



# **Border Protection Legislation Amendment Act 1999**

**No. 160, 1999**



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**An Act to provide enhanced protection for  
Australia's borders, and for related purposes**

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## **An Act to provide enhanced protection for Australia's borders, and for related purposes**

*[Assented to 8 December 1999]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Border Protection Legislation  
Amendment Act 1999*.

### **2 Commencement**

*Sections 1, 2 and 3*

- (1) Sections 1, 2 and 3 commence on the day on which this Act receives the Royal Assent.

*Division 2 of Part 3 of Schedule 1*

- (2) Division 2 of Part 3 of Schedule 1 commences immediately after the commencement of Schedule 2 to the *Fisheries Legislation Amendment Act (No. 1) 1999*.

*Part 5 of Schedule 1*

- (3) Part 5 of Schedule 1 is taken to have commenced on 1 September 1994, immediately after the commencement of section 83 of the *Migration Legislation Amendment Act 1994*.

*Parts 1 and 3 of Schedule 3*

- (4) Parts 1 and 3 of Schedule 3 commence at the same time as the item in Schedule 2 that inserts section 189A into the *Customs Act 1901*.

*Division 2 of Part 2 of Schedule 3*

- (5) Division 2 of Part 2 of Schedule 3 commences immediately after the commencement of Schedule 2 to the *Fisheries Legislation Amendment Act (No. 1) 1999*.

*Remaining provisions of this Act*

- (6) Subject to subsections (7) and (8), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (7) If the provisions referred to in subsection (6) do not commence under that subsection within the period of 6 months after the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

*Special condition for commencement of items of Schedule 2*

- (8) If, apart from this subsection, an item of Schedule 2 would commence before the commencement of any of the following amendments of the *Customs Act 1901* made by the *Customs Legislation Amendment Act (No. 1) 1999*:
- (a) the amendments of sections 4, 175, 185, 219L, 219M and 219ZE;
  - (b) the amendments inserting sections 186A and 219NA;
- then the item commences immediately after the last commencement of those amendments.

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### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Migration Act 1958

### Part 1—Chasing, boarding etc. ships and aircraft

#### 1 After section 3A

Insert:

#### 3B 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.

#### 2 After Division 12 of Part 2

Insert:

### Division 12A—Chasing, boarding etc. ships and aircraft

#### 245A Definitions

In this Division, unless the contrary intention appears:

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**aircraft** includes aeroplanes, seaplanes, airships, balloons or any other means of aerial locomotion.

**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 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*.

**Commonwealth aircraft** means an aircraft that is in the service of the Commonwealth and displaying the ensign or insignia prescribed for the purposes of the definition of **Commonwealth aircraft** in subsection 4(1) of the *Customs Act 1901*.

**Commonwealth ship** means a ship that is in the service of the Commonwealth and flying the ensign prescribed for the purposes of the definition of **Commonwealth ship** in subsection 4(1) of the *Customs Act 1901*.

**contiguous zone**, in relation to Australia, has the same meaning as in the *Seas and Submerged Lands Act 1973*.

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

*goods* includes a document.

*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.

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

*this Act* includes regulations made under this Act.

*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.

## **245B Request to board a ship**

### *General power to request to board*

- (1) In the circumstances described in subsection (2), (3), (4), (5), (6) or (7), the commander of a Commonwealth ship or Commonwealth aircraft may request the master of a ship to permit the commander, a member of the commander's crew or an officer to board the master's ship.

Note: Sections 245F and 245G give power to board the master's ship if a request is made under this section.

### *Foreign ships in Australian waters*

- (2) The commander may make the request if the master's ship is a foreign ship that is on the landward side of the outer edge of Australia's territorial sea. However, the request must be made for the purposes of this Act.

### *Australian ships outside territorial seas of other countries*

- (3) The commander may make the request if:
  - (a) the master's ship is an Australian ship; and

- (b) the master's ship is outside the territorial sea of any foreign country.

The commander must not make the request under this subsection if it may be made under subsection (7).

*Foreign ships in contiguous zone or near installations*

- (4) The commander may make the request if:
  - (a) the master's ship is a foreign ship; and
  - (b) the master's ship is either:
    - (i) in the contiguous zone of Australia; or
    - (ii) within 500 metres of an Australian resources installation or Australian sea installation; and
  - (c) the commander:
    - (i) wishes to establish the identity of the master's ship; or
    - (ii) reasonably suspects that the master's ship is, will be or has been involved in a contravention, or an attempted contravention, in Australia of this Act.

*Mother ships on high seas supporting contraventions in Australia*

- (5) The commander may make the request if:
  - (a) the master's ship is a foreign ship; and
  - (b) the master's ship is:
    - (i) outside the outer edge of the contiguous zone of Australia; and
    - (ii) not within 500 metres of an Australian resources installation or Australian sea installation; and
    - (iii) outside the territorial sea of a foreign country; and
  - (c) the commander reasonably suspects that the master's ship is being or was used in direct support of, or in preparation for, a contravention in Australia of this Act, where the contravention involves another ship (whether a foreign ship or an Australian ship); and
  - (d) the request is made as soon as practicable after the contravention happens.

*Foreign ships on high seas and covered by an agreement etc.*

- (6) The commander may make the request if:
-

- (a) the master's ship is:
  - (i) outside the outer edge of the contiguous zone of Australia; and
  - (ii) outside the territorial sea of a foreign country; and
- (b) the commander reasonably suspects that the master's ship is a foreign ship that is entitled to fly the flag of a country; and
- (c) Australia has an agreement or arrangement with that country which enables the exercise of Australian jurisdiction over ships of that country.

The commander must not make the request under this subsection if it may be made under subsection (5).

*Ships without nationality on high seas*

- (7) The commander may make the request if:
  - (a) the master's ship is:
    - (i) outside the outer edge of the contiguous zone of Australia; and
    - (ii) outside the territorial sea of a foreign country; and
  - (b) any of the following applies:
    - (i) the master's ship is not flying a flag of a country;
    - (ii) the master's ship is flying a flag of a country and the commander reasonably suspects that the master's ship is not entitled to fly that flag;
    - (iii) the commander reasonably suspects that the master's ship is not entitled to fly the flag of a country or has been flying the flag of more than one country; and
  - (c) the Commander wishes to establish the identity of the master's ship.

The commander must not make the request under this subsection if it may be made under subsection (5) or (6).

*Means of making request*

- (8) The commander of a Commonwealth ship or Commonwealth aircraft may use any reasonable means to make a request under this section.

*Request still made even if no master on the ship etc.*

- (9) To avoid doubt, a request is still made under this section even if:
-

- (a) there was no master on board the ship to receive the request;  
or
- (b) the master did not receive or understand the request.

*Master must comply with request*

- (10) The master of a ship must comply with a request made under this section (other than subsection (7)) unless he or she has a reasonable excuse.

Penalty: Imprisonment for 2 years.

Note: The master's ship can still be boarded under section 245F or 245G even though the master has not complied with a request to board under this section.

### **245C Power to chase foreign ships for boarding**

*Generally, foreign ships may be chased if request to board is made*

- (1) To enable the boarding of a foreign ship whose master has not complied with a request to board under section 245B (other than subsection 245B(7)), the commander of a Commonwealth ship or Commonwealth aircraft may use it to chase, or continue the chase of, the foreign ship to any place outside the territorial sea of a foreign country.

Note: Subsection 245B(7) is about requests to board ships without nationality that are on the high seas. Section 245G allows those ships to be boarded, even though the master of the ship has not complied with the request to board.

