEO 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.
- (2) If the CEO imposes conditions under subsection (1):
  - (a) the CEO 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 CEO considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

**82B The CEO may vary the conditions to which a warehouse licence is subject**

- (1) The CEO may, by written notice to the holder of a warehouse licence, vary:

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- (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.
- (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 CEO 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.
- (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:
- (a) comes into force on a date specified in the licence or, if no date is so specified, the date on which the licence is granted; and
  - (b) subject to this Part, remains in force until 30 June next following the grant of the licence but may be renewed in accordance with section 84.
- (2) Notwithstanding that a warehouse licence has not been renewed, a Collector may:
- (a) permit goods to be placed in the former warehouse; 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 Customs in respect of the services of officers required as the result of the licence not having been renewed (including services relating to the supervision of activities in relation to the former warehouse permitted by a Collector, the stocktaking of goods in the former warehouse or the reconciliation of records relating to such goods) such fee as the CEO determines having regard to the cost of the services; 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 Customs in respect of the cost of the removal such fee as the CEO determines having regard to that cost.
- (3) Subject to subsection (4), where a warehouse licence has not been renewed and goods remain in the former warehouse, the CEO shall by notice:
- (a) published by being displayed on a public notice board in the Customs House or other office of the Customs nearest to the former warehouse;
  - (b) published in the *Gazette*; and

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- (c) published in a newspaper circulating in the locality in which the warehouse is situated;
- inform the owners of goods in the former warehouse:
- (d) that they are required, within a time specified in the notice or any further time allowed by the CEO, to:
    - (i) pay to the Collector duty payable in respect of their goods in the former warehouse; or
    - (ii) remove their goods in the former warehouse to another place in accordance with permission obtained from the Collector; and
  - (e) that, if they do not comply with the requirements of the notice, their goods in that former warehouse will be sold.
- (4) Where the CEO is satisfied that all the goods in a former warehouse the licence in respect of which has not been renewed are the property of the person who held the licence, the notice referred to in subsection (3) need not be published as mentioned in that subsection but shall be:
- (a) served, either personally or by post, on that person; or
  - (b) served personally on a person who, at the time of the expiration of the licence, apparently participated in the management or control of the former warehouse.
- (5) Where the owner of goods to which a notice under subsection (3) applies fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed by the CEO, the goods may be sold by a Collector.
- (6) If an amount that the last holder of a licence is required to pay in accordance with a notice under paragraph (2)(e) or (g) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

**84 Renewal of warehouse licence**

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



- (3) The CEO may refuse to renew a licence if the CEO is satisfied that, if the licence were renewed, he or she would be entitled to cancel the licence.
- (4) Subject to this Part, a warehouse licence that has been renewed continues in force for 12 months but may be further renewed.

Note: Additional conditions may be imposed on the licence under section 82A, and the conditions to which the licence is subject may be varied under subsection 82(5) or section 82B.

### **85 Fees for warehouse licences**

- (1) Such fees as are prescribed are payable in respect of warehouse licences.
- (2) Regulations for the purposes of subsection (1) may prescribe:
  - (a) annual fees in respect of warehouse licences;
  - (b) fees calculated in accordance with the duration of warehouse licences;
  - (c) a fee for each transaction, or each transaction in a class of transactions, involving the movement of goods into or out of the warehouse to which a warehouse licence relates; and
  - (d) a fee calculated by reference to the volume or value of transactions, or of a specific class of transactions, relating to goods in the warehouse to which a warehouse licence relates.
- (3) Different fees may be prescribed in relation to warehouse licences subject to different conditions or in relation to warehouse licences for warehouses of different kinds.
- (4) The regulations may make provision for, and in relation to, the refund of any fees referred to in subsection (1).
- (5) Without limiting subsection (4), the regulations may set out the means of determining the amount of the refund.

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**86 Suspension of warehouse licences**

- (1) The CEO may give notice in accordance with this section to the holder of a warehouse licence if he or she has reasonable grounds for believing that:
- (a) the physical security of the warehouse is no longer adequate having regard to the matters referred to in paragraph 81(1)(e); or
  - (b) the plant and equipment used in the warehouse are such that the protection of the revenue in relation to goods in the warehouse is inadequate; 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
  - (e) where the licence is held by a company—a director, officer or shareholder of the company who participates in the management or control of the warehouse is not a fit and proper person so to participate; or
  - (f) an employee of the holder of the licence, being an employee who participates in the management or control of the warehouse, is not a fit and proper person so to participate; or
  - (fa) where the licence is held by a company—the company is not a fit and proper company to hold a warehouse licence; or
  - (g) a condition to which the licence is subject has not been complied with; or
  - (h) a fee payable in respect of a licence is unpaid and has been unpaid for 28 days after the day on which it became payable;
- or it otherwise appears to him 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.

- (1A) The CEO shall, in considering whether a person is a fit and proper person for the purposes of paragraph (1)(c), (d), (e) or (f), have regard to:
- (a) any conviction of the person of an offence against this Act committed:
    - (i) where the licence has not been renewed—after the grant of the licence or within 10 years immediately preceding the making of the application for the licence; and
    - (ii) where the licence has been renewed on one occasion only—after the renewal of the licence or within 10 years immediately preceding the making of the application for the renewal; and
    - (iii) where the licence has been renewed on more than one occasion—after the latest renewal of the licence or within 10 years immediately preceding the making of the application for the latest renewal; 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) where the licence has been renewed on one occasion only—after the renewal of the licence or within 10 years immediately preceding the making of the application for the renewal; and
    - (iii) where the licence has been renewed on more than one occasion—after the latest renewal of the licence or within 10 years immediately preceding the making of the application for the latest renewal; and
  - (c) whether the person is an undischarged bankrupt; and
  - (d) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled:

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- (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) where the licence has been renewed on one occasion only—after the renewal of the licence or within 10 years immediately preceding the making of the application for the renewal; and
  - (iii) where the licence has been renewed on more than one occasion—after the latest renewal of the licence or within 10 years immediately preceding the making of the application for the latest renewal.
- (1B) The CEO shall, in considering whether a company is a fit and proper company for the purposes of paragraph (1)(fa) have regard, in relation to the company, to:
- (a) any conviction of the company of an offence against this Act that was:
    - (i) where the licence has not been renewed—committed after the grant of the licence; or
    - (ii) where the licence has been renewed on one occasion only—committed after the renewal of the licence; or
    - (iii) where the licence has been renewed on more than one occasion—committed after the latest renewal of the licence; or
    - (iv) committed:
      - (A) where the licence has not been renewed—within 10 years immediately preceding the making of the application for the licence; and
      - (B) where the licence has been renewed on one occasion only—within 10 years immediately preceding the making of the application for the renewal of the licence; and

- (C) where the licence has been renewed on more than one occasion—within 10 years immediately preceding the making of the application for the latest renewal of the licence; and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company; 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
    - (ii) where the licence has been renewed on one occasion only—committed after the renewal of the licence; or
    - (iii) where the licence has been renewed on more than one occasion—committed after the latest renewal of the licence; or
    - (iv) committed:
      - (A) where the licence has not been renewed—within 10 years immediately preceding the making of the application for the licence; and
      - (B) where the licence has been renewed on one occasion only—within 10 years immediately preceding the making of the application for the renewal of the licence; and
      - (C) where the licence has been renewed on more than one occasion—within 10 years immediately preceding the making of the application for the latest renewal of the licence; and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company; and
  - (c) the matters mentioned in paragraphs 81(3)(c) and (e).
- (2) Notice in accordance with this section to the holder of a warehouse licence shall be in writing and shall be:
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- (a) served, either personally or by post, on the holder of the licence; or
  - (b) served personally on a person who, at the time of service, apparently participates in the management or control of the warehouse.
- (3) A notice in accordance with this section to the holder of a warehouse licence:
- (a) shall state that, if the holder of the licence wishes to prevent the cancellation of the licence, he or she may, within 7 days after the day on which the notice was served, furnish to the CEO at an address specified in the notice a written statement showing cause why the licence should not be cancelled; and
  - (b) may, if it appears to the CEO to be necessary 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;
- and, if the notice states that the licence is suspended, that licence is suspended on and from the service of the notice.
- (5) Where a warehouse licence is suspended under this section, the CEO:
- (a) may at any time revoke the suspension; and
  - (b) if the licence has not been cancelled within 28 days after the day on which the licence was suspended—shall revoke the suspension.
- (6) Subject to subsection (7), during a period in which a warehouse licence is suspended under this section, a person shall not use the warehouse with the intention of warehousing goods.

Penalty: 50 penalty units.

- (7) Notwithstanding subsection (6), during a period in which a warehouse licence is suspended under this section, a Collector may:
- (a) permit goods to be placed in the warehouse; and
  - (b) permit a process to be carried out in the warehouse; and
  - (c) permit the removal of goods from the warehouse, including the removal of goods to another warehouse; and
  - (d) by notice in a prescribed manner 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 Customs in respect of the services of officers required as the result of the suspension, including services relating to the enforcement of the suspension, the supervision of activities in relation to the warehouse permitted by a Collector, the stocktaking of goods in the warehouse or the reconciliation of records relating to such goods, such fee as the CEO determines, having regard to the cost of the services.
- (8) If an amount that the holder of a licence is required to pay in accordance with a notice under paragraph (7)(f) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

## **87 Cancellation of warehouse licences**

- (1) The CEO may cancel a warehouse licence if:
- (a) he or she is satisfied in relation to the licence as to any of the matters mentioned in paragraphs (a) to (h) (inclusive) of subsection 86(1); or

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- (b) he or she is satisfied on any other grounds that cancellation of the licence is necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations.
- (1A) The CEO must cancel a warehouse licence if the CEO receives a written request from the holder of the licence that the licence be cancelled on and after a specified day.
- (2) The CEO must cancel a warehouse licence under this section by notice in writing:
- (a) served, either personally or by post, on the holder of the licence; or
  - (b) served personally on a person who, at the time of service, apparently participates in the management or control of the warehouse.
- (4) Subject to subsection (5), if the CEO cancels a warehouse licence under this section, he or she must by notice:
- (a) published by being displayed on a public Notice Board in the Customs House or other office of the Customs nearest to the warehouse; and
  - (b) published in the *Gazette*; and
  - (c) published in a newspaper circulating in the locality in which the warehouse is situated;
- inform the owners of goods in the place that was the warehouse:
- (d) that they are required, within a time specified in the notice or any further time allowed by the CEO, to:
    - (i) pay to the Collector duty payable in respect of their goods in the warehouse; or
    - (ii) remove their goods in the warehouse to another place in accordance with permission obtained from the Collector; and
  - (e) that, if they do not comply with the requirements of the notice, their goods in that place will be sold.



- (5) Where the CEO who has cancelled a warehouse licence under this section is satisfied that all the goods in the place that was the warehouse are the property of the person who held the licence, the notice referred to in subsection (4) need not be published as mentioned in that subsection but must be:
- (a) served, either personally or by post, on that person; or
  - (b) served personally on a person who, at the time of the cancellation of the licence, apparently participated in the management or control of the place that was the warehouse.
- (6) Where the owner of goods to which a notice under subsection (4) applies fails to comply with the requirements of the notice within the time specified in the notice or any further time allowed by the CEO, the goods may be sold by a Collector.
- (7) Where a warehouse licence is cancelled under this section, the holder of the licence must, if requested by the CEO to do so, surrender the licence to the CEO.

Penalty: 1 penalty unit.

- (8) Subsection (7) is an offence of strict liability.

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

## **88 Service of notices**

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

## **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.

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**90 Obligations of holders of warehouse licences**

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

Penalty: 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 served, either personally or by post, on 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.

**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 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.

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**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.

*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;
  - (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:
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- (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 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 served on the proprietor of the outwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not

have effect in relation to any goods delivered to a relevant traveller before the notice was served.

- (9) A condition imposed in respect of a permission under paragraph (5)(c) or subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.
- (10) A permission under subsection (2) is subject to:
- (a) the condition that the proprietor of the outwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of any conditions of the permission with which they are required to comply; and
  - (b) the condition that that proprietor will provide a Collector with proof, in a prescribed way and within a prescribed time, of the export of goods delivered to a relevant traveller in accordance with the permission.
- (11) If a person who is required to comply with a condition imposed in respect of a permission under subsection (2) fails to comply with the condition, he or she is guilty of an offence against this Act punishable upon conviction by a penalty 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) 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.

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

**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.

*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.



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- (2) A warehouse licence is not to authorise the sale in the warehouse of airport shop goods to relevant travellers unless the warehouse:
- (a) is situated at an airport; and
  - (b) is so located that passengers on international flights who arrive at that airport would normally have access to the warehouse before being questioned for the purposes of this Act by officers of Customs.
- (3) Subject to the regulations (if any), a Collector may give permission, in accordance with subsection (4), for airport shop goods that are specified in the permission and are sold to a relevant traveller in an inwards duty free shop that is specified in the permission to be:
- (a) delivered to the relevant traveller; and
  - (b) taken by the relevant traveller for reporting to an officer of Customs doing duty in relation to clearance through Customs of the personal baggage of the relevant traveller.
- (4) Permission under subsection (3) is given in accordance with this subsection if it is in writing and is delivered to the proprietor of the inwards duty free shop to which the permission relates.
- (5) Without limiting the matters that may be prescribed in regulations referred to in subsection (3), those regulations:
- (a) may prescribe circumstances in which permission under that subsection may be given;
  - (b) may prescribe matters to be taken into account by a Collector when deciding whether to give permission under that subsection; and
  - (c) may prescribe conditions to which a permission under that subsection is to be subject.
- (6) A Collector may, when giving permission under subsection (3) or at any time while a permission under that subsection is in force, impose conditions to which the permission is to be subject, being conditions that, in the opinion of the Collector, are necessary:
- (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;
- and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.
- (7) Without limiting the generality of paragraph (5)(c) or subsection (6), a condition referred to in that paragraph or that subsection to which a permission is to be subject may be:
- (a) a condition to be complied with by the proprietor of the inwards duty free shop to which the permission relates or by relevant travellers to whom goods to which the permission relates are sold; or
- (b) a condition that the proprietor of the inwards duty free shop to which the permission relates will keep records specified in the regulations.
- (8) A condition imposed in respect of a permission under subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of such a condition takes effect when notice in writing of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the proprietor of the inwards duty free shop to which it relates, or at such later time (if any) as is specified in the notice, but does not have effect in relation to any goods delivered to a relevant traveller before the notice was served.
- (9) A condition imposed in respect of a permission under paragraph (5)(c) or subsection (6) or a revocation, suspension or variation, or a cancellation of a suspension, of a condition under subsection (6) may relate to all goods to which the permission relates or to particular goods to which the permission relates and may apply either generally or in particular circumstances.
- (10) A permission under subsection (3) is subject to the condition that the proprietor of the inwards duty free shop to which the permission relates will ensure that relevant travellers to whom goods are delivered in accordance with the permission are aware of

any conditions of the permission with which they are required to comply.

- (11) If a person who is required to comply with a condition imposed in respect of a permission under subsection (3) fails to comply with the condition, the person is guilty of an offence against this Act punishable upon conviction by a fine not exceeding 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 shall cause to be served, either personally or by post, on the proprietor of the shop, a notice in writing setting out the Collector's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

## **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

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

**99 Entry of warehoused goods**

- (1) Warehoused goods may be entered:
  - (a) for home consumption; or
  - (b) for export.
- (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 the warehouse 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 Customs, 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 Customs**

*Applying for permission to enter goods without warehousing*

- (1) A person may apply to Customs 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.
- (3) A documentary application must:
- (a) be communicated to Customs 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 CEO 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.