*Using different Commonwealth ships or aircraft to continue chase*

- (2) To avoid doubt, a Commonwealth ship or Commonwealth aircraft may be used in the chase even if its commander did not make the request under section 245B.

*When foreign ships may be chased without a request being made*

- (3) The commander of a Commonwealth ship or Commonwealth aircraft may use it to chase, or continue the chase of, a foreign ship to a place outside the territorial sea of a foreign country to enable the boarding of the foreign ship if, immediately before the start of the chase, the commander could have made a request to board the foreign ship under subsection 245B(5).

*Chase may continue even if the foreign ship is out of sight*

- (4) A chase under this section may continue even if the crew of all of the Commonwealth ships and Commonwealth aircraft involved in the chase lose sight of the chased ship or lose trace of it from radar or other sensing devices.

*Chase may not continue after interruption*

- (5) The commander of a Commonwealth ship or Commonwealth aircraft must not use it to chase, or continue the chase of, a ship under this section if the chase is interrupted (within the meaning of Article 111 of UNCLOS) at a place outside the outer edge of the contiguous zone. This subsection has effect despite subsections (1), (3) and (4).

*Means that may be used to enable boarding of the foreign ship*

- (6) Anywhere outside the territorial sea of a foreign country, the commander of a Commonwealth ship or Commonwealth aircraft chasing a ship under this section may use any reasonable means consistent with international law to enable boarding of the chased ship, including:
- (a) using necessary and reasonable force; and
  - (b) where necessary and after firing a gun as a signal, firing at or into the chased ship to disable it or compel it to be brought to for boarding.

**245D Power to chase Australian ships for boarding**

*Australian ships may be chased*

- (1) To enable the boarding of an Australian ship, the commander of a Commonwealth ship or Commonwealth aircraft may use it to chase, or continue the chase of, the Australian ship to any place outside the territorial sea of a foreign country.

*Chase may continue even if the Australian ship is out of sight*

- (2) A chase under this section may continue even if the crew of all of the Commonwealth ships and Commonwealth aircraft involved in the chase lose sight of the chased ship or lose trace of it from radar or other sensing devices.

*Means that may be used to enable boarding of the Australian ship*

- (3) Anywhere outside the territorial sea of a foreign country, the commander of a Commonwealth ship or Commonwealth aircraft chasing a ship under this section may use any reasonable means to enable boarding of the chased ship, including:
  - (a) using necessary and reasonable force; and
  - (b) where necessary and after firing a gun as a signal, firing at or into the chased ship to disable it or compel it to be brought to for boarding.

### **245E Identifying an aircraft and requesting it to land for boarding**

*Application of section*

- (1) This section allows the commander of a Commonwealth aircraft to make requests of the pilot of another aircraft that:
  - (a) if the other aircraft is an Australian aircraft—is over anywhere except a foreign country; and
  - (b) if the other aircraft is not an Australian aircraft—is over Australia.

*Requesting information to identify an aircraft*

- (2) If the commander cannot identify the other aircraft, the commander may:
  - (a) use his or her aircraft to intercept the other aircraft in accordance with the practices recommended in Annex 2 (headed “Rules of the Air”) to the Convention on International Civil Aviation done at Chicago on 7 December 1944 (that was adopted in accordance with that Convention); and
  - (b) request the pilot of the other aircraft to disclose to the commander:
    - (i) the identity of the other aircraft; and
    - (ii) the identity of all persons on the other aircraft; and
    - (iii) the flight path of the other aircraft; and
    - (iv) the flight plan of the other aircraft.

*Requesting aircraft to land for boarding*

- (3) The commander may request the pilot of the other aircraft to land it at the nearest proclaimed airport, or at the nearest suitable landing field, in Australia for boarding for the purposes of this Act if:
- (a) the pilot does not comply with a request under subsection (2); or
  - (b) the commander reasonably suspects that the other aircraft is or has been involved in a contravention, or attempted contravention, of this Act.

Note: Section 245F gives power to board the aircraft and search it once it has landed.

*Means of making request*

- (4) Any reasonable means may be used to make a request under this section.

*Request still made even if pilot did not receive etc. request*

- (5) To avoid doubt, a request is still made under this section even if the pilot did not receive or understand the request.

*Pilot must comply with request*

- (6) The pilot of the other aircraft must comply with a request made under this section unless he or she has a reasonable excuse.

Penalty: Imprisonment for 2 years.

**245F Power to board and search etc. ships and aircraft**

*Application of section to ships*

- (1) This section applies to a ship that is outside the territorial sea of a foreign country if:
- (a) a request to board the ship has been made under section 245B; or
  - (b) the ship is a foreign ship described in subsection 245C(3) (which allows foreign ships on the high seas to be chased); or
  - (c) the ship is an Australian ship.

However, this section does not apply to a ship if a request to board the ship has been made under subsection 245B(6) or (7) (certain



ships on the high seas), unless an officer is satisfied under subsection 245G(3) that the ship is an Australian ship.

Note: Section 245G deals with the boarding of ships where a request has been made under subsection 245B(6) or (7).

*Application of section to aircraft*

- (2) This section applies to an aircraft that has landed in Australia for boarding as a result of a request made under section 245E.

*Officer's powers*

- (3) An officer may:
- (a) board and search the ship or aircraft; and
  - (b) search and examine any goods found on the ship or aircraft; and
  - (c) secure any goods found on the ship or aircraft; and
  - (d) require all persons found on the ship or aircraft to answer questions, and produce any documents in their possession, in relation to the following:
    - (i) the ship or aircraft, its voyage or flight and its cargo, stores, crew and passengers;
    - (ii) the identity and presence of those persons on the ship or aircraft;
    - (iii) a contravention, an attempted contravention or an involvement in a contravention or attempted contravention, either in or outside Australia, of this Act; and
  - (e) copy, or take extracts from, any document:
    - (i) found on the ship or aircraft; or
    - (ii) produced by a person found on the ship or aircraft as required under paragraph (d); and
  - (f) arrest without warrant any person found on the ship or aircraft if:
    - (i) in the case of a person found on a ship or aircraft that is in Australia—the officer reasonably suspects that the person has committed, is committing or attempting to commit, or is involved in the commission of, an offence, either in or outside Australia, against this Act; and

- (ii) in the case of a person found on a ship that is outside Australia—the officer reasonably suspects that the person has committed, is committing or attempting to commit, or is involved in the commission of, an offence in Australia against this Act.
- (4) Any exercise of the power of arrest referred to in subsection (3) in the contiguous zone in relation to Australia is subject to the obligations of Australia under international law, including obligations under any treaty, convention or other agreement or arrangement between Australia and another country or other countries.

*Help to search*

- (5) Without limiting the generality of paragraph (3)(a), an officer may use a dog to assist in searching the ship or aircraft.

*Help to examine goods*

- (6) In the exercise of the power under paragraph (3)(b) to examine goods, the officer may do, or arrange for another officer or other person having the necessary experience to do, whatever is reasonably necessary to permit the examination of the goods.

*Examples of examining goods*

- (7) Without limiting the generality of subsection (6), examples of what may be done in the examination of goods include the following:
- (a) opening any package in which goods are or may be contained;
  - (b) using a device, such as an X-ray machine or ion scanning equipment, on the goods;
  - (c) if the goods are a document—reading the document either directly or with the use of an electronic device;
  - (d) using a dog to assist in examining the goods.

*Power to detain and move ship or aircraft*

- (8) An officer may detain the ship or aircraft and bring it, or cause it to be brought, to a port or other place that he or she considers appropriate if:

- (a) in the case of a ship or aircraft that is in Australia—the officer reasonably suspects that the ship or aircraft is or has been involved in a contravention, either in or outside Australia, of this Act; and
- (b) in the case of an Australian ship that is outside Australia—the officer reasonably suspects that the ship is, will be or has been involved in a contravention, either in or outside Australia, of this Act; and
- (c) in the case of a foreign ship that is outside Australia—the officer reasonably suspects that the ship is, will be or has been involved in a contravention in Australia of this Act.

However, a ship need not be brought to a port or other place if the Secretary makes a direction in relation to the ship under section 245H.

*Power to detain people on detained ships or aircraft*

- (9) If an officer detains a ship or aircraft under this section, the officer may also detain any person who is found on the ship or aircraft and bring the person, or cause the person to be brought, to the migration zone.

*Use of necessary and reasonable force*

- (10) An officer may use such force as is necessary and reasonable in the exercise of a power under this section.

*Limit on use of force to board and search ships or aircraft*

- (11) In boarding and searching the ship or aircraft and searching or examining goods found on the ship or aircraft, an officer must not damage the ship, aircraft or goods by forcing open a part of the ship, aircraft or goods unless:
  - (a) the person (if any) apparently in charge of the ship or aircraft has been given a reasonable opportunity to open that part or the goods; or
  - (b) it is not reasonably practicable to give that person such an opportunity.

This subsection has effect despite paragraphs (3)(a) and (b) and subsection (10).

*Limit on use of force to arrest or detain person on ships or aircraft*

- (12) In arresting or detaining a person found on the ship or aircraft, an officer:
- (a) must not use more force, or subject the person to greater indignity, than is necessary and reasonable to make the arrest or detention, or to prevent the person escaping after the arrest or detention; and
  - (b) must not do anything likely to cause the person grievous bodily harm unless the officer believes on reasonable grounds that doing the thing is necessary to protect life or prevent serious injury of another person (including the officer).

This subsection has effect despite paragraph (3)(f) and subsection (10).

*Limit on use of force to arrest fleeing person*

- (13) In arresting a person found on the ship or aircraft who is fleeing to escape arrest, an officer must not do anything likely to cause the person grievous bodily harm unless:
- (a) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other way; or
  - (b) the officer believes on reasonable grounds that doing the thing is necessary to protect life or prevent serious injury of another person (including the officer).

This subsection applies in addition to subsection (12) and has effect despite paragraph (3)(f) and subsection (10).

*If ship covered by agreement, officer may exercise other powers*

- (14) If:
- (a) an officer is satisfied that the ship is a foreign ship that is entitled to fly the flag of a country; and
  - (b) Australia has an agreement or arrangement with that country which enables the exercise of Australian jurisdiction over ships of that country;

then the officer may exercise any powers prescribed by the regulations consistently with the agreement or arrangement in relation to the ship or persons found on the ship.

*Complying with requirement by officer*

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

Penalty: 100 penalty units.

*Evidence may be used in prosecutions etc.*

- (16) To avoid doubt, if, when exercising powers under this section, an officer obtains evidence of the commission of an offence against a law of the Commonwealth, a State or a Territory, then that evidence may be used, or given to another body for use, in:

- (a) investigating the offence; or
- (b) proceedings for the prosecution for the offence.

However, this subsection does not override or limit the operation of a law of a State about the evidence that may be used in proceedings for the prosecution for an offence against a law of that State.

*Section not to limit officer's other powers*

- (17) This section does not limit the use by an officer of any other powers under this Act.

*Definition of officer*

- (18) In this section, **officer** means an officer within the meaning of section 5, and includes:
- (a) any person who is in command, or a member of the crew, of:
    - (i) the ship or aircraft from which the relevant request under section 245B or 245E was made; or
    - (ii) a ship or aircraft that was used under section 245C or 245D to chase the ship in relation to which this section applies; and
  - (b) a member of the Australian Defence Force.

*Interpretation*

- (19) In this section:
- (a) a reference to a person found on the ship or aircraft includes a reference to a person suspected on reasonable grounds by

an officer of having landed from or left the ship or aircraft;  
and

- (b) a reference to goods found on the ship or aircraft includes a reference to goods suspected on reasonable grounds by an officer of having been removed from the ship or aircraft.

## **245G Boarding of certain ships on the high seas**

### *Application of section*

- (1) This section applies to a ship if:
- (a) a request has been made under:
    - (i) subsection 245B(6) (request to board a ship of a country with which Australia has an agreement); or
    - (ii) subsection 245B(7) (request to board a ship without nationality); and
  - (b) the ship is:
    - (i) outside the outer edge of the contiguous zone of Australia; and
    - (ii) outside the territorial sea of any country (including Australia).

### *Powers to establish the identity of the ship*

- (2) An officer may:
- (a) board the ship; and
  - (b) ask all persons found on the ship questions about:
    - (i) the identity of the ship; and
    - (ii) the voyage of the ship; and
  - (c) require all persons found on the ship to produce documents relevant to:
    - (i) finding out the identity of the ship; or
    - (ii) the voyage of the ship; and
  - (d) require the master or a member of the master's crew to show the commander or a member of the commander's crew readings of the ship's navigation instruments relating to the voyage of the ship.

*Officer discovers that the ship is an Australian ship*

- (3) If, after exercising the powers in subsection (2), the officer is satisfied that the ship is an Australian ship, then section 245F applies to the ship.

Note: If section 245F applies to a ship, then the officer will be able to exercise all of the powers under that section in relation to the ship.

*Officer confirms that the ship is covered by an agreement etc.*

- (4) If:
- (a) after exercising the powers in subsection (2), the officer is satisfied that the ship is a foreign ship that is entitled to fly the flag of a country; and
  - (b) Australia has an agreement or arrangement with that country which enables the exercise of Australian jurisdiction over ships of that country;
- then the officer may exercise the powers prescribed by the regulations consistently with that agreement or arrangement.

*Officer discovers that the ship is not covered by an agreement etc.*

- (5) If:
- (a) after exercising the powers in subsection (2), the officer is satisfied that the ship is a foreign ship that is entitled to fly the flag of a country; and
  - (b) Australia does not have an agreement or arrangement with that country which enables the exercise of Australian jurisdiction over ships of that country;
- then the officer must leave the ship as soon as is practicable.

*Officer confirms that the ship is without nationality*

- (6) If, after exercising the powers in subsection (2), the officer is satisfied that the ship is a foreign ship that:
- (a) is not entitled to fly the flag of a country; or
  - (b) has been flying the flag of a country that it is not entitled to fly; or
  - (c) has been flying the flag of more than one country;
- then the officer may search the ship.

*Definition of officer*

- (7) In this section, **officer** means an officer within the meaning of section 5, and includes any person who is in command, or a member of the crew, of:
- (a) the ship or aircraft from which the relevant request under section 245B or 245E was made; or
  - (b) a ship or aircraft that was used under section 245C to chase the ship in relation to which this section applies.

**245H Moving or destroying hazardous ships etc.**

*Application of section to ships in Australia*

- (1) This section applies to a ship that is in Australia and that an officer reasonably suspects is or has been involved in a contravention or an attempted contravention, either in or outside Australia, of this Act.

*Application of section to ships outside Australia*

- (2) This section also applies to a ship that is outside Australia if:
- (a) an officer has detained it under subsection 245F(8); and
  - (b) in the case of an Australian ship—the officer reasonably suspects it is or has been involved in a contravention or an attempted contravention, either in or outside Australia, of this Act; and
  - (c) in the case of a foreign ship—the officer reasonably suspects it is or has been involved in a contravention in Australia of this Act.