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*Giving permission to enter goods without warehousing*

- (6) Customs must, on receiving an application under subsection (1), by notice in writing either:
- (a) grant the permission, which has effect accordingly; or
  - (b) refuse to grant the permission.

*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*.

**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, he or she shall, as soon as practicable, before the goods are delivered to the warehouse nominated in the authority or permission, deliver the authority or permission to the holder of the warehouse licence by leaving it at the warehouse with a person apparently participating in the management or control of the warehouse.

Penalty: 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.

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

**102A Notices to Customs 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 Customs 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) If goods that have previously been released from a warehouse for export are returned to the warehouse, the holder of the warehouse licence must give notice to Customs electronically, within the

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period prescribed by the regulations, stating that the goods have been returned and giving 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.



## **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 Customs 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 CEO is considering giving a direction to the person under Division 5—any misleading statement given by the person in response to the request.
- (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.

## **Division 2—Obligations of cargo terminal operators**

### **102C Notifying Customs of cargo terminal**

- (1) The cargo terminal operator of a cargo terminal must notify Customs 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 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 Customs 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.

- (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 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 Customs 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 Customs, 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.

- (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.

### **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 CEO may impose additional obligations**

The CEO may, by legislative instrument, impose additional obligations on cargo terminal operators generally if the CEO 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.

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

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



## **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 transshipment or export of goods**

If goods are imported into Australia and are subject to Customs control, a cargo handler must not facilitate the transshipment or export of the goods without the written approval of an authorised officer.

### **102DC Using establishment identification when communicating with Customs**

- (1) When communicating electronically with Customs 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 CEO may impose additional obligations**

The CEO may, by legislative instrument, impose additional obligations on cargo handlers generally if the CEO 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*.

## **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).

**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:
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- (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;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.

## **Division 5—Directions to cargo terminal operators or cargo handlers**

### **102F Directions to cargo terminal operators or cargo handlers etc.**

- (1) The CEO 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 CEO 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 CEO 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.

### **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
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(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*.

## 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 CEO's approval

- (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 CEO, by notice in writing, permits the customable beverage to be entered for home consumption packaged in bulk containers.



- (2) The CEO must not permit customizable 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 CEO approves in writing; and
  - (b) the CEO is satisfied that the customizable 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 the control of the Customs 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.

## Part VAA—Special provisions relating to excise-equivalent goods

### 105B Extinguishment of duty on excise-equivalent goods

- (1) The liability to pay import duty on excise-equivalent goods is 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 the control of the Customs at the time they are used in that manufacture; and
  - (d) that manufacture occurs at a place that is both:
    - (i) a warehouse described in a warehouse licence granted under Part V of this Act; and
    - (ii) premises specified in a manufacturer licence granted under the *Excise Act 1901*.
- (2) The liability is extinguished at the time the excisable goods are manufactured.

#### *Ad valorem component*

- (3) Subsection (1) does not apply to an amount of duty that is calculated as a percentage of the value of the excise-equivalent goods because of section 9 of the *Customs Tariff Act 1995*.

Note: Subsection 105C(2) deals with the payment of the amount.

### 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 the control of the Customs at the time they are used in that manufacture; and
  - (d) that manufacture occurs at a place that is both:
    - (i) a warehouse described in a warehouse licence granted under Part V of this Act; and
    - (ii) premises specified in 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 Customs 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 Customs, pay any amount of duty referred to in 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.
- (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:
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- (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 the control of the Customs 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.

***GST regulations*** means the *A New Tax System (Goods and Services Tax) Regulations 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 the control of the Customs in the manufacture of excisable goods unless that manufacture occurs at a place that is both:

- (a) a warehouse described in a warehouse licence granted under Part V of this Act; and
- (b) premises specified in a manufacturer licence granted under the *Excise Act 1901*.

## **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 Customs, 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

- (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 Customs, 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 Customs, 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.

- (4) Strict liability applies to an offence against subsection (3).
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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 Customs, 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.

## **Subdivision C—How reports under this Division are to be made**

### **106G Reports to be made electronically**

- (1) A report under this Division must:

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- (a) be made:
    - (i) electronically, using a system (if any) approved by the CEO by legislative instrument for the purposes of this subparagraph; or
    - (ii) using a format or method approved by the CEO 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 Customs when Customs 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 Customs when the report is given to an officer doing duty in relation to ships and aircraft due to depart.
  - (4) The CEO 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);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 Customs 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 Customs in the prescribed manner.

**106I CEO may approve different statements or forms**

- (1) The CEO 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 CEO 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.

## **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).

## **Part VI—The exportation of goods**

### **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:

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- (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;
- (ii) the granting of a licence or permission to export goods subject to compliance with conditions or requirements, either before or after the exportation of the goods, by the holder of the licence or permission at the time the goods are exported;
- (iii) the surrender of a licence or permission to export goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to export goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to export goods; and
- (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against subsection (2B) in respect of the failure.

(2AA) Where a Minister makes an amendment to a list or other document:

- (a) that is formulated and published by the Minister; and
- (b) to which reference is made in regulations made for the purposes of paragraph (2)(c);

the amendment is a legislative instrument.

(2B) A person is guilty of 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
- (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 is guilty of 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*.

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

- (a) published:
  - (i) in the *Gazette*; and
  - (ii) in each State and internal Territory, in a newspaper circulating throughout that State or Territory; and

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

(c) a situation in that place; or

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

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

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

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

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

(4) In this section:

***engage in conduct*** means:

(a) do an act; or

(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 determined, under section 301.13 of the *Criminal Code* (which deals with emergency



Ministerial determinations of serious drugs), to be a border controlled drug or a border controlled plant.

- (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 determined, under section 301.14 of the *Criminal Code* (which deals with emergency Ministerial determinations of serious drug precursors), to be a border controlled precursor.
- (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.

#### **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.

## 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.

*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.

**Part VI** The exportation of goods

**Division 1AA** Export of goods for a military end-use

**Section 112BB**

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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).

**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 the control of Customs 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.

**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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**Division 1A** Directions in relation to goods for export etc. that are subject to Customs control

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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*.

## **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.

**Part VI** The exportation of goods

**Division 2** Entry and clearance of goods for export

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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 Customs refuses under subsection 114(8) to accept.



## **Subdivision B—Export declarations**

### **114 Making an export declaration**

- (1) An export declaration is a communication to Customs 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 Customs 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 Customs 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 Customs, the goods to which the declaration relates are taken to have been entered for export.

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- (8) Customs may refuse to accept or deal with an export declaration in circumstances prescribed by the regulations.
- (9) Customs 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 Customs by the owner of the goods on, or at any time after, the communication of the declaration to Customs; or
  - (b) by reference to information, in writing, in respect of the goods that has been so given to Customs.
- (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 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;
- authority to deal with the relevant goods in accordance with the declaration must not be granted unless:

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- (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 CEO 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.
- (3) Where a person applies for confirming exporter status in respect of particular information and particular goods or goods of a particular kind, the CEO must:

- (a) if the CEO is satisfied that the information cannot be ascertained before exportation—grant the applicant that status by signing a notice stating:
    - (i) that the applicant is granted that status in respect of that information and those goods; and
    - (ii) that the grant is on such conditions as are specified in the notice; or
  - (b) if the CEO is not so satisfied—refuse to grant the applicant that status by signing a notice stating that the CEO has refused to grant the applicant that status and setting out the reasons for the refusal.
- (4) A grant of confirming exporter status has effect from the day on which the relevant notice is signed.
- (5) Without limiting the generality of the conditions to which a grant of confirming exporter status may be subject, those conditions must be expressed to include:
- (a) a requirement that the appropriate confirming exporter status will be specified in any export 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 CEO indicates in the notice granting the status; and
  - (c) a requirement that, if information in respect of which the status was granted becomes, to the knowledge of the confirming exporter, able to be ascertained before the exportation of goods in respect of which the status was granted, the confirming exporter will notify the CEO forthwith.
- (6) Where the CEO is satisfied that information in respect of which confirming exporter status was granted is now able to be ascertained before exportation, he or she must sign a notice in writing:
- (a) cancelling the confirming exporter status forthwith; or

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(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 is guilty of 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 CEO becomes satisfied that a person who is such a confirming exporter has failed to comply with a condition of a grant of confirming exporter status although no proceedings for an offence against subsection (7) have been brought against the person;

the CEO may:

(c) cancel that person's status in respect of that information and those goods; or

(d) modify that person's status so that it no longer relates to specified information or goods or so that the conditions to which it is subject are altered in a specified respect;

by signing a notice stating that that status has been so cancelled or modified and setting out the reasons for that cancellation or modification.

(9) A cancellation or modification of the confirming exporter status of a person has effect on the day the relevant notice was signed.

(10) The CEO must, as soon as practicable after signing a notice under subsection (3), (6) or (8), serve a copy of the notice on the person

concerned but a failure to do so does not alter the effect of the notice.

### **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, Customs must give an export entry advice, in a manner and form specified in 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), regulations specifying the form of an export entry advice must include in the information set out in that advice a number (the ***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.
- (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.

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- (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 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 Customs by the owner of the goods on, or at any time after, the communication of the declaration to Customs; or
  - (b) by reference to information, in writing, in respect of the goods that has been so given to Customs.
- (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:

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- (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
    - (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
  - (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

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- (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.

**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 Customs:
  - (a) must, as soon as practicable after an authority to deal with the goods is granted, deal with the goods in accordance with the entry; and

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- (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 Customs 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.

### 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:

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- (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 deliverer 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 deliverer 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 deliverer in the prescribed manner; or
  - (c) if the goods have not been entered for export—the deliverer 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.

**114F Notices to Customs 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 Customs 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 Customs 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.

### **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.

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**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
  - (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 Customs; 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 the control of the Customs to give security that the goods will be landed at the place for which they are entered or will be otherwise accounted for to the satisfaction of the Collector.

### **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 person in charge of the place must give notice electronically to Customs, 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 Customs, that:
    - (i) the goods have been entered for export; and

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- (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 Customs, 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 Customs**

- (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 Customs a submanifest in respect of the goods.

Penalty: 60 penalty units.

- (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 Customs, Customs 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
  - (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 CEO for a Certificate of Clearance. The decision of the CEO 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.

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- (6) If, after an application to the CEO for a Certificate of Clearance is made under subsection (5), the CEO 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 CEO 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.

**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 Customs, 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 Customs 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 Customs**

- (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; the master or owner of the ship, or the pilot or owner of the aircraft, must communicate electronically to Customs, 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.

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- (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:
  - (a) that are subject to the control of Customs under paragraph 30(1)(b), (c) or (d); and
  - (b) that have been entered for export; and
  - (c) in relation to which an authority to deal with the goods is in force.
- (2) A person may apply to Customs 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.
- (3A) A documentary application must:
  - (a) be communicated to Customs 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 CEO 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.

**119AB Application for permission to move, alter or interfere with goods that are no longer for export**

- (1) If goods are subject to the control of Customs under paragraph 30(1)(e), a person may apply to Customs 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 Customs by sending or giving it to an officer doing duty in relation to export entries; and
  - (b) be in an approved form; and

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- (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 CEO 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:
- (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 Customs and before the goods to which it relates are exported, a withdrawal of the entry, submanifest or manifest may be communicated to Customs:
  - (a) in the case of a withdrawal of an entry that was communicated to Customs 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 Customs 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.
- (4) A withdrawal of an entry, submanifest or manifest has effect when, in accordance with section 119D, it is communicated to Customs.

### **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.

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- (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.

**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 Customs 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 Customs is taken to have been communicated to Customs when an export entry advice or an

acknowledgment of receipt of the submanifest, manifest or withdrawal is 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 Customs when an acknowledgment of the application is sent or given by Customs to the person who sent or gave the application.

### **119E Requirements for communicating to Customs electronically**

A communication that is required or permitted by this Division to be made to Customs 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.

### **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.

## **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 the control of Customs 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 CEO must not authorise an officer to exercise powers under this Division unless the CEO 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.
- (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 the control of Customs goods that are made or prepared in, or brought to, a prescribed place for export.

Note 2: Paragraph 30(1)(e) subjects to the control of Customs 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 Customs for the damage.

- (2) Customs must pay the person such reasonable compensation as Customs 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 1982*.

## **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.



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

## Division 4A—Exportation of goods to Singapore

### 126AA Declaration concerning exports to Singapore

The regulations may prescribe the requirements on exporters relating to the making of declarations concerning the export of goods to Singapore for which a preferential tariff is to be claimed.

### 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 the produce or manufacture of Australia 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, manufacturer 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 instrumentality or agency of 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 an instrumentality or agency of Singapore.

**126AD Power to ask questions**

*Power to ask questions*

- (1) An authorised officer may require a person who is an exporter, producer or manufacturer of goods that:
  - (a) are exported to Singapore; and
  - (b) are claimed to be the produce or manufacture of Australia 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 instrumentality or agency of 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 an instrumentality or agency of Singapore.

## Division 4B—Exportation of textile and clothing goods to the US

### 126AE Authorised officer may request records or ask questions

- (1) If textile and clothing goods 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 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
- (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.

## 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.

*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.

## 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.



### **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.

## 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.

## 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.

## 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.

## 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.

## 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;

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 the control of Customs must not be exported in a ship of less than 50 tons gross registered.

Penalty: 30 penalty units.

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

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

- (3) Subsection (1) does not apply if the CEO has given written permission for the export of the goods in that way.

## **Part VIA—Electronic communications**

### **126D CEO to maintain information systems**

The CEO must establish and maintain such information systems as are necessary to enable persons to communicate electronically with Customs.

### **126DA Communications standards and operation**

- (1) After consulting with persons likely to be affected, the CEO 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 Customs electronically; and
  - (c) the information technology requirements that have to be met to satisfy a requirement that a person's signature be given to Customs 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 Customs when the document is produced electronically.
- (2) The CEO 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.

### **126DB Authentication of certain electronic communications**

An electronic communication that is made to Customs 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 CEO has determined under section 126DA have to be met to satisfy a requirement that the person's signature be given to Customs in connection with information in the communication; and
  - (b) the person did not notify Customs 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 CEO must keep a record of each electronic communication made as required or permitted by this Act. The CEO must keep the record for 5 years after the communication is made.

Note: It does not matter whether the communication is made to Customs or by Customs.

*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 Customs; and
  - (b) met the information technology requirements that the CEO has determined under section 126DA have to be met to satisfy a requirement that the person's signature be given to Customs in connection with information in the communication.
- (4) In proceedings under this Act, the record is prima facie evidence that Customs made the statements in the communication, if the record purports to be a record of an electronic communication that was made by Customs.

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**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 Customs 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 CEO must cause notice of the occurrence to be given:
- (c) on the website maintained by Customs; and
  - (d) where practicable, by email to persons who communicate with Customs electronically.
- (2) If an information system is temporarily inoperative, information that a person could otherwise have communicated electronically to Customs by means of the system may be communicated to Customs in either of the following ways:
- (a) if another information system by means of which the person can communicate information to Customs 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.
- (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 CEO 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 Customs within 24 hours after the notice was given.