*When the ship may be destroyed or moved*

- (3) The Secretary may direct an officer to move, destroy, or move and destroy the ship, or cause such thing to be done, if the Secretary has reasonable grounds to believe any of the following:
- (a) that the ship is unseaworthy;
  - (b) that the ship poses a serious risk to navigation, quarantine, safety or public health;
  - (c) that the ship poses a serious risk of damage to property or the environment.



*Giving of notice after the ship has been destroyed*

- (4) As soon as practicable, but not later than 7 days after the ship has been destroyed, the Secretary must give a written notice to:
- (a) the owner of the ship; or
  - (b) if the owner cannot be identified after reasonable inquiry—the person in whose possession or under whose control the ship was when it was detained or located.
- (5) The notice must state:
- (a) that the ship has been destroyed under subsection (3); and
  - (b) the reason for the destruction; and
  - (c) that compensation may be payable under section 3B.

Note: A person may be paid compensation under section 3B if the destruction of the ship results in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution).

*Failure to give notice not to affect validity*

- (6) A failure to give a notice under this section does not affect the validity of the ship's destruction.

*Section to override certain other provisions*

- (7) This section applies despite sections 260 and 261 and Subdivisions B and C of Division 13A.

### **3 Subsection 251(1)**

Repeal the subsection, substitute:

- (1) An officer may at any time board and search a vessel if:
- (a) section 245F does not apply to the vessel; and
  - (b) the officer reasonably suspects there is on board the vessel:
    - (i) an unlawful non-citizen; or
    - (ii) a person seeking to enter the migration zone who would, if in the migration zone, be an unlawful non-citizen.

### **4 Paragraph 252(1)(a)**

Repeal the paragraph, substitute:

- (a) the person is detained:
  - (i) in Australia; or

- (ii) on an Australian ship (within the meaning of section 245A) that is outside the territorial sea of any country (including Australia); or

## **Part 2—Forfeiture**

### **5 At the end of section 260**

Add:

(7) Division 13A does not limit the operation of this section.

### **6 Paragraph 261(2)(a)**

After “(1)”, insert “or section 261B”.

### **7 At the end of paragraph 261(2)(b)**

Add “or condemned as forfeited under Division 13A”.

### **8 Subsection 261(4)**

Omit “the vessel and”, substitute “the vessel, and in selling or disposing of the vessel, and, subject to subsection (5),”.

### **9 At the end of section 261**

Add:

(5) If:

- (a) a person owes a debt to the Commonwealth under this Act;  
and
- (b) an amount by way of the balance of the proceeds of a sale  
(the *balance amount*) is payable to the person under  
subsection (4);

the Commonwealth may apply the balance amount in payment of the debt, and the debt is reduced accordingly. The amount applied must not exceed the amount of the debt.

(6) Division 13A does not limit the operation of this section.

### **10 After Division 13 of Part 2**

Insert:

## **Division 13A—Automatic forfeiture of things used in certain offences**

### **Subdivision A—Automatic forfeiture**

#### **261A Forfeiture of things used in certain offences**

- (1) The following things are forfeited to the Commonwealth:
  - (a) a vessel used or involved in a contravention of this Act (where the contravention occurred in Australia), if the contravention involved:
    - (i) the bringing or coming to Australia of one or more persons who were, or upon entry into Australia became, unlawful non-citizens; or
    - (ii) the entry or proposed entry into Australia of one or more such persons;
  - (b) a vehicle or equipment:
    - (i) on a vessel described in paragraph (a) at the time of the contravention mentioned in that paragraph; or
    - (ii) used or involved in the contravention referred to in that paragraph.
- (2) Despite subsection (1), a vessel that:
  - (a) was used or involved in a contravention of this Act of a kind referred to in that subsection; and
  - (b) at the time of the contravention, was being used in the course of a regular public transport operation;is not forfeited to the Commonwealth if both the master and the owner of the vessel:
  - (c) did not know; and
  - (d) could not reasonably be expected to have known;that it was used or involved in the contravention.
- (3) In this section:

***regular public transport operation***, in relation to a vessel, means an operation of the vessel for the purpose of a service that:

  - (a) is provided for a fee payable by persons using the service; and

- (b) is conducted in accordance with fixed schedules to or from fixed terminals over specific routes; and
- (c) is available to the general public on a regular basis.

### **Subdivision B—Seizure**

#### **261B Seizure of things used in certain offences**

- (1) An authorised officer may seize a thing in Australia, or may order an officer to seize a thing in Australia, if:
  - (a) the thing is forfeited under section 261A; or
  - (b) the authorised officer reasonably suspects that the thing is forfeited under section 261A.
- (2) If an officer is ordered by an authorised officer to seize a thing under subsection (1), the officer may seize the thing.

### **Subdivision C—Dealing with things seized as automatically forfeited**

#### **261C Application of this Subdivision**

This Subdivision sets out rules about a thing that an officer seizes under section 261B.

#### **261D Notice of seizure**

- (1) The officer must give written notice of the seizure of the thing to the owner of the thing. However, if the owner cannot be identified after reasonable inquiry, the officer must give the notice to the person in whose possession or custody or under whose control the thing was immediately before it was seized.
- (2) If the officer cannot conveniently give the notice to the person referred to in subsection (1) in person, the officer may give written notice of the seizure of the thing by fixing the notice to a prominent part of the thing.
- (3) The notice must:
  - (a) identify the thing; and
  - (b) state that the thing has been seized; and
  - (c) specify the reason for the seizure; and

- (d) state that the thing will be condemned as forfeited unless:
  - (i) the owner of the thing, or the person who had possession, custody or control of the thing immediately before it was seized, gives the Secretary, within 21 days, a claim for the thing; or
  - (ii) within 21 days, the Minister gives a written order that the thing is not to be condemned as forfeited; and
- (e) specify the address of the Secretary.

Note: Section 261F condemns the thing if it is not claimed within 21 days, unless the Minister gives an order that the thing is not to be condemned as forfeited. Section 261H condemns the thing if a claim is made, but the claimant does not get a court order supporting the claim, unless the Minister gives an order that the thing is not to be condemned as forfeited.

- (4) A claim under subparagraph (3)(d)(i) must:
  - (a) be in writing; and
  - (b) be in English; and
  - (c) state an address for service on the person making the claim.

#### **261E Dealing with thing before it is condemned**

- (1) The Secretary may, on behalf of the Commonwealth, cause the thing to be disposed of or destroyed if:
  - (a) its custody or maintenance creates serious difficulties; or
  - (b) the expenses of its custody or maintenance between its seizure and condemnation are likely to be greater than its value.
- (2) If the Secretary causes the thing to be disposed of, the Secretary may cause the disposal to be subject to specified conditions.

#### **261F Thing condemned if not claimed in time**

- (1) By force of this subsection, the thing is condemned as forfeited to the Commonwealth 21 days after notice of seizure of the thing has been given under section 261D, unless:
  - (a) the following conditions are satisfied:
    - (i) within the 21 days, the owner of the thing or the person who had possession, custody or control of it immediately before it was seized gives the Secretary a written claim for the thing;

- (ii) the claim is in English;
  - (iii) the claim sets out an address for service on the person making the claim; or
- (b) within the 21 days, the Minister gives a written order that the thing is not to be condemned as forfeited.

Note: Section 261I requires things condemned as forfeited to be dealt with in accordance with the Secretary's directions.

- (2) A person may claim the thing even if it is disposed of or destroyed before or after the claim.

### **261G Dealing with claim for thing**

- (1) If the thing is claimed under section 261F:
- (a) an officer may retain possession of the thing whether or not any proceedings for the condemnation of the thing have been instituted; and
  - (b) the Minister may give a written order that the thing is not condemned as forfeited; and
  - (c) unless an order has already been made under paragraph (b), the Secretary may give the claimant a written notice stating that the thing will be condemned as forfeited unless:
    - (i) the claimant institutes proceedings against the Commonwealth within one month to recover the thing, or for a declaration that the thing is not forfeited; or
    - (ii) within one month, the Minister gives a written order that the thing is not condemned as forfeited.

Note 1: An officer may retain possession even if the Secretary does not give notice. If so, the claimant will be able to recover the thing only if a court orders its release to the claimant.

Note 2: If the Secretary does give the notice and the claimant institutes proceedings, whether the claimant recovers the thing will depend on the outcome of the proceedings.

- (2) The Secretary may give the notice to the claimant by posting it prepaid as a letter to the last address of the claimant that is known to the Secretary. If the Secretary does so, the letter is taken to be properly addressed for the purposes of section 29 of the *Acts Interpretation Act 1901*.
- (3) Subsection (2) does not limit the ways in which the notice may be given.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how a notice can be given, and when it is taken to be given.

### **261H What happens if thing is claimed**

- (1) This section applies if the Secretary gives the claimant a notice under section 261G about instituting proceedings:
  - (a) to recover the thing; or
  - (b) for a declaration that the thing is not forfeited.
- (2) If, within the period of one month after the notice is given:
  - (a) the claimant does not institute such proceedings; and
  - (b) the Minister does not give a written order that the thing is not to be condemned as forfeited;the thing is condemned as forfeited to the Commonwealth immediately after the end of that period.
- (3) If the claimant institutes such proceedings within the period of one month after the notice is given, the thing is condemned as forfeited to the Commonwealth unless:
  - (a) before the end of the proceedings, the Minister gives a written order that the thing is not to be condemned as forfeited; or
  - (b) at the end of the proceedings, there is:
    - (i) an order for the claimant to recover the thing; or
    - (ii) if the thing has been sold or disposed of—an order for the Commonwealth to pay the claimant an amount in respect of the thing; or
    - (iii) a declaration that the thing is not forfeited.
- (4) For the purposes of subsection (3), if the proceedings go to judgment, they end:
  - (a) if no appeal against the judgment is lodged within the period for lodging such an appeal—at the end of that period; or
  - (b) if an appeal against the judgment is lodged within that period—when the appeal lapses or is finally determined.
- (5) Proceedings relating to the thing may be instituted or continued even if it is disposed of or destroyed.
- (6) If the court hearing the proceedings decides that it would have ordered that the thing be delivered to a person apart from the fact



that the thing had been disposed of or destroyed, the court may make such orders as the court considers appropriate, including an order that the Commonwealth pay the person an amount equal to:

- (a) if the thing has been sold before the end of the proceedings—the proceeds of the sale of the thing, less such costs incurred by the Commonwealth in respect of the thing as the court considers appropriate; or
- (b) if the thing has been disposed of (except by sale) or destroyed before the end of the proceedings—the market value of the thing at the time it was disposed of or destroyed, less such costs incurred by the Commonwealth in respect of the thing as the court considers appropriate.

### **261I Dealing with thing after it is condemned**

If the thing is condemned as forfeited to the Commonwealth, the thing must be dealt with or disposed of in accordance with the directions of the Secretary.

### **Subdivision D—Operation of Division**

#### **261J Operation of Division**

Sections 245G, 260 and 261 do not limit the operation of this Division.

### **Subdivision E—Minister's order that a thing not be condemned as forfeited**

#### **261K Minister's order that a thing not be condemned**

- (1) A power of the Minister under this Division to give a written order that a thing is not to be condemned as forfeited must be exercised by the Minister personally.
- (2) The Minister does not have a duty to consider whether to exercise such a power in respect of any thing, whether the Minister is requested to do so by any person, or in any other circumstances.
- (3) If the Minister makes an order under this Division that a thing is not to be condemned as forfeited, he or she must cause to be laid before each House of the Parliament a statement that sets out:

- (a) the order; and
  - (b) the Minister's reasons for making the order.
- (4) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after:
- (a) if the order is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
  - (b) if the order is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

#### **11 At the end of section 475**

Add:

- (3) A decision of the Minister under Division 13A of Part 2 to order that a thing is not to be condemned as forfeited is not a judicially-reviewable decision.

#### **12 Subsection 485(1)**

Omit "475(2)", substitute "475(2) or (3)".

#### **13 Application**

The amendments made by this Part apply only in relation to contraventions after the commencement of this Part.

## **Part 3—Enforcement visas**

### **Division 1—Basic provisions**

#### **14 Subsection 5(1)**

Insert:

*enforcement visa* has the meaning given by section 38A.

#### **15 Subsection 5(1)**

Insert:

*fisheries detention offence* means an offence against section 99, 100, 100A, 101, 101A or 101B of the *Fisheries Management Act 1991*.

#### **16 Subsection 5(1)**

Insert:

*fisheries officer* means an officer as defined in the *Fisheries Management Act 1991*.

#### **17 Subsection 5(1)**

Insert:

*foreign boat* has the same meaning as in the *Fisheries Management Act 1991*.

#### **18 Subsection 5(1) (definition of *substantive visa*)**

Repeal the definition, substitute:

*substantive visa* means a visa other than:

- (a) a bridging visa; or
- (b) a criminal justice visa; or
- (c) an enforcement visa.

#### **19 After section 38**

Insert:

### 38A Enforcement visas

There is a class of temporary visas to travel to, enter and remain in Australia, to be known as enforcement visas.

Note: Division 4A deals with these visas.

### 20 Subsection 43(1)

After “Subject to”, insert “subsection (3) and”.

### 21 At the end of section 43

Add:

(3) This section does not apply to:

(a) the holder of an enforcement visa; or

(b) an Australian resident entering Australia on a foreign boat as a result of a fisheries officer:

(i) making a requirement of the boat’s master under subparagraph 84(1)(k)(ii) or paragraph 84(1)(l) of the *Fisheries Management Act 1991*; or

(ii) exercising his or her power under paragraph 84(1)(m) of that Act in relation to the boat;

because a fisheries officer had reasonable grounds to believe that the boat was used, or was intended to be used, in the commission of a fisheries detention offence.

Note: Subsection 33(10) also disapplies this section.

(4) In subsection (3):

*Australian resident* has the same meaning as in the *Fisheries Management Act 1991*.

*master* has the same meaning as in the *Fisheries Management Act 1991*.

### 22 At the end of section 44

Add:

(2) This Subdivision and the later Subdivisions of this Division, other than this section and Subdivision AG, do not apply to enforcement visas.

**23 Paragraph 46(1)(d)**

After “(criminal justice),”, insert “164D (enforcement visa),”.

**24 After subsection 82(2)**

Insert:

- (2A) A temporary visa held by a non-citizen ceases to be in effect if an enforcement visa for the non-citizen comes into effect.

**25 After Division 4 of Part 2**

Insert:

**Division 4A—Enforcement visas**

**164A Definitions**

In this Division:

*fisheries detention* means detention under paragraph 84(1)(ia) of the *Fisheries Management Act 1991*.

*master* has the same meaning as in the *Fisheries Management Act 1991*.