Penalty: 50 penalty units.

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**126F Payment to Customs when information system is temporarily inoperative**

- (1) This section applies when a person who is liable to make a payment to Customs 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 Customs to make the payment as soon as practicable after, and in any case not later than 24 hours after, the CEO 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 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 CEO is satisfied that the period for which it has been, or is likely to be, inoperative is significant.

## 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.
- (6) An 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.
- (7) The CEO may approve different forms for 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 of the Customs 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 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 subsection (5) 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,

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are necessary for the protection of the revenue of the Customs or for the purpose of ensuring compliance with the Customs Acts.

- (3) If, in relation to any goods, a person to whom an approval has been granted under subsection (1) fails to comply with a requirement specified in the approval:
- (a) he or she is guilty of 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.
- (5) An application under subsection (1) 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.
- (6) The CEO may approve different forms for 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 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:
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- (a) whenever so directed by an officer, give to a Collector particulars of:
    - (i) the prescribed aircraft's stores of the aircraft; and
    - (ii) goods taken on board the aircraft as prescribed aircraft's stores; and
  - (b) immediately before the departure of the aircraft from Australia, give to a Collector a return, in accordance with the prescribed form, relating to drugs that are prohibited imports and:
    - (i) are aircraft's stores of the aircraft; or
    - (ii) have been taken on board the aircraft as aircraft's stores.
- (3) A person who fails to comply with a direction under subsection (2) or (2A) is guilty of an offence punishable upon conviction by a penalty not exceeding 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.

**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.

## Part VIII—The duties

### Division 1—The payment and computation of duties generally

#### 131A Fish caught by Australian ships

- (1) Fish and other goods the produce of the sea which are caught or gathered by a ship which:
  - (a) is registered in Australia; and
  - (b) was fitted out for the voyage during which those fish or goods were caught or gathered at a port or place in Australia;shall not, when brought into Australia by that ship, or by a tender (which is registered in Australia) of that ship, be liable to any duty of Customs, or be subject to the control of the Customs.

#### 131AA Special provisions for goods taken to Joint Petroleum Development Area

- (1) Goods taken out of Australia for the purpose of being taken to a resources installation in the Joint Petroleum Development Area and there used for a purpose related to petroleum activities are not liable to any duty of Customs in relation to the taking of the goods out of Australia.
- (2) Goods brought into Australia for the purpose of being taken to a resources installation in the Joint Petroleum Development Area and there used for a purpose related to petroleum activities are not liable to any duty of Customs in relation to the bringing of the goods into Australia.
- (3) In this section:

*petroleum activities* has the same meaning as in the Treaty (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*).

**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
  - (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):

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- (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;
- 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.

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<b>When import duty must be paid</b>		
<b>Item</b>	<b>Description of goods</b>	<b>Time by which duty on goods must be paid</b>
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

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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*.

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*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.

*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 CEO. 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:

<b>Exceptions to this section</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Provisions</b>	<b>Subject</b>
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.

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**132B Declared period quotas—effect on rates of import duty**

- (1) If at any time the CEO is of the opinion that, for the reason that persons are anticipating, or may anticipate, an increase in the rate of duty applicable to goods of a particular kind, the quantity of goods of that kind that may be entered for home consumption during a period is likely to be greater than it would otherwise be, the CEO may, by notice published in the *Gazette*, declare that that period is, for the purposes of this section, a declared period with respect to goods of that kind.
- (2) The CEO shall, in a notice under subsection (1) declaring that a period is a declared period for the purposes of this section, specify in the notice another period being a period ending before the commencement of the declared period, as the base period in relation to the declared period.
- (3) Where the CEO makes a declaration under subsection (1) specifying a declared period in respect of goods of any kind, he 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 CEO 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 CEO shall have regard to the quantity of goods (if any) of the kind to which the order relates that, at any time or times during the period that is the base period with respect to the declared period to which the order relates or during any other period that the CEO considers relevant, the person has entered for home consumption, and to such other matters as the CEO considers relevant.
- (6) If:
- (a) at any time during a declared period, a person has entered any goods (in this section referred to as the *relevant goods*) for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person's quota in respect of goods of that kind is a quantity specified in the order;
  - (b) the quantity of the relevant goods so entered, together with goods (if any) of that kind previously entered for home consumption by the person during the declared period, exceeds the quota; and
  - (c) the amount of import duty paid or payable on the relevant goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those goods in accordance with the rate of duty in force on the day immediately following the last day of the declared period;
- the rate of import duty payable on the relevant goods, or on so much of the relevant goods as, together with goods (if any) of that kind previously entered for home consumption by the person during the declared period, exceeds the quota, is the rate of duty in force on the day immediately following the last day of the declared period.
- (7) If:
- (a) at any time during a declared period, a person has entered any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person's quota in respect of goods of that kind is nil; and

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- (b) the amount of import duty paid or payable on those goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those goods in accordance with the rate of duty in force on the day immediately following the last day of the declared period; the rate of import duty payable on the goods is the rate of duty in force on the day immediately following the last day of the declared period.
- (8) Where at any time during a declared period, a person enters any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that is applicable to that person for the declared period, the Customs shall have the right, before authority to deal with the goods is given under section 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 of the Customs in relation to any additional amount of duty that may become payable on the goods, or on a part of the goods, by virtue of the operation of subsection (6) or (7), security by way of cash deposit of an amount equal to the amount of duty payable on the goods, or on that part of the goods, at the rate in force at the time of entry of the goods.

**132C Revocation and variation of quota orders**

- (1) The CEO 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 CEO under this section, the revocation shall be deemed to have taken effect on the day on which the order came into force.
- (3) The revocation of a quota order under this section does not prevent the making of a further quota order that is applicable to the person to whom the revoked quota order was applicable and that has effect with respect to the declared period in respect of which the revoked quota order had effect, whether or not the kind of goods to which

the further quota order relates is the same as the kind of goods to which the revoked quota order related.

- (4) Subject to subsection (5), a variation of a quota order under this section shall, for the purposes of section 132B, be deemed to have had effect on and from the day on which the quota order came into force.
- (5) Where:
- (a) a quota order applicable to a person states that the person's quota in respect of goods of the kind to which the order relates is a quantity specified in the order; and
  - (b) the CEO varies the order in such a way that the order specifies a lesser quantity or states that the person's quota is nil;
- the variation has effect on and from the day on which it is made.

### **132D Service of quota orders etc.**

The CEO 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

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exported and shall be paid before that concentrate is exported or within such further period as the Collector allows.

**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
  - (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

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volume of the contents of the container exceeds 101.5% of the volume so indicated—a volume equal to the sum of:

- (i) the volume so indicated; and
  - (ii) the volume by which the actual volume of the contents of the container exceeds 101.5% of the volume so indicated; or
  - (c) if the volume of the contents of the container is not indicated on a label printed on, or attached to, the container—the actual volume of the contents of the container;
- and duty on beer so entered shall be fixed accordingly.

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

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

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

**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.



### **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 the control of the Customs 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*.

## **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.

**153AC Rules for working out strength of prescribed alcoholic beverages**

- (1) The CEO 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 CEO 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 CEO 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 CEO 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*.

**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.

## 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

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.



### **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

- (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.

*Transshipment*

- (8) If, in the course of their exportation from one country to another country, materials are transhipped, that transshipment 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.

*Customs and excise duties and certain other taxes to be disregarded*

- (3) Any part of the cost of materials in the form they are received at a factory that represents:
- (a) a customs or excise duty; or
  - (b) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty;
- imposed on the materials by a country in the qualifying area is to be disregarded.

*CEO may require artificial elements of cost to be disregarded*

- (4) If the CEO is satisfied that preference claim goods consist partly of materials added or attached solely for the purpose of artificially raising the allowable factory cost of the goods, the CEO may, by written notice given to the importer of the preference claim goods, require the part of that cost that is, in the CEO's opinion, reasonably attributable to those materials, to be disregarded.

*CEO may require cost over normal market value to be disregarded*

- (5) If the CEO is satisfied that the cost to the manufacturer of materials in the form they are received at a factory exceeds, by an amount determined by the CEO, the normal market value of the materials, the CEO may, by written notice given to the importer of preference claim goods in which those materials are incorporated, require the excess to be disregarded.

*CEO may determine cost of certain materials received at a factory*

- (6) If the CEO is satisfied:
- (a) that materials in the form they are received at a factory are so received:
    - (i) free of charge; or
    - (ii) at a cost that is less than the normal market value of the materials; and

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- (b) that the receipt of the materials free of charge or at a reduced cost has been arranged, directly or indirectly, by a person who will be the importer of preference claim goods in which those materials are incorporated;

the CEO may, by written notice given to the importer, require that an amount determined by the CEO to be the difference between the cost, if any, paid by the manufacturer and the normal market value be treated as the amount, or a part of the amount, paid by the manufacturer in respect of the materials.

*Effect of determination*

- (7) If the CEO gives a notice to the importer of preference claim goods under subsection (4), (5) or (6) in respect of materials incorporated in those goods, the cost of the materials to the manufacturer must be determined having regard to the terms of that notice.

**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
  - (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.

### **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 CEO has determined, by *Gazette* notice, to be manufactured raw materials of Papua New Guinea.

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*Rule for manufactured goods last processed in PNG or a Forum Island Country*

- (2) Goods claimed to be the manufacture of Papua New Guinea or of a Forum Island Country are the manufacture of that country if:
- (a) the last process in their manufacture was performed in that country; and
  - (b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

*Specified percentage*

- (4) The specified percentage of the total factory cost of goods referred to in subsection (2) is:
- (a) unless paragraph (b) applies—50%; or
  - (b) if the goods are of a kind for which the CEO has determined, by *Gazette* notice, that a lesser percentage is appropriate—that percentage.

**153LA Modification of section 153L in special circumstances**

*When 50% in subsection 153L(4) can be read as 48%*

- (1) If the CEO is satisfied:
- (a) that the allowable factory cost of preference claim goods in a shipment of such goods that are claimed to be the manufacture of Papua New Guinea or a Forum Island Country is at least 48% but not 50% of the total factory cost of those goods; and
  - (b) that the allowable factory cost of those goods would be at least 50% of the total factory cost of those goods if an unforeseen circumstance had not occurred; and
  - (c) that the unforeseen circumstance is unlikely to continue; the CEO may determine, in writing, that section 153L has effect;
  - (d) for the purpose of the shipment of goods that is affected by that unforeseen circumstance; and



- (e) for the purposes of any subsequent shipment of similar goods that is so affected during a period specified in the determination;

as if the reference in subsection 153L(4) to 50% were a reference to 48%.

*Effect of determination*

- (2) If the CEO makes a determination, then, in relation to all preference claim goods imported into Australia that are covered by the determination, section 153L has effect in accordance with the determination.

*CEO may revoke determination*

- (3) If:
  - (a) the CEO makes a determination; and
  - (b) the CEO becomes satisfied that the unforeseen circumstance giving rise to the determination no longer continues;the CEO may, by written notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

*Definition of similar goods*

- (4) In this section:

**similar goods**, in relation to goods in a particular shipment, means goods:

- (a) that are contained in another shipment that is imported by the same importer; and
- (b) that undergo the same process or processes of manufacture as the goods in the first-mentioned shipment.

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**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
- (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 CEO is satisfied that, when they were shipped from Canada, their intended destination was Australia.

#### *Rule for certain manufactured goods wholly manufactured in Canada*

- (2) Goods claimed to be the manufacture of Canada are the manufacture of that country if they are wholly manufactured in Canada from one or more of the following:
  - (a) unmanufactured raw products;
  - (b) materials wholly manufactured in Australia or Canada or Australia and Canada;
  - (c) materials imported into Canada that the CEO has determined, by *Gazette* notice, to be manufactured raw materials of Canada.

#### *Rule for other manufactured goods last processed in Canada*

- (3) Goods claimed to be the manufacture of Canada are the manufacture of that country if:
  - (a) the last process in their manufacture was performed in Canada; and
  - (b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

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*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;
  - (c) materials imported into the country that the CEO has determined, by *Gazette* notice, to be manufactured raw materials of the country.

*Rule for other manufactured goods last processed in a country that is not a preference country*

- (2) Goods claimed to be the manufacture of a country that is not a preference country are the manufacture of that country if:
- (a) the last process in their manufacture was performed in that country; and
  - (b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

*Specified percentage*

- (3) Subject to subsection (4), the specified percentage of the total factory cost of goods referred to in subsection (2) is:
- (a) if the goods are of a kind commercially manufactured in Australia—75%; or
  - (b) if the goods are of a kind not commercially manufactured in Australia—25%.

*Special rule for Christmas Island, Cocos (Keeling) Islands and Norfolk Island*

- (4) If the country that is not a preference country is Christmas Island, Cocos (Keeling) Islands or Norfolk Island, the specified percentage of the total factory cost of goods referred to in subsection (2) is:
- (a) if the goods are of a kind commercially manufactured in Australia—50%; or
  - (b) if the goods are of a kind not commercially manufactured in Australia—25%.

**153R Are goods commercially manufactured in Australia?**

*CEO may determine that goods are, or are not, commercially manufactured in Australia*

- (1) For the purposes of sections 153P and 153Q, the CEO may, by *Gazette* notice, determine that goods of a specified kind are, or are not, commercially manufactured in Australia.

*Effect of determination*

- (2) If such a determination is made, this Division has effect accordingly.

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**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.

## **Division 1B—Rules of origin of goods claimed to be the produce or manufacture of Singapore**

### **Subdivision A—Preliminary**

#### **153U Purpose of this Division**

The purpose of this Division is to set out rules for determining whether goods are the produce or manufacture of Singapore.

#### **153UA Definitions**

In this Division:

*allowable cost to manufacture* has the meaning given by section 153W.

*allowable expenditure by the principal manufacturer on labour* has the meaning given by section 153WB.

*allowable expenditure by the principal manufacturer on materials* has the meaning given by section 153WA.

*allowable expenditure by the principal manufacturer on overheads* has the meaning given by section 153WC.

*Certificate of Origin* means a certificate that complies with the requirements of Annex 2A of SAFTA.

*cultivate* includes cultivate by a process of aquaculture.

*input* means any matter or substance used or consumed in the manufacture or production of a material, other than a matter or substance that is treated as an overhead.

*manufacture* means the creation of an article essentially different from the matters or substances that go into such manufacture and does not include the following activities (whether performed alone or in combination with each other):

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- (a) restoration or renovation processes such as repairing, reconditioning, overhauling or refurbishing;
- (b) minimal operations;
- (c) quality control inspections.

**material** means any matter or substance purchased by the principal manufacturer of the goods and used or consumed in the processing of the goods, other than any matter or substance that is treated as an overhead.

**minimal operations** means pressing, labelling, ticketing, packaging and preparation for sale, or any similar process, whether conducted alone or in combination with each other.

**partly manufactured in Singapore**, in relation to goods, has the meaning given by section 153VB.

**person** includes partnerships and unincorporated associations.

**principal manufacturer**, in relation to goods, means the person in Singapore who performs, or has had performed on its behalf, the last process of manufacture of the goods.

**process** means any operation performed on goods, and includes:

- (a) a process of manufacture; and
- (b) minimal operations; and
- (c) quality control inspections.

**produce**, in relation to wholly obtained goods, means grow, mine, harvest, fish, hunt, gather, trap, capture, farm, cultivate or otherwise obtain wholly obtained goods.