**164B Grant of enforcement visas**

*Non-citizen on foreign boat outside migration zone*

- (1) A non-citizen on a foreign boat outside the migration zone is granted an enforcement visa when, because a fisheries officer has reasonable grounds to believe that the boat has been used, is being used or is intended to be used in the commission of a fisheries detention offence, a fisheries officer:
- (a) makes a requirement of the boat’s master under subparagraph 84(1)(k)(ii) or paragraph 84(1)(l) of the *Fisheries Management Act 1991*; or
  - (b) exercises his or her power under paragraph 84(1)(m) of that Act in relation to the boat;

whichever occurs first.

Note 1: Under subparagraph 84(1)(k)(ii) and paragraph 84(1)(l) of the *Fisheries Management Act 1991*, a fisheries officer may require the

master of a boat to bring or take the boat into the migration zone.  
Under paragraph 84(1)(m) of that Act, a fisheries officer may bring a boat into the migration zone.

Note 2: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

*Non-citizen in migration zone*

- (2) A non-citizen in the migration zone who does not already hold an enforcement visa is granted an enforcement visa when he or she is detained by a fisheries officer under paragraph 84(1)(ia) of the *Fisheries Management Act 1991*.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

*Non-citizen in prescribed circumstances*

- (3) An enforcement visa is granted to a non-citizen (who does not already hold an enforcement visa) when a fisheries officer exercises under the *Fisheries Management Act 1991* a prescribed power in prescribed circumstances in relation to the non-citizen. The visa is granted at the time the power is exercised.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

*Non-citizen on foreign boat in prescribed circumstances*

- (4) An enforcement visa is granted to a non-citizen (who does not already hold an enforcement visa) who was on a foreign boat when a fisheries officer exercises under the *Fisheries Management Act 1991* a prescribed power in prescribed circumstances in relation to the boat. The visa is granted at the time the power is exercised.

Note: The grant of an enforcement visa effectively cancels any temporary visa that the non-citizen may have held (see subsection 82(2A)).

*Enforcement visas granted by force of this section*

- (5) To avoid doubt, an enforcement visa is granted by force of this section.

Note: No administrative action under this Act is necessary to grant the visa.

*Exception if Minister's declaration in force*

- (6) Despite subsections (1), (2), (3) and (4), a non-citizen is not granted an enforcement visa if a declaration under subsection (7) is in force in relation to:
- (a) the non-citizen; or
  - (b) a class of persons of which the non-citizen is a member.

*Declaration*

- (7) The Minister may make a written declaration, for the purposes of this section, that it is undesirable that a person, or any persons in a class of persons, travel to and enter Australia or remain in Australia.

*Section does not apply to Australian residents*

- (8) This section does not apply to non-citizens who are Australian residents as defined in the *Fisheries Management Act 1991*.

**164C When enforcement visa ceases to be in effect**

*Non-citizen in fisheries detention*

- (1) The enforcement visa of a non-citizen who is in fisheries detention ceases to be in effect:
- (a) at the time the non-citizen is released, or escapes, from fisheries detention; or
  - (b) at the time the Minister makes a declaration under subsection 164B(7) in relation to the non-citizen, or a class of persons of which the non-citizen is a member; or
  - (c) on the occurrence of a prescribed event;
- whichever occurs first.

*Non-citizen not in fisheries detention*

- (2) The enforcement visa of a non-citizen who is not in fisheries detention ceases to be in effect:
- (a) at the time a decision is made not to charge the non-citizen with a fisheries detention offence; or

- (b) at the time the Minister makes a declaration under subsection 164B(7) in relation to the non-citizen, or a class of persons of which the non-citizen is a member; or
  - (c) on the occurrence of a prescribed event.
- whichever occurs first.

**164D Applying for other visas**

- (1) The holder of an enforcement visa may not apply for a visa other than a protection visa while he or she is in Australia.
- (2) While a non-citizen who has held an enforcement visa remains in Australia when the visa ceases to be in effect, the non-citizen may not apply for a visa other than a protection visa.

**26 At the end of subsection 193(1)**

Add:

- ; or (d) detained under section 189 who:
  - (i) held an enforcement visa that has ceased to be in effect; and
  - (ii) has not been a lawful non-citizen since the enforcement visa ceased to be in effect.

**27 Paragraph 198(2)(a)**

Omit “or (c)”, substitute “, (c) or (d)”.

**28 At the end of subsection 229(1)**

Add:

- ; or (d) holds an enforcement visa.

**29 At the end of paragraph 229(5)(b)**

Add:

- (iv) was the holder of an enforcement visa; or
- (v) would, when entering Australia, be the holder of an enforcement visa; or

**Division 2—Amendments relating to the Fish Stocks Agreement**

**30 Subsection 5(1) (definition of *fisheries detention offence*)**

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Omit “or 101B”, substitute “, 101B, 105E or 105F”.

**31 At the end of section 43**

Add:

- (5) The references in subsection (3) to subparagraph 84(1)(k)(ii) and paragraphs 84(1)(l) and (m) of the *Fisheries Management Act 1991* are to those provisions:
- (a) as they apply of their own force; and
  - (b) as they apply because of section 87B, 87C or 87D of that Act.

**32 After subsection 164B(1)**

Insert:

*Extended operation of subsection (1)*

- (1A) The references in subsection (1) to subparagraph 84(1)(k)(ii) and paragraphs 84(1)(l) and (m) of the *Fisheries Management Act 1991* are to those provisions:
- (a) as they apply of their own force; and
  - (b) as they apply because of section 87B, 87C or 87D of that Act.

## Part 4—Miscellaneous amendments

### 33 Subsection 42(1)

Omit “and (3)”, substitute “, (2A) and (3)”.

### 34 After subsection 42(2)

Insert:

- (2A) Subsection (1) does not apply to a non-citizen in relation to travel to Australia:
- (a) if the travel is by a New Zealand citizen who holds and produces a New Zealand passport that is in force; or
  - (b) if the travel is by a non-citizen who holds and produces a passport that is in force and is endorsed with an authority to reside indefinitely on Norfolk Island; or
  - (c) if:
    - (i) the non-citizen is brought to the migration zone under subsection 245F(9) of this Act or 185(3A) of the *Customs Act 1901*; and
    - (ii) the non-citizen is a person who would, if in the migration zone, be an unlawful non-citizen; or
  - (d) if:
    - (i) the non-citizen has been removed under section 198 to another country but has been refused entry by that country; and
    - (ii) the non-citizen travels to Australia as a direct result of that refusal; and
    - (iii) the non-citizen is a person who would, if in the migration zone, be an unlawful non-citizen; or
  - (e) if:
    - (i) the non-citizen has been removed under section 198; and
    - (ii) before the removal the High Court or the Federal Court had made an order in relation to the non-citizen, or the Minister had given an undertaking to the High Court or the Federal Court in relation to the non-citizen; and
    - (iii) the non-citizen’s travel to Australia is required in order to give effect to the order or undertaking; and

- (iv) the Minister has made a declaration that this paragraph is to apply in relation to the non-citizen's travel; and
- (v) the non-citizen is a person who would, if in the migration zone, be an unlawful non-citizen; or
- (f) if:
  - (i) the travel is from Norfolk Island to Australia; and
  - (ii) the Minister has made a declaration that this paragraph is to apply in relation to the non-citizen's travel; and
  - (iii) the non-citizen is a person who would, if in the migration zone, be an unlawful non-citizen.

### **35 At the end of section 42**

Add:

- (4) Nothing in subsection (2A) or (3) is to be taken to affect the non-citizen's status in the migration zone as an unlawful non-citizen.

Note: Section 189 provides that an unlawful non-citizen in the migration zone must be detained.

### **36 At the end of section 48**

Add:

- (2) For the purposes of this section, a non-citizen who:
  - (a) has been removed from the migration zone under section 198; and
  - (b) is again in the migration zone as a result of travel to Australia that is covered by paragraph 42(2A)(d) or (e);is taken to have been continuously in the migration zone despite the removal referred to in paragraph (a).