**SAFTA** means the Singapore-Australia Free Trade Agreement done at Singapore on 17 February 2003, as amended from time to time.

Note: In 2003 the text of the Agreement was accessible through the website of the Department of Foreign Affairs and Trade.

**total cost to manufacture** has the meaning given by section 153X.



***total expenditure by the principal manufacturer on materials*** has the meaning given by section 153XA.

***total expenditure by the principal manufacturer on overseas processing costs*** has the meaning given by section 153XB.

***unmanufactured raw products*** means:

- (a) natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and includes:
  - (i) animals and products obtained from animals, including greasy wool; and
  - (ii) plants and products obtained from plants; and
  - (iii) minerals in their natural state and ores; and
  - (iv) crude petroleum; or
- (b) raw materials recovered in Singapore or in Australia from waste and scrap.

***waste and scrap*** means only waste and scrap that:

- (a) have been derived from manufacturing operations or consumption; and
- (b) are fit only for the recovery of raw materials.

***wholly manufactured in Singapore***, in relation to goods, has the meaning given by section 153VA.

***wholly obtained goods*** means:

- (a) unmanufactured raw products; or
- (b) waste and scrap.

### **153UB Rule against double counting**

In determining:

- (a) the allowable cost to manufacture; or
- (b) the total cost to manufacture;

goods claimed to be the produce or manufacture of Singapore, a cost incurred, whether directly or indirectly, by the principal

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manufacturer of the goods must not be taken into account more than once.

**153UC CEO may determine cost of certain input, material etc.**

If the CEO is satisfied that any input, material, labour, overhead or overseas process was provided:

- (a) free of charge; or
- (b) at a price that is inconsistent with the normal market value of that input, material, labour, overhead or overseas process;

the CEO may require, in writing, that an amount determined by the CEO to be the normal market value of that input, material, labour, overhead or overseas process be treated, for the purposes of this Division, as the amount paid by the manufacturer for the input, material, labour, overhead or overseas process.

**Subdivision B—Rules of origin of goods claimed to be the produce or manufacture of Singapore**

**153V Goods claimed to be the produce or manufacture of Singapore**

*Goods claimed to be produce of Singapore*

- (1) Goods claimed to be the produce of Singapore are the produce of that country if they are wholly obtained goods produced in Singapore.

*Goods claimed to be manufacture of Singapore*

- (2) Goods claimed to be the manufacture of Singapore are the manufacture of that country if:
  - (a) they are wholly manufactured in Singapore; or
  - (b) they are partly manufactured in Singapore.
- (3) This section is subject to sections 153VE and 153VF.

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**153VA Goods wholly manufactured in Singapore**

Goods are *wholly manufactured in Singapore* if they are manufactured in that country from one or more of the following:

- (a) unmanufactured raw products;
- (b) waste and scrap produced in Singapore or Australia;
- (c) materials wholly manufactured within Singapore or Australia;
- (d) materials imported into Singapore that the CEO has determined, by *Gazette* notice, to be manufactured raw materials of Singapore.

**153VB Goods partly manufactured in Singapore**

*General rule*

- (1) Goods are *partly manufactured in Singapore* if:
  - (a) in relation to any goods—subsection (2) applies to the goods; or
  - (b) in relation to any goods that are not specified in Annex 2C of SAFTA—subsection (5) applies to the goods.

*Any goods*

- (2) This subsection applies to the goods if:
  - (a) the last process of manufacture was performed in Singapore by, or on behalf of, the principal manufacturer; and
  - (b) the allowable cost to manufacture the goods is not less than:
    - (i) if the goods are specified in Annex 2D of SAFTA—30% of the total cost to manufacture the goods; or
    - (ii) in any other case—50% of the total cost to manufacture the goods.

*Costs not included in allowable cost to manufacture—any goods*

- (3) For the purposes of subsection (2), the allowable cost to manufacture the goods does not include the following:

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- (a) the cost of any material purchased by the principal manufacturer and subsequently processed outside Singapore or Australia;
- (b) the cost of processing (including the cost of labour and overheads) any materials referred to in paragraph (a) that is performed, whether in Singapore or Australia or elsewhere, up until the processed material is returned to Singapore.

*Minimal operations or quality control inspections*

- (4) For the purposes of subsection (2), if minimal operations or quality control inspections are conducted by, or on behalf of, the principal manufacturer in Singapore, as part of a process of manufacturing the goods, the cost of those minimal operations or quality control inspections may be included in the calculation of:
  - (a) the total expenditure on materials; and
  - (b) the allowable expenditure on materials, labour and overheads;

to the extent that they relate to the cost of materials, labour or overheads, as the case requires.

*Goods other than those specified in Annex 2C*

- (5) This subsection applies to the goods if:
  - (a) one or more processes of manufacture was or were performed on the goods in Singapore by, or on behalf of, the principal manufacturer; and
  - (b) one or more processes was or were performed on the goods in Singapore by, or on behalf of, the principal manufacturer immediately prior to export of the goods to Australia; and
  - (c) the principal manufacturer in Singapore incurred all the costs associated with any process performed on the goods outside Singapore or Australia; and
  - (d) the allowable cost to manufacture the goods is not less than:
    - (i) if the goods are specified in Annex 2D of SAFTA—30% of the total cost to manufacture the goods; or

- (ii) in any other case—50% of the total cost to manufacture the goods.

*Costs not included in allowable cost to manufacture—other goods*

- (6) For the purposes of subsection (5), the allowable cost to manufacture the goods does not include the cost of processing (including the cost of labour or overheads) any material outside Singapore or Australia.

**153VC Reduction of the required percentage of allowable cost to manufacture in unforeseen circumstances**

*When 30% in subsection 153VB(2) or 153VB(5) can be read as 28%*

- (1) If the CEO is satisfied:
- (a) that the allowable cost to manufacture goods that are claimed to be the manufacture of Singapore, in a shipment of such goods, is at least 28% but not 30%, of the total cost to manufacture those goods; and
  - (b) that the allowable cost to manufacture those goods would be at least 30% of the total cost to manufacture those goods if an unforeseen circumstance had not occurred; and
  - (c) that the unforeseen circumstance is unlikely to continue; the CEO may determine, in writing, that subsection 153VB(2) or 153VB(5) has effect:
    - (d) for the purposes 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 153VB(2) or 153VB(5) to 30% were a reference to 28%.

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*When 50% in subsection 153VB(2) or 153VB(5) can be read as 48%*

- (2) If the CEO is satisfied:
- (a) that the allowable cost to manufacture goods that are claimed to be the manufacture of Singapore, in a shipment of such goods, is at least 48% but not 50%, of the total cost to manufacture those goods; and
  - (b) that the allowable cost to manufacture those goods would be at least 50% of the total cost to manufacture those goods if an unforeseen circumstance had not occurred; and
  - (c) that the unforeseen circumstance is unlikely to continue; the CEO may determine, in writing, that subsection 153VB(2) or 153VB(5) has effect:
    - (d) for the purposes 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 153VB(2) or 153VB(5) to 50% were a reference to 48%.

*Effect of determination*

- (3) If the CEO makes a determination under this section then, in relation to all goods imported into Australia that are covered by that determination, section 153VB has effect in accordance with the determination.

*CEO may revoke determination*

- (4) If:
- (a) the CEO has made a determination under this section; and
  - (b) the CEO becomes satisfied that the unforeseen circumstance giving rise to the determination no longer continues;

the CEO may, by written notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

*Similar goods*

(5) 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 are covered by the same Certificate of Origin.

**153VD Changing the required percentage of allowable cost to manufacture in exceptional circumstances**

*CEO may determine a different percentage*

- (1) If the CEO is satisfied that exceptional circumstances apply, the CEO may determine, by *Gazette* notice, that a reference to a percentage in subsection 153VB(2) or 153VB(5) is taken to be a reference to another percentage in respect of particular goods or goods of a specific class or kind during a period specified in the determination.

*Effect of determination*

- (2) If the CEO makes a determination under this section then, in relation to all goods imported into Australia that are covered by that determination, section 153VB has effect in accordance with the determination.

*CEO may revoke determination*

- (3) If:
- (a) the CEO makes a determination under this section; and

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- (b) the CEO becomes satisfied that the exceptional circumstances giving rise to the determination no longer continue;
- the CEO may, by *Gazette* notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

**153VE Certificate of Origin requirements**

*Certificate of Origin*

- (1) Goods claimed to be the produce or manufacture of Singapore are not the produce or manufacture of Singapore, unless:
- (a) at the time of entry of the goods, the importer of the goods holds a valid Certificate of Origin relevant to those goods; and
  - (b) if, at the time of entry of the goods, the importer of the goods has previously used that Certificate of Origin in respect of goods of the same kind—at the time of entry of the goods to which the claim relates, the importer of those goods also holds a declaration relevant to those goods; and
  - (c) if an officer requests production of a copy of any document that the importer of the goods is required under paragraph (a) or (b) to hold—a copy of that document is produced to the officer.

*Declaration*

- (2) In this section:

**declaration** means a declaration made, by the exporter of the goods in question from Singapore, in accordance with Article 11.6 of Chapter 3 of SAFTA.



### **153VF Consignment requirements**

Goods claimed to be the produce or manufacture of Singapore are not the produce or manufacture of Singapore, unless:

- (a) they have been transported directly to Australia from Singapore; or
- (b) they have been transported through a country or place other than Singapore or Australia but:
  - (i) did not undergo operations in that country or place other than packing, packaging, unloading, reloading or operations to preserve them in good condition; and
  - (ii) were not traded or used in that country or place; or
- (c) they have been transported from a country or place other than Singapore where minimal operations were performed immediately after importation from Singapore and immediately before their exportation to Australia.

### **Subdivision C—Allowable cost to manufacture**

#### **153W Allowable cost to manufacture**

The *allowable cost to manufacture* goods is the sum of:

- (a) the allowable expenditure by the principal manufacturer on materials in respect of the goods; and
- (b) the allowable expenditure by the principal manufacturer on labour in respect of the goods; and
- (c) the allowable expenditure by the principal manufacturer on overheads in respect of the goods.

#### **153WA Allowable expenditure by principal manufacturer on materials**

*General rule*

- (1) The *allowable expenditure by the principal manufacturer on materials* in respect of goods is the amount incurred, directly or indirectly, by the principal manufacturer for all materials, in the

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form purchased by the principal manufacturer, that were manufactured or produced in Singapore or Australia.

*Particular matters included in allowable expenditure on materials*

- (2) The **allowable expenditure by the principal manufacturer on materials** in respect of goods includes:
- (a) freight, insurance, shipping and packing costs and all other costs, incurred directly or indirectly by the principal manufacturer, in transporting the materials to the first place in Singapore or Australia at which a process is performed on those materials by or on behalf of the principal manufacturer; and
  - (b) customs brokerage fees, incurred directly or indirectly by the principal manufacturer on the materials paid in Singapore or Australia or both.

*What is not included in allowable expenditure on materials*

- (3) The allowable expenditure by the principal manufacturer on materials in respect of goods does not include the following:
- (a) a customs or excise duty imposed on the materials by or under a law of Singapore or Australia;
  - (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 or under a law of Singapore or Australia;
  - (c) the cost of any input that, in the form it was received by the manufacturer or producer of the materials, was not manufactured or produced in Singapore or Australia.

*Total cost of inputs may be included in allowable expenditure on materials*

- (4) Despite paragraph (3)(c), the total cost of those inputs that would, because of that paragraph, not have been included in the allowable expenditure on a material by the principal manufacturer may be included in that allowable expenditure if the total cost does not

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exceed 50% of the total expenditure by the principal manufacturer on that material.

- (5) Subsection (4) does not apply in relation to materials that are provided for processing in a country other than Singapore or Australia.

**153WB Allowable expenditure by principal manufacturer on labour**

The *allowable expenditure by the principal manufacturer on labour*, in respect of goods, is the sum of those parts, of the costs relating to the goods that are costs referred to in section (i) of Annex 2B of SAFTA, that:

- (a) are incurred, directly or indirectly, by the principal manufacturer; and
- (b) relate, directly or indirectly, and wholly or partly, to the processing of the goods in Singapore; and
- (c) can reasonably be allocated to the processing of the goods in Singapore.

**153WC Allowable expenditure by principal manufacturer on overheads**

The *allowable expenditure by the principal manufacturer on overheads*, in respect of goods, is the sum of those parts, of the costs relating to the goods that are costs allowed in section (ii) of Annex 2B of SAFTA, that:

- (a) are incurred, directly or indirectly, by the principal manufacturer; and
- (b) relate, directly or indirectly, and wholly or partly, to the processing of the goods in Singapore; and
- (c) can reasonably be allocated to the processing of the goods in Singapore.

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**Subdivision D—Total cost to manufacture**

**153X Total cost to manufacture**

The *total cost to manufacture* goods is the sum of:

- (a) the total expenditure by the principal manufacturer on materials in respect of the goods; and
- (b) the allowable expenditure by the principal manufacturer on labour in respect of the goods; and
- (c) the allowable expenditure by the principal manufacturer on overheads in respect of the goods; and
- (d) the total expenditure (if any) by the principal manufacturer on overseas processing costs in respect of the goods.

**153XA Total expenditure by principal manufacturer on materials**

*General rule*

- (1) The *total expenditure by the principal manufacturer on materials* in respect of goods is the amount incurred, directly or indirectly, by the principal manufacturer for all materials.

*What is included in total expenditure on materials*

- (2) The *total expenditure by the principal manufacturer on materials* in respect of goods includes:
  - (a) freight, insurance, shipping and packing costs and all other costs, incurred directly or indirectly by the principal manufacturer, in transporting the materials to the first place in Singapore or Australia at which a process is performed on those materials by or on behalf of the principal manufacturer; and
  - (b) customs brokerage fees, incurred directly or indirectly by the principal manufacturer, on the materials paid in Singapore or Australia or both.

*What is not included in total expenditure on materials*

- (3) The total expenditure by the principal manufacturer on materials in respect of goods does not include:
- (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 or under a law of Singapore or Australia.

**153XB Total expenditure by principal manufacturer on overseas processing costs**

The *total expenditure by the principal manufacturer on overseas processing costs* in respect of goods is the sum of those parts, of the costs relating to the goods, that:

- (a) are incurred, directly or indirectly, by the principal manufacturer; and
- (b) relate, directly or indirectly, and wholly or partly, to the processing of the goods outside Singapore or Australia, including any associated transport costs; and
- (c) can reasonably be allocated to the processing of the goods.

## 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 (except clothing and textiles) 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 E sets out when goods that are clothing or textiles 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.

## 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 System*** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

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***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.

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.



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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
- (e) have a producer's warranty similar to such new goods.

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**Schedule 1 tariff table** means the table in Schedule 1 to the *Customs (Australia-United States Free Trade Agreement) Regulations 2004*.

**Schedule 2 tariff table** means the table in Schedule 2 to the *Customs (Australia-United States Free Trade Agreement) Regulations 2004*.

**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.

*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.

**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 (except clothing and textiles) produced entirely in the US or in the US and Australia from non-originating materials**

**153YD Simplified outline**

The following is a simplified outline of this Subdivision:

- This Subdivision sets out when goods (except clothing and textiles) 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.
- The goods may be US originating goods under section 153YE (which applies to all goods except clothing and textiles).
- The goods may also be US originating goods under section 153YF (which applies only to goods that are chemicals, plastics or rubber).

**153YE Goods (except clothing and textiles) produced entirely in the US or in the US and Australia from non-originating materials**

- (1) Goods are *US originating goods* if:
- (a) a tariff classification (the *final classification*) that is specified in column 2 of the Schedule 1 tariff table applies to the goods; 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) if any of the following 3 requirements apply in relation to the goods—that requirement is satisfied.

*First requirement*

- (2) Subject to subsection (3), the first requirement applies only if a change in tariff classification is specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods. The first requirement is that:
- (a) each of the non-originating materials satisfies the transformation test (see subsection (8)); or
  - (b) the following are satisfied:
    - (i) the total value of all the non-originating materials, that do not satisfy the transformation test (see subsection (8)), does not exceed 10% of the customs value of the goods;
    - (ii) if one or more of the non-originating materials are prescribed for the purposes of this paragraph—each of those non-originating materials satisfies the transformation test (see subsection (8)).

Note 1: Paragraph (2)(b) relates to Article 5.2 (De Minimis) of the Agreement.

Note 2: The value of the non-originating materials is to be worked out in accordance with the regulations: see subsection 153YA(2).

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- (3) However, the first requirement does not apply if:
- (a) an alternative requirement to the change in tariff classification is also specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods; and
  - (b) that alternative requirement is satisfied.

*Second requirement*

- (4) Subject to subsection (5), the second requirement applies only if a regional value content requirement is specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods. The second requirement is that the goods satisfy that regional value content requirement.
- (5) However, the second requirement does not apply if:
- (a) an alternative requirement to the regional value content requirement is also specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods; and
  - (b) that alternative requirement is satisfied.
- (6) The regulations may prescribe different regional value content requirements for different kinds of goods.

*Third requirement*

- (7) The third requirement is that the goods satisfy any other requirement that is specified in, or referred to in, column 3 of the Schedule 1 tariff table opposite the final classification for the goods.

*Transformation test*

- (8) A non-originating material satisfies the transformation test if:
- (a) it satisfies the change in tariff classification that is specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods; or
  - (b) it does not satisfy the change in tariff classification mentioned in paragraph (a), but it was produced entirely in the US, or entirely in the US and Australia, from other

non-originating materials, and each of those materials satisfies the transformation test (including by one or more applications of this subsection).

- Note 1: Paragraph (8)(b) relates to paragraph 2 of Article 5.3 (Accumulation) of the Agreement.
- Note 2: Subsection (8) operates in a recursive manner: a non-originating material may satisfy the transformation test in its own right, or it may satisfy it because each non-originating material used to produce it satisfies the transformation test (whether because each of those materials does so in its own right, or because each non-originating material used to produce the material does so), and so on.

### **153YF Goods that are chemicals, plastics or rubber**

Goods are *US originating goods* if:

- (a) 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
- (b) they are goods that are classified to any of Chapters 28 to 40 of the Harmonized System; and
- (c) a tariff classification (the *final classification*) that is specified in column 2 of the Schedule 1 tariff table applies to the goods; and
- (d) before the tariff classifications in column 2 of that table in relation to Chapter 28 or 39 of the Harmonized System, the regulations specify particular rules in column 3 of that table; and
- (e) those rules apply in relation to the final classification for the goods; and
- (f) the goods satisfy those rules.

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**Subdivision E—Goods that are clothing or textiles produced entirely in the US or in the US and Australia from non-originating materials**

**153YG Simplified outline**

The following is a simplified outline of this Subdivision:

- This Subdivision sets out when goods that are clothing or textiles 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.
- The goods may be US originating goods under section 153YH (which applies to all clothing and textiles).
- The goods may also be US originating goods under section 153YI (which applies only to clothing and textiles classified to Chapter 62 of the Harmonized System).

**153YH Goods that are clothing or textiles produced entirely in the US or in the US and Australia from non-originating materials**

- (1) Subject to subsection (5), goods are *US originating goods* if:
  - (a) a tariff classification (the *final classification*) that is specified in column 2 of the Schedule 2 tariff table applies to the goods; 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
  - (ba) if the component of the goods that determines the final classification for the goods contains elastomeric yarns—the elastomeric yarns are produced entirely in the US or Australia; and



(c) if any of the following 2 requirements apply in relation to the goods—that requirement is satisfied.

Note 1: Subsection (5) sets out a qualification for goods put up in a set for retail sale.

Note 2: Paragraph (1)(ba) relates to paragraph 7 of Article 4.2 (Rules of origin and related matters) of the Agreement.

*First requirement*

(2) The first requirement applies only if a change in tariff classification is specified in column 3 of the Schedule 2 tariff table opposite the final classification for the goods. The first requirement is that:

- (a) subject to subsection (3), each of the non-originating materials satisfies the transformation test (see subsection (7)); or
- (b) the following are satisfied:
  - (i) the total weight of all the relevant non-originating materials (see subsection (8)) does not exceed 7% of the total weight of the component of the goods that determines the final classification for the goods;
  - (ii) if one or more of the non-originating materials are prescribed for the purposes of this paragraph—each of those non-originating materials satisfies the transformation test (see subsection (7)).

Note: Paragraph (2)(b) relates to paragraph 6 (De Minimis) of Article 4.2 of the Agreement.

(3) In relation to goods classified to Chapter 61, 62 or 63 of the Harmonized System, paragraph (2)(a) is to be applied by applying:

- (a) for goods covered by Chapter 61 of the Harmonized System—Chapter Rule 2 for Chapter 61 that is set out in the Schedule 2 tariff table; and
- (b) for goods covered by Chapter 62 of the Harmonized System—Chapter Rule 3 for Chapter 62 that is set out in the Schedule 2 tariff table; and

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- (c) for goods covered by Chapter 63 of the Harmonized System—Chapter Rule 1 for Chapter 63 that is set out in the Schedule 2 tariff table.

*Second requirement*

- (4) The second requirement is that the goods satisfy any other requirement that is specified in, or referred to in, column 3 of the Schedule 2 tariff table opposite the final classification for the goods.

*Goods put up in a set for retail sale*

- (5) However, if:
- (a) the 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 **US originating goods** only if:
- (c) all of the goods in the set are US originating goods under this Division; or
  - (d) the total value of the goods in the set that are not US originating goods under this Division does not exceed 10% of the customs value of the set of goods.

Note: The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153YA(2).

- (6) In applying paragraph (5)(c), assume the goods were not part of a set.

Example: A skirt and a belt are put up in a set for retail sale. The skirt and the belt have been classified under Rule 3 of the Interpretation Rules according to the tariff classification applicable to skirts.

The effect of subsection (6) is that the origin of the belt must now be determined according to the tariff classification applicable to belts.

*Transformation test*

- (7) A non-originating material satisfies the transformation test if:

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- (a) it satisfies the change in tariff classification that is specified in column 3 of the Schedule 2 tariff table opposite the final classification for the goods; or
- (b) it does not satisfy the change in tariff classification mentioned in paragraph (a), but it was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials, and each of those materials satisfies the transformation test (including by one or more applications of this subsection).

Note 1: Paragraph (7)(b) relates to paragraph 2 of Article 5.3 (Accumulation) of the Agreement.

Note 2: Subsection (7) operates in a recursive manner: a non-originating material may satisfy the transformation test in its own right, or it may satisfy it because each non-originating material used to produce it satisfies the transformation test (whether because each of those materials does so in its own right, or because each non-originating material used to produce the material does so), and so on.

(8) In this section:

***relevant non-originating materials***, in relation to goods, means non-originating materials that:

- (a) are used to produce the component of the goods that determines the final classification for the goods; and
- (b) do not satisfy the transformation test (see subsection (7)).

**153YI Goods that are clothing and textiles classified to Chapter 62 of the Harmonized System**

Goods are ***US originating goods*** if:

- (a) 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
- (b) they are goods that are classified to Chapter 62 of the Harmonized System; and
- (c) either:

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- (i) in any case—the goods satisfy Chapter Rule 2 for Chapter 62 that is set out in the Schedule 2 tariff table; or
- (ii) in the case of goods that are classified to subheading 6205.20 or 6205.30 of Chapter 62 of the Harmonized System—the goods satisfy the subheading rule for that subheading that is set out in the Schedule 2 tariff table.

**Subdivision F—Other US originating goods**

**153YJ Standard accessories, spare parts and tools**

- (1) If goods (the *underlying goods*) are imported into Australia with standard accessories, standard spare parts or standard tools, then the accessories, spare parts or tools are *US originating goods* if:
  - (a) the underlying goods are US originating goods; and
  - (b) the accessories, spare parts or tools are not invoiced separately from the underlying goods; and
  - (c) the quantities and value of the accessories, spare parts or tools are the usual quantities and value in relation to the underlying goods.
- (2) In working out if the underlying goods are US originating goods, if the goods must satisfy a regional value content requirement under Subdivision D, the regulations must require the value of the accessories, spare parts or tools to be taken into account for the purposes of that requirement.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153YA(2).

**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).
- (2) The exception is that in working out if the goods are US originating goods, if the goods must satisfy a regional value content requirement under Subdivision D, the regulations must require the value of the packaging material or container to be taken into account for the purposes of that requirement.

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).
- (2) This section applies despite any other provision of this Division.

## 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.

#### 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 System*** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

***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.

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**tariff table** means the table in Schedule 1 to the *Customs (Thailand-Australia Free Trade Agreement) Regulations 2004*.

**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.

*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) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, 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
- (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 Simplified outline**

The following is a simplified outline of this Subdivision:

- This Subdivision sets out when goods that are produced entirely in Thailand, or in Thailand and Australia, are Thai originating goods.
- The goods may be Thai originating goods under section 153ZD (which applies to all goods).
- The goods may also be Thai originating goods under section 153ZE (which applies only to goods that are chemicals, plastics or rubber).

#### **153ZD Goods produced entirely in Thailand or in Thailand and Australia**

- (1) Subject to subsection (6), goods are *Thai originating goods* if:
- (a) they are classified to a heading or subheading of the Harmonized System that is specified in column 1 or 2 of the tariff table; 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 requirement or requirements that are specified in column 4 of the tariff table and that apply to the goods are satisfied; and
  - (d) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

*Change in tariff classification*

- (2) The regulations may make it a requirement (the ***tariff change requirement***) that each non-originating material (if any) used to produce the goods must satisfy a particular change in tariff classification. The regulations may also set out when a non-originating material is taken to satisfy that change.
- (3) The tariff change requirement is also taken to be satisfied if the total value of all the non-originating materials that:
  - (a) do not satisfy the particular change in tariff classification; and
  - (b) are used to produce the goods;does not exceed 10% of the customs value of the goods.

*Regional value content*

- (4) The regulations may make it a requirement that the goods must satisfy a regional value content requirement. The regulations may prescribe different regional value content requirements for different kinds of goods.

*No limit on paragraph (1)(c)*

- (5) Subsections (2) and (4) do not limit the requirements the regulations may specify under paragraph (1)(c).

*Dilution with water or another substance*

- (6) However, the goods are not Thai originating goods under this section if:
  - (a) they are classified to any of Chapters 1 to 40 of the Harmonized System; and
  - (b) they are produced merely as a result of non-originating materials being diluted with water or another substance; and
  - (c) that dilution does not materially alter the characteristics of the non-originating materials.

**153ZE Goods that are chemicals, plastics or rubber**

Goods are *Thai originating goods* if:

- (a) they are produced entirely in Thailand or entirely in Thailand and Australia; and
- (b) they are classified to any of Chapters 28 to 40 of the Harmonized System; and
- (c) they are the product of a chemical reaction (within the meaning of the *Customs (Thailand-Australia Free Trade Agreement) Regulations 2004*); and
- (d) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

**Subdivision D—Other Thai originating goods**

**153ZF Standard accessories, spare parts and tools**

- (1) If goods (the *underlying goods*) are imported into Australia with standard accessories, standard spare parts or standard tools, then the accessories, spare parts or tools are *Thai originating goods* if:
  - (a) the underlying goods are Thai originating goods; and
  - (b) the accessories, spare parts or tools are not invoiced separately from the underlying goods; and
  - (c) the quantities and value of the accessories, spare parts or tools are the usual quantities and value in relation to the underlying goods.

*Exception*

- (2) However, the accessories, spare parts or tools are not Thai originating goods under this section if:
  - (a) the underlying goods must satisfy a regional value content requirement under section 153ZD to be Thai originating goods; and

- (b) the accessories, spare parts or tools are imported solely for the purpose of artificially raising the regional value content of the underlying goods.

*Underlying goods*

- (3) If:
  - (a) the underlying goods must satisfy a regional value content requirement under section 153ZD to be Thai originating goods; and
  - (b) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the underlying goods;

then the regulations must require the value of the accessories, spare parts or tools to be taken into account for the purposes of that requirement.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZA(2).

## **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).
- (2) The exception is that in working out if the goods are Thai originating goods, if the goods must satisfy a regional value content requirement under section 153ZD, the regulations must require the value of the packaging material or container to be taken into account for the purposes of that requirement.

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.

## **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.

### 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](http://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](http://www.austlii.edu.au)).

***customs value*** of goods has the meaning given by section 159.

***Harmonized System*** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.



***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.

***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.

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*territorial sea* has the same meaning as in the *Seas and Submerged Lands Act 1973*.

*Regional value content of goods*

- (2) The *regional value content* of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

*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.

**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
  - (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 heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (New Zealand Rules of Origin) Regulations 2006*; 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) each requirement that is specified in the regulations to apply in relation to the goods is satisfied.

*Change in tariff classification*

- (2) The regulations may specify that each non-originating material used or consumed in the production of the goods is required to satisfy a specified change in tariff classification.

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(3) The regulations may also specify 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) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

*Regional value content*

(5) The regulations may specify that the goods are required to have a regional value content of at least a specified percentage.

(6) If:

- (a) the goods are required to have a regional value content of at least a particular percentage; 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;

then the regulations must require the value of the accessories, spare parts or tools 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 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.

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- (8) However, subsection (6) does not apply if the accessories, spare parts or tools are imported solely for the purpose of artificially raising the regional value content of the goods.

*No limit on regulations*

- (9) Subsections (2) and (5) do not limit paragraph (1)(c).

**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).

*Exception*

- (2) If the goods are required to have a regional value content of at least a particular percentage, 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 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.

### **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 CEO 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;

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- (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.

**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.



## **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.

## 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](http://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 paragraph 2 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](http://www.austlii.edu.au)).

**customs value** of goods has the meaning given by section 159.

**Harmonized System** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

**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.

**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*.

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*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.

*Regional value content of goods*

- (2) The *regional value content* of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

*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.

**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) 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.
- (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

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- (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
- (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) 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.

**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 heading or subheading of the Harmonized System specified in column 1 of the table in Schedule 1 to the *Customs (Chilean Rules of Origin) Regulations 2008*; 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
  - (c) each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
  - (d) 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.

This subsection is subject to subsections (9) and (10).

*Change in tariff classification*

- (2) The regulations may specify that each non-originating material used in the production of the goods is required to satisfy a specified change in tariff classification.
- (3) The regulations may also specify when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:

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- (a) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

*Regional value content*

- (5) The regulations may specify that the goods are required to have a regional value content of at least a specified percentage.
- (6) If:
  - (a) the goods are required to have a regional value content of at least a particular percentage; 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;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information resources to be taken into account as non-originating materials 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).