Note: Paragraphs 42(2A)(d) and (e) cover limited situations where people are returned to Australia despite their removal under section 198.

### **37 After subsection 48A(1)**

Insert:

- (1A) For the purposes of this section, a non-citizen who:
  - (a) has been removed from the migration zone under section 198; and

(b) is again in the migration zone as a result of travel to Australia that is covered by paragraph 42(2A)(d) or (e);  
is taken to have been continuously in the migration zone despite the removal referred to in paragraph (a).

Note: Paragraphs 42(2A)(d) and (e) cover limited situations where people are returned to Australia despite their removal under section 198.

**38 At the beginning of Subdivision A of Division 12 of Part 2**

Insert (before section 229):

**228A Application of Subdivision**

This Subdivision applies in and outside Australia.

**39 At the end of paragraph 229(1)(a)**

Add “or”.

**40 At the end of subsection 229(1)**

Add:

; or (e) is a non-citizen who is covered by subsection 42(2) or (2A) or by regulations made under subsection 42(3).

**41 Subsections 229(3) and (4)**

Repeal the subsections.

**42 Subsection 230(1)**

Omit “Australia”, substitute “the migration zone”.

**43 After subsection 230(1)**

Insert:

- (1A) The master, owner, agent and charterer of a vessel are each guilty of an offence against this section if:
- (a) a person is concealed on the vessel when it arrives in Australia; and
  - (b) the person would, if in the migration zone, be an unlawful non-citizen.

**44 Subsection 230(2)**

Omit “to an unlawful non-citizen”.

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**45 Paragraph 230(2)(a)**

Omit “at a port”, substitute “in the migration zone”.

**46 After subsection 230(2)**

Insert:

- (2A) Subsection (1A) does not apply if the master of the vessel:
- (a) as soon as it arrives in Australia, gives notice to an officer that the person is on board; and
  - (b) prevents the person from leaving the vessel without an officer having had an opportunity to question the person.

**47 Subparagraph 232(a)(ii)**

Omit “; or”, substitute “; and”.

**48 At the end of paragraph 232(a)**

Add:

- (iii) is a person to whom subsection 42(1) applies; or

**49 At the end of section 232**

Add:

- (2) It is a defence to a prosecution for an offence against subsection (1) in relation to the entry of a non-citizen to Australia on a vessel if it is established:
- (a) that the non-citizen was, when he or she boarded or last boarded the vessel for travel to Australia, in possession of evidence of a visa that was in effect and that permitted him or her to travel to and enter Australia, being a visa that:
    - (i) did not appear to have been cancelled; and
    - (ii) was expressed to continue in effect until, or at least until, the date of the non-citizen’s expected entry into Australia; or
  - (b) that the master of the vessel had reasonable grounds for believing that, when the non-citizen boarded or last boarded the vessel for travelling to and entering Australia, the non-citizen:
    - (i) was eligible for a special category visa; or
    - (ii) was the holder of a special purpose visa; or

- (iii) would, when entering Australia, be the holder of a special purpose visa; or
  - (iv) was the holder of an enforcement visa; or
  - (v) would, when entering Australia, be the holder of an enforcement visa; or
- (c) that the vessel entered Australia from overseas only because of:
- (i) the illness of a person on board the vessel; or
  - (ii) stress of weather; or
  - (iii) other circumstances beyond the control of the master.

**50 Paragraph 232A(a)**

After “more people”, insert “to whom subsection 42(1) applies”.

**51 Paragraph 232A(b)**

Repeal the paragraph, substitute:

- (b) does so reckless as to whether the people had, or have, a lawful right to come to Australia;

**52 Paragraph 249(1)(a)**

Repeal the paragraph, substitute:

- (a) prevent a person whom the officer reasonably suspects to be an unlawful non-citizen from leaving a vessel on which the person arrived in Australia; or

**53 After subsection 249(1)**

Insert:

- (1AA) An officer may prevent a person from leaving a vessel on which the person arrived in Australia if the officer reasonably suspects that the person:
- (a) is seeking to enter the migration zone; and
  - (b) would, if in the migration zone, be an unlawful non-citizen.

**54 Subsection 249(1A)**

Omit “subsection (1)” (wherever occurring), substitute “subsections (1) and (1AA)”.

**55 Subsection 249(1A)**

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After “paragraph (1)(a)”, insert “or subsection (1AA)”.

**56 Subsection 249(2)**

Omit “subsection (1)”, substitute “subsections (1) and (1AA)”.

**57 Paragraph 262(b)**

After “offence”, insert “against this Act or”.

**58 At the end of subsection 271(1)**

Add:

; and (j) evidence that a person who travelled to and entered Australia on board a vessel, when entering, either:

(i) failed to produce to an officer, upon demand by that officer, a passport; or

(ii) produced to an officer a passport that was not an Australian passport;

is prima facie evidence that the person was, when entering, a non-citizen; and

(k) evidence that a non-citizen who entered Australia on board a vessel failed, when entering, to produce to an officer, upon demand by that officer, evidence of a visa:

(i) that is in effect; and

(ii) that permits the non-citizen to travel to and enter Australia;

is prima facie evidence that the non-citizen did not, when entering, hold such a visa.

**59 Subsection 271(4) (paragraph (a) of the definition of *migration proceedings*)**

After “court”, insert “(including criminal proceedings)”.

**60 Subsection 271(4) (subparagraph (a)(i) of the definition of *migration proceedings*)**

Repeal the subparagraph, substitute:

(i) under this Act or in relation to an offence against this Act; or

**61 At the end of subsection 271(4)**

Add:

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Note: For *offence against this Act*, see subsection 5(1).

## **62 Paragraph 504(1)(j)**

Repeal the paragraph, substitute:

- (j) enabling a person who is alleged to have contravened section 229 or 230 to pay to the Commonwealth, as an alternative to prosecution, a prescribed penalty, not exceeding:
  - (i) in the case of a natural person—30 penalty units; and
  - (ii) in the case of a body corporate—100 penalty units; and

## **63 Application**

- (1) The amendments made by items 34, 35, 36, 37, 40, 48 and 50 do not apply in relation to travel to Australia that occurred before the commencement of those items.
- (2) The amendments made by items 41, 51, 57 and 58 do not apply in relation to the entry of a person into Australia that occurred before the commencement of those items.



## **Part 5—Technical amendment**

### **64 Paragraph 198(2)(c)**

Before “either”, insert “who”.

## Part 6—Amendments to prevent forum shopping

### 65 At the end of section 36

Add:

#### *Protection obligations*

- (3) Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.
- (5) Also, if the non-citizen has a well-founded fear that:
  - (a) a country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion;subsection (3) does not apply in relation to the first-mentioned country.

#### *Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.

### 66 Paragraph 46(1)(d)

After “91K (temporary safe haven visa),” insert “91P (non-citizens with access to protection from third countries),”.

### 67 After Subdivision AJ of Division 3 of Part 2

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Insert:

### **Subdivision AK—Non-citizens with access to protection from third countries**

#### **91M Reason for this Subdivision**

This Subdivision is enacted because the Parliament considers that a non-citizen who can avail himself or herself of protection from a third country, because of nationality or some other right to re-enter and reside in the third country, should seek protection from the third country instead of applying in Australia for a protection visa, or, in some cases, any other visa. Any such non-citizen who is an unlawful non-citizen will be subject to removal under Division 8.

Note: For protection visas, see section 36.