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- (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.

*No limit on regulations*

- (8) Subsections (2) and (5) do not limit paragraph (1)(c).

*Goods put up in a set for retail sale*

- (9) If:

- (a) the 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, considered individually, are Chilean originating goods under this Division; or
- (d) the total value of the goods in the set that are not Chilean originating goods under this Division does not exceed 25% of the customs value of the set of goods.

Note: The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

*Composite goods*

- (10) If:

- (a) the 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, considered individually, are Chilean originating goods under this Division; or
- (d) the total value of the components of the composite goods that are not Chilean originating goods under this Division does not exceed 25% of the customs value of the goods.



Note: The value of the components of the composite goods is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

### **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).

#### *Exception*

- (2) If:
- (a) the goods are required to have a regional value content of at least a particular percentage; and
  - (b) the packaging material or container is a non-originating material;
- the regulations must require the value of 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 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

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- (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.

**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
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- (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.

## 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.

## 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 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](http://www.austlii.edu.au)).

***aquaculture*** has the meaning given by Article 1 of Chapter 3 of the Agreement.

***Certificate of Origin*** means a certificate that is in force and that complies with the requirements of 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 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](http://www.austlii.edu.au)).

***customs value*** of goods has the meaning given by section 159.

***Harmonized System*** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

***in a Party*** includes:

- (a) the territorial sea of a Party; and

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- (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
- (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.

**territorial sea** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

*Regional value content of goods*

- (2) The **regional value content** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

*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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*Notification of entry into force of Agreement for a Party*

- (7) The Minister must announce by notice in the *Gazette* the day on which the Agreement enters into force for a Party (other than Australia). For the purposes of this subsection, **Party** means a Party (within the meaning of the Agreement).
- (8) A notice referred to in subsection (7) is not a legislative instrument.

**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) 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.
- (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; 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) 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.

### **Subdivision D—Goods produced from non-originating materials**

#### **153ZKE Goods produced from non-originating materials and classified in the tariff table**

- (1) Goods are *AANZ originating goods* if:
  - (a) they are classified to a heading or subheading of the Harmonized System specified in column 1 or 2 of the table in

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Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and

- (b) each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
- (c) 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.

*Change in tariff classification*

- (2) The regulations may specify that each non-originating material used or consumed in the production of the goods is required to satisfy a specified change in tariff classification.
- (3) The regulations may also specify 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) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.
- (5) If:
  - (a) the requirement referred to in subsection (2) applies in relation to the goods; 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 or consumed in the production of the goods do not satisfy the change in tariff classification;

then the requirement referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) The regulations may specify that the goods are required to have a regional value content of at least a specified percentage.
- (7) If:
- (a) the goods are required to have a regional value content of at least a particular percentage; 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;

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 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.
- (9) However, subsection (7) does not apply if the accessories, spare parts, tools or instructional or other information materials are imported solely for the purpose of artificially raising the regional value content of the goods.

*No limit on regulations*

- (10) Subsections (2) and (6) do not limit paragraph (1)(b).

**153ZKF Goods produced from non-originating materials and not classified in the tariff table**

*Regional value content of at least 40%*

- (1) Goods are **AANZ originating goods** if:
- (a) they are classified to a heading or subheading of the Harmonized System that is not specified in column 1 or 2 of the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and
  - (b) the final process in their production was performed in a Party; and
  - (c) the goods have a regional value content of at least 40%; and
  - (d) 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.
- (2) For the purposes of subsection (1), if:
- (a) the 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 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 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 153ZKB(3).

- (3) For the purposes of subsection (2), 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.
- (4) However, subsection (2) does not apply if the accessories, spare parts, tools or instructional or other information materials are imported solely for the purpose of artificially raising the regional value content of the goods.

*Change in tariff classification at heading level*

- (5) Goods are **AANZ originating goods** if:
  - (a) they are classified to a heading or subheading of the Harmonized System that is not specified in column 1 or 2 of the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and
  - (b) they are produced entirely in one or more Parties from non-originating materials only or from non-originating materials and originating materials; and
  - (c) each non-originating material used or consumed in the production of the goods undergoes a change in tariff classification that is a change to a heading of the Harmonized System from any other heading of the Harmonized System; and
  - (d) 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.
- (6) For the purposes of paragraph (5)(c), if 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 referred to in that paragraph, then that paragraph is taken to be satisfied if

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the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

- (7) For the purposes of paragraph (5)(c), if:
- (a) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; 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 referred to in that paragraph;
- then that paragraph is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

**153ZKG Non-qualifying operations or processes**

- (1) This section applies for the purposes of working out if goods are AANZ originating goods under:
- (a) subsection 153ZKE(1) where, in relation to paragraph 153ZKE(1)(b), the goods are claimed to be AANZ originating goods solely on the basis that the goods have a regional value content of at least a particular percentage; or
  - (b) subsection 153ZKF(1).
- (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;
  - (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).

#### *Exception*

- (2) If the goods are required to have a regional value content of at least a particular percentage, 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 153ZKB(3).

### **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

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- (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 preserve the goods in good condition or to transport the goods to Australia);
    - (ii) the goods enter the commerce of that country or place;
    - (iii) the transport through that country or place is not justified by geographical, economic or logistical reasons.
- (2) This section applies despite any other provision of this Division.



## **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.

## 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](http://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](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, and Rule 7 of the Annex to Chapter 3, of the Agreement.

***Harmonized System*** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

***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.

***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:

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- (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.

***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.

*Regional value content of goods*

- (2) The ***regional value content*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

*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 *Legislative Instruments 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  
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) 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.
  
- (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
  - (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

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- (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) 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.

**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 heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (Malaysian Rules of Origin) Regulation 2012*; 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) each requirement that is prescribed by the regulations to apply in relation to the goods is satisfied; and
  - (d) 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.

*Change in tariff classification*

- (2) The regulations may prescribe that each non-originating material used in the production of the goods is required to satisfy a prescribed change in tariff classification.
- (3) The regulations may also 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) the requirement referred to in subsection (2) applies in relation to the goods; 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;

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then the requirement referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

(5) If:

- (a) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

*Regional value content*

(6) The regulations may prescribe that the goods are required to have a regional value content of at least a prescribed percentage.

(7) If:

- (a) the goods are required to have a regional value content of at least a particular percentage; 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;

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 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.

*No limit on regulations*

- (9) Subsections (2) and (6) do not limit paragraph (1)(c).

### **153ZLF 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 the goods are required to have a regional value content of at least a particular percentage, 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.
- (3) If the packaging material or container is not customary for the goods, the regulations must require the value of the packaging material or container to be taken into account as non-originating materials 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;
- (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 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.

## 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:

**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 System** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

**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

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- (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
- (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.

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***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.

*Regional value content of goods*

- (2) The ***regional value content*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

*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 *Legislative Instruments 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 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:
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- (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
  - (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
  - (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 heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (Korean Rules of Origin) Regulation 2014*; 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) each requirement that is prescribed by the regulations to apply in relation to the goods is satisfied; 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.

*Change in tariff classification*

- (2) The regulations may prescribe that each non-originating material used in the production of the goods is required to satisfy a prescribed change in tariff classification.
- (3) The regulations may also 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) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

- (5) Subsection (4) does not apply in relation to goods that are classified to a heading or subheading of the Harmonized System falling within the following:
- (a) heading 0301 to 0303 or 0305 to 0308 of Chapter 3;
  - (b) heading 0701 to subheading 0710.10 or heading 0713 to 0714 of Chapter 7;
  - (c) heading 0801 to 0810 or subheading 0813.10 to 0813.40 of Chapter 8.

- (6) If:
- (a) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

*Regional value content*

- (7) The regulations may prescribe that the goods are required to have a regional value content of at least a prescribed percentage.
- (8) If:
- (a) the goods are required to have a regional value content of at least a particular percentage; and
  - (b) the goods are imported into Australia with accessories, spare parts or tools; and

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(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;

then the regulations must require the value of the accessories, spare parts or tools 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 or tools is to be worked out in accordance with the regulations: see subsection 153ZMB(3).

*No limit on regulations*

(9) Subsections (2) and (7) do not limit paragraph (1)(c).

**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;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

*Regional value content*

(2) However, if the goods are required to have a regional value content of at least a particular percentage, 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 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;
  - (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

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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.

## **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.

#### **153ZNB Interpretation**

##### *Definitions*

(1) In this Division:

*Agreement* means the Japan-Australia Economic Partnership Agreement, done at Canberra on 8 July 2014, as amended from time to time.

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Note: The Agreement could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**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 System** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

**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
- (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.

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*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.

*Regional value content of goods*

- (2) The *regional value content* of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

*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 *Legislative Instruments 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 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
  - (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

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- (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.

**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 heading or subheading of the Harmonized System specified in column 1 of the table in Schedule 1 to the *Customs (Japanese Rules of Origin) Regulation 2014*; 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) each requirement that is prescribed by the regulations to apply in relation to the goods is satisfied; 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.

*Change in tariff classification*

- (2) The regulations may prescribe that each non-originating material used in the production of the goods is required to satisfy a prescribed change in tariff classification.
- (3) The regulations may also 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) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.
- (5) If:
  - (a) the requirement referred to in subsection (2) applies in relation to the goods; and
  - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and

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- (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 referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) The regulations may prescribe that the goods are required to have a regional value content of at least a prescribed percentage.

- (7) If:

- (a) the goods are required to have a regional value content of at least a particular percentage; 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;

then the regulations must require the value of the accessories, spare parts or tools 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 or tools is to be worked out in accordance with the regulations: see subsection 153ZNB(3).

*No limit on regulations*

- (8) Subsections (2) and (6) do not limit paragraph (1)(c).

**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.

*Regional value content*

- (2) However, if the goods are required to have a regional value content of at least a particular percentage, 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 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 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.



## **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

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.

***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,

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;



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

(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

- (iv) that are payable for the assembly, erection, construction or maintenance of imported goods after their importation into Australia or for any technical assistance in respect of the goods after their importation; and
- (f) the whole or any part of the proceeds of any subsequent use, resale or disposal of the goods, by or on behalf of the purchaser, that have accrued, or will accrue, to the vendor.

**produce** includes grow, manufacture, mine, process and treat.

**production assist costs**, in relation to imported goods (including imported goods that are comparable goods or derived goods in relation to other imported goods), means the sum of:

- (a) the purchaser's material costs;
- (b) the purchaser's tooling costs;
- (c) the purchaser's work costs; and
- (d) the purchaser's subsidiary costs;

in relation to those first-mentioned imported goods.

**production materials**, in relation to the imported goods, means:

- (a) materials, components or other goods that form part of the imported goods; and
- (b) materials consumed in the production of the imported goods.

**production tooling**, in relation to imported goods, means tools, dies, moulds or other machinery or equipment used in the production of the imported goods.

**production work** means art work, design work, development work and engineering work and includes models, plans and sketches.

**purchaser**, in relation to imported goods, means the purchaser under the import sales transaction for the goods.

**purchaser's material costs**, in relation to imported goods, means the sum of the following amounts relating to production materials supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost:

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- (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 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);
- (g) the cost of the supply outside Australia of any further services in relation to the subsidiary services that relate to work services.

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***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 ***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.

**related**, in relation to persons, has the meaning given by subsection (3).

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**request goods** means goods whose owner has requested a Collector to determine their deductive (derived goods sales) value.

**royalty**, in relation to imported goods, means royalty within the meaning given by section 157.

**self transported goods** means:

- (a) a ship imported otherwise than in another ship or an aircraft;  
or
- (b) an aircraft imported otherwise than in a ship or another aircraft.

**similar goods**, in relation to imported goods, has the meaning given by section 156.

**similar goods value**, in relation to imported goods, has the meaning given by section 161B.

**subsidiary goods**, in relation to imported goods, means goods supplied, directly or indirectly, by the purchaser in relation to the production of production materials, production tooling, work goods, or work services, supplied, directly or indirectly by the purchaser (whether or not free of charge or at a reduced cost) in relation to the production of the imported goods.

**subsidiary services**, in relation to imported goods, means services supplied, directly or indirectly, by the purchaser in relation to the production of production materials, production tooling, work goods, or work services, supplied, directly or indirectly by the purchaser (whether or not free of charge or at a reduced cost) in relation to the production of the imported goods.

**trade mark** means a mark of a kind capable of registration under the *Trade Marks Act 1955*, whether or not it is registered under that Act or any other law, but does not include a mark that relates to a service.

**trader**, in relation to goods, means a vendor, exporter, purchaser or importer of the goods.

**transaction value**, in relation to imported goods, has the meaning given by section 161.

**transportation** includes transportation by post and storage or handling incidental to transportation.

**value unrelated amount**, in relation to goods in a sale, means:

- (a) where the sale is on commission—the amount of commission usually earned in connection with the sale of other goods of the same class and in the same quantity as the goods in the sale, being a sale of other goods in Australia at the same trade level as the first-mentioned goods;
- (b) where the sale is not on commission—the amount usually added for profit and general expenses (including all costs, direct or indirect, of marketing), taken as a whole, in connection with the sale of other goods of the same class or kind and in the same quantity as the goods in the sale, being a sale of other goods in Australia at the same trade level as the first-mentioned goods;
- (c) Australian inland freight and Australian inland insurance in respect of the goods in the sale or of the goods from which the goods in the sale were derived;
- (d) the amount of any duties of Customs and other taxes payable because of the importation into, or the sale in, Australia of the goods in the sale or of goods from which the goods in the sale were derived; and
- (e) overseas freight and overseas insurance in relation to the goods in the sale or of the goods from which the goods in the sale were derived.

**vendor**, in relation to imported goods, means the vendor under the import sales transaction for the goods.

**work goods**, in relation to imported goods, means goods relating to production work that was:

- (a) required for the production of the imported goods; and
- (b) undertaken outside Australia.

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**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
  - (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);
  - (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);

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- (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 identical goods in relation to the imported goods, being goods that the Collector is satisfied:
  - (a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods;
  - (b) were produced in the same country as the imported goods; and

- (c) were produced by or on behalf of the producer of the imported goods;  
but not being goods in relation to which:
- (d) art work, design work, development work, engineering work undertaken, or substantially undertaken, in Australia; or
  - (e) models, plans or sketches prepared, or substantially prepared, in Australia;
- was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.
- (2) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (1) as identical goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (1)(c) for the purpose of treating goods as identical goods in relation to the imported goods.
- (3) Subject to subsection (4), a reference in this Division to similar goods, in relation to imported goods, is a reference to goods that a Collector is prepared, or is required by their owner, to treat as similar goods in relation to the imported goods, being goods that the Collector is satisfied:
- (a) closely resemble the imported goods in respect of component materials and parts and in respect of physical characteristics;
  - (b) are functionally and commercially interchangeable with the imported goods having regard to the quality and reputation (including any relevant trade marks) of each lot of goods;
  - (c) were produced in the same country as the imported goods;  
and
  - (d) were produced by or on behalf of the producer of the imported goods;
- but not being goods in relation to which:
- (e) art work, design work, development work or engineering work undertaken, or substantially undertaken, in Australia; or
  - (f) models, plans or sketches prepared, or substantially prepared, in Australia;

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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
  - (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 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

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- (b) has supplied any subsidiary goods to a person in a foreign country for purposes related to the production of production materials, production tooling, work goods or work services in relation to those imported goods;

references in this Division to the cost of transporting that production material or production tooling or those work goods or subsidiary goods, after its or their acquisition or production by the purchaser, to the place of production in that foreign country shall be taken to include:

- (c) the packing costs for materials and labour paid or payable by or on behalf of the purchaser in relation to that production material, or production tooling or those work goods or subsidiary goods including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the material tooling or goods for transportation to the place of production of the imported goods;
- (d) any amount paid or payable by or on behalf of the purchaser in relation to that production material or production tooling or those work goods or subsidiary goods that would:
  - (i) if that foreign country were Australia;
  - (ii) if any other country from which that material or tooling or those goods were exported were a foreign country; and
  - (iii) if that material or tooling or those goods were imported goods;  
be an amount of foreign inland freight or foreign inland insurance, overseas freight or overseas insurance, or Australian inland freight or Australian inland insurance; and
- (e) all duties of Customs, sales tax, or other duties or taxes paid or payable in consequence of the importation of that production tooling or those work goods or subsidiary goods or in consequence of any other use, sale or disposition in that foreign country.

### **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.
- (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.

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- (7) Where a Collector:
- (a) cannot determine the transaction value of imported goods, not being computed valued goods but being request goods;
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value;
  - (d) cannot determine their deductive (contemporary sales) value; and
  - (e) cannot determine their deductive (later sales) value;
- but can determine their deductive (derived goods sales) value, their customs value is their deductive (derived goods sales) value.
- (8) Where a Collector:
- (a) cannot determine the transaction value of exporter's goods, not being computed valued goods;
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value;
  - (d) where they are request goods, cannot determine any of their deductive values; and
  - (e) where they are not request goods:
    - (i) cannot determine their deductive (contemporary sales) value; and
    - (ii) cannot determine their deductive (later sales) value;
- but can determine their computed value, their customs value is their computed value.
- (9) Where a Collector:
- (a) cannot determine the transaction value of imported goods, being computed valued goods;
  - (b) cannot determine their identical goods value; and
  - (c) cannot determine their similar goods value;
- their customs value is their computed value.
- (10) Where a Collector:
- (a) cannot determine the transaction value of imported goods;
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value;
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- (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 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:

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- (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;
  - (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:
  - (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

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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
  - (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;
- (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:

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- (a) where there was only one contemporary sale of the goods—  
that sale;
- (b) where:
  - (i) there were 2 or more such sales; and
  - (ii) the comparable goods were sold in those sales at the one  
unit price;  
each of those sales;
- (c) where:
  - (i) there were 2 or more such sales;
  - (ii) the comparable goods were sold in those sales at 2 or  
more unit prices; and
  - (iii) a higher number of units of comparable goods were sold  
in those sales at one of those unit price than were sold in  
those sales at any other single particular unit price;  
the sale, or each of the sales, in which comparable goods  
were sold at the particular unit price first-mentioned in  
subparagraph (iii);
- (d) where:
  - (i) there were 2 or more such sales;
  - (ii) the comparable goods were sold in those sales at 2 or  
more unit prices; and
  - (iii) an equal number of units of comparable goods were  
sold in those sales at each of those unit prices;  
the sale or sales in which the comparable goods were sold at  
the lower or lowest of the unit prices; and
- (e) where:
  - (i) there were 2 or more such sales;
  - (ii) the comparable goods were sold in those sales at 2 or  
more unit prices; and
  - (iii) an equal number of units of comparable goods were  
sold in those sales at 2 or more of those unit prices and  
that number was not exceeded by the number of units of  
comparable goods sold in those sales at any other single  
particular unit price;

the sale, or sales, at which comparable goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii).

**unit price**, in relation to comparable goods sold in a contemporary sale, means the price of the goods in that sale:

- (a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and
  - (b) divided by the number of units of the comparable goods.
- (3) The following example illustrates the operation of paragraph (c) of the definition of **reference sale** in subsection (2):

*Facts:*

There were 2 contemporary sales of 5 units of comparable goods at a unit price of \$100.

There were 6 contemporary sales of 3 units of comparable goods at a unit price of \$40.

There was one contemporary sale of 4 units of comparable goods at a unit price of \$40.

There was one contemporary sale of 7 units of comparable goods at a unit price of \$60.

There were 3 contemporary sales of 2 units of comparable goods at a unit price of \$60.

This means that:

10 units of comparable goods were sold in contemporary sales at \$100.

22 units of comparable goods were sold in contemporary sales at \$40.

13 units of comparable goods were sold in contemporary sales at \$60.

*Result:*

More units of comparable goods were sold in contemporary sales at \$40 than were sold in such sales at any other unit price.

Therefore, the reference sales are the sales at the unit price of \$40.

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- (4) The following example illustrates the operation of paragraph (e) of the definition of *reference sale* in subsection (2):

*Facts:*

There was one contemporary sale of 10 units of comparable goods at a unit price of \$60.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of \$20.

There was one contemporary sale of 6 units of comparable goods at a unit price of \$20.

There were 8 contemporary sales of 1 unit of comparable goods at a unit price of \$80.

There was one contemporary sale of 5 units of comparable goods at a unit price of \$70.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of \$70.

There were 2 contemporary sales of 1 unit of comparable goods at a unit price of \$50.

There were 2 contemporary sales of 4 units of comparable goods at a unit price of \$50.

*Result:*

An equal number of units of comparable goods (10) were sold in contemporary sales at 3 unit prices (\$60, \$20, \$50).

This number is not exceeded by 8 units of comparable goods sold in contemporary sales at \$80 or by 9 units of comparable goods sold in contemporary sales at \$70.

Therefore, reference sales are the sales at the unit price of \$20.

**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
- (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:

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- (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;
- (b) at the first trade level at which the derived goods were sold after that importation;
- (c) in circumstances where, in the opinion of the Collector, the purchaser of the derived goods:
  - (i) was not related to the vendor of the derived goods at the time of the sale; and
  - (ii) did not incur any production assist costs in relation to the derived goods; and
- (d) that was, in the opinion of the Collector, a sale of a sufficient number of units of derived goods as to permit an appropriate determination of the price per unit of the goods.

*reference sale*, in relation to derived goods, means:

- (a) where there was only one derived goods sale—that sale;
- (b) where:

- (i) there were 2 or more such sales; and
  - (ii) derived goods were sold in those sales at the one unit price;
- each of those sales;
- (c) where:
- (i) there were 2 or more such sales;
  - (ii) the derived goods were sold in those sales at 2 or more unit prices; and
  - (iii) a higher number of units of derived goods were sold in those sales at one of those unit prices than were sold in those sales at any other single particular unit price;
- the sale, or each of the sales, in which derived goods were sold at the particular unit price first-mentioned in subparagraph (iii);
- (d) where:
- (i) there were 2 or more such sales;
  - (ii) derived goods were sold in those sales at 2 or more unit prices; and
  - (iii) an equal number of units of derived goods were sold in those sales at each of those unit prices;
- the sale or sales in which the derived goods were sold at the lower or lowest of the unit prices; and
- (e) where:
- (i) there were 2 or more such sales;
  - (ii) derived goods were sold in those sales at 2 or more unit prices; and
  - (iii) an equal number of units of derived goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of derived goods sold in those sales at any other single particular unit price;
- the sale, or sales, at which derived goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii).

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**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.

**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 *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 Customs purposes of the higher of 2 alternative values;
- (c) the price of goods on the domestic market of the country from which the imported goods were exported;

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- (d) the cost of production of goods, other than the computed value of identical goods or similar goods;
- (e) the price of goods sold for export to a country other than Australia and not imported into Australia;
- (f) any system that provides for minimum values for Customs purposes;
- (g) arbitrary or fictitious values.

**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;
  - (b) has, in accordance with subsection (3), (5) or (7), decided that the transaction value of the goods cannot be determined; or
  - (c) is satisfied that the disposition or use of the goods by the purchaser is subject to restrictions, not being restrictions of the following kinds:
    - (i) restrictions imposed or required by, or by any public officer or authority acting in accordance with, any law in force in Australia;
    - (ii) restrictions that limit the geographical area in which the goods may be sold;
    - (iii) restrictions that do not substantially affect the commercial value of the goods.
- (2) Where, in relation to goods required to be valued, a Collector:
  - (a) is satisfied that the purchaser and the vendor of imported goods were, at the time of the goods' import sales transaction, related persons; and

- (b) considers that that relationship may have influenced the price of the goods;
- the Collector shall, by notice in writing served, personally or by post, on the purchaser of the goods:
- (c) advise the purchaser of:
- (i) the view that the Collector has formed of the possible effect on the price of the goods of the relationship between the purchaser and the vendor;
  - (ii) the reasons for forming that view; and
  - (iii) the fact that, because of that view, the Collector may be required to decide under subsection (3) that the transaction value of the goods cannot be determined; and
- (d) invite the purchaser to put before the Collector, within a period specified in the notice (not being a period of less than 28 days), such further information as the purchaser considers might serve to satisfy the Collector as to any of the matters set out in subsection (3).
- (3) On the expiration of the period specified in a notice under subsection (2), the Collector shall, unless the purchaser of the imported goods has satisfied the Collector that:
- (a) a relationship between the purchaser and the vendor of the goods did not influence the price of the goods; or
  - (b) the amount of the transaction value that would be determined in respect of the goods if the purchaser and the vendor had not been related at the time of the import sales transaction for the goods divided by the number of the units of the goods closely approximates, having regard to all relevant factors:
    - (i) the unit price within the meaning of section 161A of identical goods that were exported to Australia about the same time as the imported goods;
    - (ii) the unit price within the meaning of section 161B of similar goods that were exported to Australia about the same time as the imported goods;

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- (iii) the unit price of identical goods or similar goods sold in a contemporary sale within the meaning of section 161C as determined in accordance with that section; or
  - (iv) the computed unit price of identical goods or similar goods that were imported into Australia about the same time as the imported goods being the computed value of those identical or similar goods determined in accordance with section 161F divided by the number of units of those identical or similar goods;
- be taken to be unable to determine the transaction value of the goods.
- (4) Where, in relation to goods required to be valued, a Collector is of the opinion that the price at which the goods were sold in their import sales transaction is different from the price at which goods that are identical goods or similar goods to the first-mentioned goods would normally be sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser:
    - (a) advise the purchaser of the Collector's opinion; and
    - (b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty.
  - (5) On the expiration of the period specified in a notice under subsection (4) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as required by the notice, be taken to be unable to determine the transaction value of the goods.
  - (6) Where, in relation to services provided in respect of goods required to be valued, a Collector is of the opinion that the services were provided in relation to the goods under the terms of their import sales transaction at a price different from the price normally paid for the provision of identical or similar services in relation to goods that are identical goods or similar goods to the first-mentioned

goods, sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser:

- (a) advise the purchaser of the Collector's opinion; and
  - (b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty.
- (7) On the expiration of the period specified in a notice under subsection (6) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as required by the notice, be taken to be unable to determine the transaction value of the goods.

### **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, ascertained according to the ruling rate of exchange in relation to that other currency in respect of the day of exportation of the goods.
- (2) For the purposes of this section, the CEO may specify, by notice published in the *Gazette*:
- (a) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of a day, or of each day occurring during a period, preceding the day of publication of the notice; or
  - (b) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of each day occurring during a period commencing on the day of publication of the notice, or on an earlier day specified in the notice, and ending on the revocation of the notice;
- after having regard:

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- (c) where the ruling rate of exchange is specified in respect of a day—to commercial rates of exchange that prevailed on or about that day;
  - (d) where the ruling rate of exchange is specified in respect of a period commencing before the day of publication of the notice—to commercial rates of exchange that prevailed during so much of that period as preceded the day of publication of the notice; and
  - (e) where the ruling rate of exchange is specified in respect of any other period—to commercial rates of exchange that last prevailed before the publication of that notice.
- (3) At any time, the ruling rate of exchange in relation to a particular foreign currency, in respect of a particular day, shall be:
- (a) if a rate of exchange has been specified at that time under subsection (2) as the ruling rate of exchange, in relation to that currency, in respect of that day, or in respect of a period that includes that day—the rate so specified; and
  - (b) if a rate of exchange has not been so specified at that time—such a rate of exchange as the CEO determines to be the ruling rate of exchange, in relation to that currency, in respect of that day, after having regard to commercial rates of exchange prevailing on or about that day and to such other matters as the CEO considers relevant.
- (4) In this section:
- day of exportation*, in relation to imported goods, means:
- (a) where the goods were exported by post from the place of export and a Collector is satisfied as to the day of posting—that day;
  - (b) where the goods departed or were transported from their place of export in any other way and a Collector is satisfied as to the day of their departure or transportation—that day; and
  - (c) in any other case—a day determined by the Collector.

**161K Owner to be advised of value of goods**

- (1) Where the CEO or a Collector has determined the customs value of goods in accordance with this Division, the CEO or the Collector shall cause the value to be recorded on the entry in respect of them or otherwise advise their owner of the amount.
- (2) Where a Collector signifies, in a manner prescribed by the regulations, his or her acceptance of an estimate of the value of the goods, whether that estimate appears on the entry in respect of those goods or in any other statement of information provided in respect of those goods, the Collector shall, by so signifying, be taken for the purposes of subsection (1) to have determined the customs value of the goods and to have advised their owner of that amount.
- (3) If, within 28 days after being advised under subsection (1) of the customs value of goods determined in accordance with this Division, an owner of the goods requests a Collector, in writing, to give the owner particulars of the valuation, the Collector shall, within 28 days after the making of the request, give the owner a notice in writing setting out:
  - (a) the method by which the customs value of the goods was determined;
  - (b) the findings of material questions of fact relating to that determination, the evidence or other material on which those findings were based and the reasons for that determination; and
  - (c) the calculations by which the determination of the value was made and the information on which those calculations were based.
- (4) Nothing in this section requires, or permits, the giving of information that:
  - (a) relates to the personal affairs or business affairs of a person, other than the person making the request because of which information was given; and

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- (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*.

**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 CEO may review the determination or other decision and may:
  - (a) affirm the determination or other decision;
  - (b) vary the determination or other decision; or
  - (c) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods in accordance with this Division.
- (2) Where, by reason that the CEO, under subsection (1), has varied or revoked a determination or other decision of an officer or has made a determination or other decision that is required to be made by reason of the revocation of a determination or other decision of an officer:
  - (a) an amount of duty that was levied is less than the amount that should have been levied; or



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- (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 CEO 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 CEO.

### **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

(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 CEO, 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 CEO 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 CEO 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
  - (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 CEO.
- (5) Duty is not payable on goods delivered under this section unless:
  - (a) the goods have been dealt with in contravention of the regulations; or
  - (b) the goods are not exported:
    - (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 CEO, on the application of the person who imported the goods and of the person who gave the security or undertaking with respect to the goods, allows;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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- (5A) Despite subsection (5), duty is not payable on goods brought into Australia for a purpose described in regulation 125A of the *Customs Regulations 1926* and delivered under this section unless:
- (a) the goods are dealt with in contravention of the regulations (whether made before or after the commencement of this subsection); or
  - (b) the goods are not exported before the end of:
    - (i) 31 December 2000; or
    - (ii) if the CEO specifies a later day on the application of the person who imported the goods and the person who gave the security or undertaking with respect to the goods—that later day;and none of the circumstances or conditions specified in the regulations mentioned in paragraph (5)(b) apply in relation to the goods.
- (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) or (5A)(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:
    - (i) the CEO; or
    - (ii) the Regional Director for a State or Territory.

**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 Customs 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

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- (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.
- (3) This section is in addition to, and not in derogation of, the provisions of subsections (5), (5A) and (6) of section 162A.
- (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 by Customs 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 Customs.
- (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;

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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 Customs, 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 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 CEO 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 CEO may make, in writing, a demand for payment of an amount that is a debt due to the Commonwealth under subsection (1) or (2).
- (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)—the time the amount was paid;
- unless the CEO 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) may be sued for and recovered in a court of competent jurisdiction by proceedings in the name of the Collector if:
- (a) the CEO has made a demand for payment of the amount in accordance with this section; or
  - (b) the CEO is satisfied that the debt arose as the result of fraud or evasion.

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**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:
- (c) the CEO 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 CEO applies an amount of drawback, refund or rebate against an amount of duty payable, the CEO 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 Customs relating to classifying or enumerating any article for duty shall be altered so that less duty is charged upon such article, no person shall thereby become entitled to any refund on account of any duty paid before such alteration.

## Division 4—Disputes as to duty

### 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) Subject to subsection (3B), 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 Customs notice in accordance with subsection (3A), by document or electronically, that the payment is made under protest; and
  - (b) Customs 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 Customs as the duty payable in respect of any goods, unless the payment is made under protest in pursuance of this section and the action is commenced within the following times:
- (a) In case the sum is paid as the duty payable under any Customs Tariff, within 6 months after the date of the payment; or
  - (b) In case the sum is paid as the duty payable under a Customs Tariff or Customs Tariff alteration proposed in the Parliament, within 6 months after the Act, by which the Customs Tariff or Customs Tariff alteration proposed in the Parliament is made law, is assented to.
- (5) Nothing in this section shall affect any rights or powers under section 163.
- (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*.

**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.

## 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



- (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.

- (3B) A person who is:
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- (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 an Australian resources installation or an Australian sea 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 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 CEO 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.
- (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

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comply with the condition, he or she is guilty of 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.

## **Part XI—Agents and customs brokers**

### **Division 1—Preliminary**

#### **180 Interpretation**

- (1) 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.

*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.

*prescribed offence* means:

- (a) an offence against this Act; or
  - (b) an offence punishable under a law of the Commonwealth (other than this Act), or by a law of a State or of a Territory, by imprisonment for one year or longer.
- (2) A reference in this Part, other than in subsection 181(2), 183CC(5), 183CJ(1), 183CQ(4), (5) or (7) or 183CR(3) or in section 183CS,

**Part XI** Agents and customs brokers

**Division 1** Preliminary

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183D, 183DA, 183DC, 183DD or 183S, to the CEO shall be read as including a reference to a Regional Director for a State or Territory.

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

### **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 CEO, by notice published in the *Gazette*, declares that a place specified in the notice is a place to which this subsection applies, an owner of goods shall not authorize a person to be his 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) is guilty of 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



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.

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

### 183C Grant of licence

- (1) Subject to this Part, the CEO may grant a person a licence in writing, to be known as a broker's licence, to act as a customs broker at a place or places specified in the 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.

### 183CA Application for licence

- (1) An application for a broker's licence shall:
  - (a) be in writing; and
  - (b) specify the place or places at which the applicant proposes to act as a customs broker; and

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- (c) where the application is made by a company or a partnership—specify the person or each person who, if the licence is granted, is to be its nominee; and
  - (ca) where the application is made by a natural person—specify the person or each person (if any) who, if the licence is granted, is to be a nominee of the applicant; and
  - (d) set out the name and address of each person whom the CEO is required to consider for the purposes of subparagraph 183CC(1)(a)(i) or paragraph 183CC(1)(b) or (c); and
  - (e) set out such particulars of the persons and matters that the CEO is required to consider for the purposes of subparagraph 183CC(1)(a)(ii) and section 183CD as will enable him or her adequately to consider those matters; and
  - (f) contain such other information as is prescribed.
- (2) Where a person makes an application, he or she shall not 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 shall not be proposed under paragraph (1)(c) unless he or she has consented, in writing, to the proposal.

**183CB Reference of application to Committee**

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

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**183CC Requirements for grant of licence**

- (1) Where an application is made, the CEO 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) an employee of the applicant who would participate in the work of the applicant if he or she 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 who would participate in the work of the company if it were a customs broker is not a fit and proper person; or
    - (ii) an officer or employee of the company who would participate in the work of the company if it 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) an employee of the partnership who would participate in the work of the partnership if it were a customs broker is not a fit and proper person.
- (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 CEO, fits the applicant to be a customs broker.
- (3) The CEO 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 CEO shall, in determining whether a person is a fit and proper person for the purposes of subsection (1), have regard to:
- (a) any conviction of the person for a prescribed offence committed within the 10 years immediately preceding the making of the application; 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 CEO 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 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*;

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- (cb) whether the company has executed under Part 5.3A of that Act a deed of company arrangement that has not yet terminated;
  - (e) whether the company is being wound up.
- (5) The CEO may, after obtaining and considering the advice of the Committee, approve, in writing, a course or courses of study or instruction that fits or fit a person to be a customs broker.

**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
- (d) where the first-mentioned customs broker is a company—he or she is a director or an employee of the company; and
- (e) where the first-mentioned customs broker is a partnership—he or she is a member or an employee of the partnership; 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 CEO 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 CEO 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**

- (1) Subject to subsection (3), the CEO may, upon application in writing by a customs broker and the production of the broker's licence, vary the endorsements on the licence so that a place is specified, or ceases to be specified, in the licence as a place at which the holder of the licence may act as a customs broker.
- (2) Subject to subsection (3), the CEO may, upon application in writing by a customs broker and the production of its broker's licence, vary the endorsements on the licence so that a person is specified, or ceases to be specified, in the licence as a nominee of the customs broker.
- (3) The CEO shall not vary the endorsements on a licence so that the licence ceases to comply with subsection 183C(2).
- (4) A person shall not be endorsed under subsection (2) as a nominee of a customs broker unless he or she has consented, in writing, to the endorsement.

### **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

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- (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
  - (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 CEO 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 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 CEO 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
  - (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 CEO 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 CEO may, upon application in writing by a customs broker and the production of the licence held by the customs broker, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.
- (7A) Subsection (7) does not limit section 183CGB.
- (8) Where a customs broker fails to comply with a condition of his or her licence the CEO may, by notice in writing served on the

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customs broker, require the customs broker to comply with that condition within the time specified in the notice.

**183CGA The CEO may impose additional conditions to which a broker's licence is subject**

- (1) The CEO may, at any time, impose additional conditions to which the licence is subject if the CEO 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 CEO imposes conditions under subsection (1):
  - (a) the CEO 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 CEO considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

**183CGB The CEO may vary the conditions to which a broker's licence is subject**

- (1) The CEO 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.
- (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

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- (b) if the CEO 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.
- (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.

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**183CJ Renewal of licence**

- (1) Where 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 CEO, or to a Regional Director for a State or Territory, for the renewal of the licence:
  - (a) if the application is made to the CEO—the CEO or the Regional Director to whom the CEO refers the application; or
  - (b) if the application is made to a Regional Director—the CEO or that Regional Director;shall, by writing, renew the licence unless:
  - (c) the CEO has given an order under paragraph 183CS(1)(d) in relation to the licence; or
  - (d) the customs 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.

**183CK Security**

- (1) The CEO may, by notice in writing served on 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 CEO, 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.

- (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 CEO 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 notice, the customs broker shall not be entitled to hold a broker's licence.
- (3) Where, by virtue of subsection (1), an applicant for a broker's licence is not entitled to be granted the licence, the CEO may refuse to grant the licence to the applicant.
- (4) Where, by virtue of subsection (1) or (2), a customs broker is not entitled to hold a broker's licence, the CEO 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.

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**183CL Fees**

- (1) Such fees (if any) as are prescribed are payable in respect of broker's licences.
- (2) Regulations made for the purposes of this section may prescribe:
  - (a) different fees in respect of different classes of customs brokers and, without limiting the generality of the foregoing, may prescribe different fees in respect of customs brokers who are natural persons and corporate customs brokers; and
  - (b) the time within which fees payable under this section are to be paid.
- (2A) The regulations may prescribe fees for broker's licences by reference to the period for which the licences are to remain in force under paragraph 183CH(1)(b). This does not limit the ways in which the regulations may prescribe fees for broker's licences.
- (3) Fees prescribed under subsection (1) may include an amount calculated with regard to the cost of the establishment, administration and operation of the Committee.

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

**183CN Removal of nominee**

- (1) The CEO 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
  - (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 CEO, 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.
- (2) Where the deletion of the name of a nominee from a licence of a customs broker is required under subsection (1), the customs broker shall forthwith deliver the licence to the CEO for the purpose of having the deletion effected.

### **183CP Notice to nominate new nominee**

If the broker's licence of a customs agent ceases to comply with subsection 183C(2), the CEO may, by notice in writing served on the customs broker, require the customs broker to apply within such period as is specified in the notice, for such variation of the endorsements on the licence as would result in the licence complying with that subsection.

## **Division 4—Suspension, revocation and non-renewal of licences**

### **183CQ Investigation of matters relating to a broker's licence**

- (1) The CEO may give notice in accordance with this section to a customs broker if the CEO 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) the customs broker has not, within 28 days after the day prescribed for the payment of any fees, paid those fees; 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 and, having been served with a notice under subsection 183CG(8) in relation to the non-compliance with that condition, the customs broker has not, within the time specified in the notice, complied with that condition; 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 CEO to be necessary for the protection of the revenue or otherwise in the public interest to give the notice.



- (2) Without limiting the generality of paragraph (1)(d), a customs 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.
- (3) Notice in accordance with this section to a customs broker shall be in writing and shall be served, either personally or by post, on the customs broker.
- (4) A notice in accordance with this section to a customs broker shall state:
  - (a) the grounds on which the notice is given;
  - (b) that the person who gave the notice intends forthwith to refer to the Committee, for investigation and report to the CEO, the question whether the CEO should take action in relation to the licence under subsection 183CS(1);
  - (c) the powers that the CEO may exercise in relation to a licence under subsection 183CS(1); and
  - (d) the rights of the customs broker under sections 183J and 183S to take part in the proceedings before the Committee.
- (5) Where the CEO, or a Regional Director for a State or Territory, gives notice in accordance with this section to a customs broker, the CEO or Regional Director shall refer the question whether the CEO should take action in relation to the licence under subsection 183CS(1) to the Committee, for investigation and report to the CEO.
- (6) Where the CEO refers a question to the Committee under subsection (5), the CEO 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 CEO.

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**183CR Interim suspension by CEO**

- (1) Where the CEO gives notice in accordance with section 183CQ to a customs broker, the CEO may, if the CEO 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 investigation and report of the Committee.
- (2) The CEO 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.
- (3) A suspension of a licence by the CEO, or by a Regional Director for a State or Territory, under subsection (1) has effect until the suspension is revoked by the CEO, or by a Regional Director for a State or Territory, or the CEO has dealt with the matter in accordance with section 183CS, whichever first occurs.
- (4) Where a broker's licence is suspended under this section, the CEO may at any time revoke the suspension.

**183CS Powers of CEO**

- (1) Where the CEO, after considering a report under subsection 183CQ(7) in relation to a broker's licence, is:
  - (a) satisfied in relation to the licence as to any of the matters mentioned in paragraphs (a) to (j) (inclusive) of subsection 183CQ(1); or
  - (b) satisfied on any other grounds that it is necessary to do so for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts;he 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.
- (2) Where the CEO, after considering a report under subsection 183CQ(7) in relation to a broker's licence, 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.
- (3) A notice under subsection (1) shall:
- (a) be in writing; and
  - (b) be served, either personally or by post, on the holder of the licence.
- (4) The period for which the CEO may suspend or further suspend a licence under subsection (1) may be a period expiring after the date on which the licence, if not renewed, would expire.
- (5) Where the CEO orders under paragraph (1)(d) that a licence not be renewed, he or she shall notify the appropriate Collector accordingly.

### **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.

**183CU Service of notices**

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a notice under this Division on a person who holds or held a broker's licence, such a notice posted as a letter addressed to that person at the last address of that person known to the sender shall be deemed to be properly addressed.

## **Division 5—National Customs 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 CEO, or a Regional Director for a State or Territory, under section 183CB;
  - (b) to investigate and report on questions referred to it by the CEO, or a Regional Director for a State or Territory, under section 183CQ;
  - (c) to advise the CEO in relation to the approval of courses of study under section 183CC; and
  - (d) where the CEO requests the Committee to advise him or her on the standards that customs brokers should meet in the performance of their duties and obligations as customs brokers—to advise the CEO 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

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- (b) in the opinion of the CEO, possesses special knowledge or skill in relation to matters that the Committee is to advise or report on.
- (3) A member referred to in paragraph (1)(a) or (b) shall be appointed by the CEO for a period not exceeding 2 years but is eligible for re-appointment.
- (4) The member referred to in paragraph (1)(b) shall be appointed on the nomination of an organization that, in the opinion of the CEO, represents customs 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 CEO 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 CEO 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 CEO determines.

**183DD Deputy member**

- (1) The CEO may appoint a person, on the nomination of an organization referred to in subsection 183DA(4), to be the deputy of the member referred to in paragraph 183DA(1)(b) during the pleasure of the CEO and the person so appointed shall, in the event of the absence of the member from a meeting of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.
- (2) Where the CEO specifies an office in the Department for the purposes of this subsection, the person for the time being holding, or performing the duties of, that office shall be the deputy of the member referred to in paragraph 183DA(1)(c) and that person shall, in the event of the absence of that member from a meeting of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.
- (3) A deputy of the member referred to in paragraph 183DA(1)(b) shall be paid such fees, allowances and expenses as the CEO determines.

**183E Procedure of Committees**

The regulations may make provision for and in relation to the procedure of the Committee.

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**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 served on the person making the application or holding the licence to which the question relates, as the case may be, at least ten days before the date of the inquiry.
- (2) Subject to subsection (3), the Committee shall afford the person on whom a notice has been served in pursuance of subsection (1) an opportunity of examining witnesses, of giving evidence and calling witnesses on his or her behalf and of addressing the Committee.
- (3) Where the person on whom notice has been served in pursuance of subsection (1) fails to attend at the time and place specified in the notice, the Committee may, unless it is satisfied that the person is prevented by illness or other unavoidable cause from so attending, proceed to hold the inquiry in his 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 served on such other persons who, in the opinion of the Chair, have a special interest in, or are specially affected by, the inquiry.

### **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.
- (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.

### **183L Service of notices and summonses**

A notice or summons under this Part shall be served by delivering it personally to the person to be served or by sending it by prepaid registered letter addressed to the person at his or her last known place of abode or business or by leaving it:

- (a) at his or her last known place of abode with some person apparently an inmate of that place and apparently not less than 16 years of age; or

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- (b) at his or her last known place of business with some person apparently employed at that place and apparently not less than 16 years of age.

**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 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(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 CEO are each entitled to be represented by a barrister or solicitor or, with the approval of the Committee, by some other person.

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

**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.