#### **91N Non-citizens to whom this Subdivision applies**

- (1) This Subdivision applies to a non-citizen at a particular time if, at that time, the non-citizen is a national of 2 or more countries.
- (2) This Subdivision also applies to a non-citizen at a particular time if, at that time:
  - (a) the non-citizen has a right to re-enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country (the *available country*) apart from:
    - (i) Australia; or
    - (ii) a country of which the non-citizen is a national; or
    - (iii) if the non-citizen has no country of nationality—the country of which the non-citizen is an habitual resident; and
  - (b) the non-citizen has ever resided in the available country for a continuous period of at least 7 days or, if the regulations prescribe a longer continuous period, for at least that longer period; and
  - (c) a declaration by the Minister is in effect under subsection (3) in relation to the available country.
- (3) The Minister may, after considering any advice received from the Office of the United Nations High Commissioner for Refugees:
  - (a) declare in writing that a specified country:

- (i) provides access, for persons seeking asylum, to effective procedures for assessing their need for protection; and
  - (ii) provides protection to persons to whom that country has protection obligations; and
  - (iii) meets relevant human rights standards for persons to whom that country has protection obligations; or
- (b) in writing, revoke a declaration made under paragraph (a).
- (4) A declaration made under paragraph (3)(a):
- (a) takes effect when it is made by the Minister; and
  - (b) ceases to be in effect if and when it is revoked by the Minister under paragraph (3)(b).
- (5) The Minister must cause a copy of a declaration, or of a revocation of a declaration, to be laid before each House of the Parliament within 2 sitting days of that House after the Minister makes the declaration or revokes the declaration.

*Determining nationality*

- (6) For the purposes of this section, the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.

**91P Non-citizens to whom this Subdivision applies are unable to make valid applications for certain visas**

- (1) Despite any other provision of this Act but subject to section 91Q, if:
- (a) this Subdivision applies to a non-citizen at a particular time; and
  - (b) at that time, the non-citizen applies, or purports to apply, for a visa; and
  - (c) the non-citizen is in the migration zone and has not been immigration cleared at that time;
- neither that application, nor any other application the non-citizen makes for a visa while he or she remains in the migration zone, is a valid application.

- (2) Despite any other provision of this Act but subject to section 91Q, if:
- (a) this Subdivision applies to a non-citizen at a particular time; and
  - (b) at that time, the non-citizen applies, or purports to apply, for a protection visa; and
  - (c) the non-citizen is in the migration zone and has been immigration cleared at that time;
- neither that application, nor any other application made by the non-citizen for a protection visa while he or she remains in the migration zone, is a valid application.

**91Q Minister may determine that section 91P does not apply to a non-citizen**

- (1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 91P does not apply to an application for a visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day that the notice is given.
- (2) For the purposes of subsection (1), the matters that the Minister may consider include information that raises the possibility that, although the non-citizen satisfies the description set out in subsection 91N(1) or (2), the non-citizen might not be able to avail himself or herself of protection from the country, or any of the countries, by reference to which the non-citizen satisfies that description.
- (3) The power under subsection (1) may only be exercised by the Minister personally.
- (4) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:
  - (a) sets out the determination; and
  - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.
- (5) A statement under subsection (4) is not to include:

- (a) the name of the non-citizen; or
  - (b) any information that may identify the non-citizen; or
  - (c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person or any information that may identify that other person.
- (6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:
- (a) if the determination is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
  - (b) if the determination is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.
- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

**68 At the end of section 198**

Add:

- (9) An officer must remove as soon as reasonably practicable an unlawful non-citizen if:
- (a) the non-citizen is a detainee; and
  - (b) Subdivision AK of Division 3 of this Part applies to the non-citizen; and
  - (c) either:
    - (i) the non-citizen has not been immigration cleared; or
    - (ii) the non-citizen has not made a valid application for a substantive visa that can be granted when the applicant is in the migration zone; and
  - (d) either:
    - (i) the Minister has not given a notice under subsection 91Q(1) to the non-citizen; or
    - (ii) the Minister has given such a notice but the period mentioned in that subsection has ended and the non-citizen has not, during that period, made a valid application for a substantive visa that can be granted when the applicant is in the migration zone.

**69 Paragraph 475(2)(e)**

After “91L,” insert “91Q.”

**70 Application of amendments**

The amendments made by this Part apply to applications, or purported applications, for a visa made after the commencement of this item.

## Schedule 2—Customs Act 1901

### Part 1—Chasing, boarding etc. ships and aircraft

#### 1 Subsection 4(1)

Insert:

*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*.

#### 2 Subsection 4(1)

Insert:

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

#### 3 Subsection 4(1)

Insert:

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

#### 4 Subsection 4(1)

Insert:

*exclusive economic zone*, in relation to Australia, has the same meaning as in the *Seas and Submerged Lands Act 1973*.



**5 Subsection 4(1)**

Insert:

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

**6 Subsection 4(1) (subparagraph (c)(ii) of the definition of *Frisk search*)**

After “219L(1B)”, insert “or (1C)”.

**7 Subsection 4(1)**

Insert:

*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.

**8 After section 4AA**

Insert:

**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.

## **9 Section 59**

Repeal the section.

## **10 Section 184**

Repeal the section, substitute:

### **184A Request to board a ship**

#### *General power to request to board*

- (1) In the circumstances described in subsection (2), (3), (4), (5), (6), (7), (8) or (9), the commander of a Commonwealth ship or Commonwealth aircraft may request the master of a ship to permit the commander, a member of the commander's crew or an officer to board the master's ship.

Note: Sections 185 and 185A give power to board the master's ship if a request is made under this section.

#### *Foreign ships in Australian waters*

- (2) The commander may make the request if the master's ship is a foreign ship that is on the landward side of the outer edge of Australia's territorial sea. However, the request must be made for the purposes of this Act or an Act prescribed by the regulations consistently with UNCLOS.

#### *Australian ships outside territorial seas of other countries*

- (3) The commander may make the request if:
- (a) the master's ship is an Australian ship; and
  - (b) the master's ship is outside the territorial sea of any foreign country.

The commander must not make the request under this subsection if it may be made under subsection (9).

*Foreign ships in contiguous zone or near installations*

- (4) The commander may make the request if:
- (a) the master's ship is a foreign ship; and
  - (b) the master's ship is either:
    - (i) in the contiguous zone of Australia; or
    - (ii) within 500 metres of an Australian resources installation or Australian sea installation; and
  - (c) the commander:
    - (i) wishes to establish the identity of the master's ship; or
    - (ii) reasonably suspects that the master's ship is, will be or has been involved in a contravention, or an attempted contravention, in Australia of this Act or an Act prescribed by the regulations consistently with UNCLOS.

*Mother ships on high seas supporting contraventions in Australia*

- (5) The commander may make the request if:
- (a) the master's ship is a foreign ship; and
  - (b) the master's ship is:
    - (i) outside the outer edge of the contiguous zone of Australia; and
    - (ii) not within 500 metres of an Australian resources installation or Australian sea installation; and
    - (iii) outside the territorial sea of a foreign country; and
  - (c) the commander reasonably suspects that the master's ship is being or was used in direct support of, or in preparation for, a contravention in Australia of this Act or an Act prescribed by the regulations consistently with UNCLOS, where the contravention involves another ship (whether a foreign ship or an Australian ship); and
  - (d) the request is made as soon as practicable after the contravention happens.

*Suspicious foreign ships in EEZ*

- (6) The commander may make the request if:
- (a) the master's ship is a foreign ship; and

- (b) the master's ship is in the exclusive economic zone of Australia; and
- (c) the commander reasonably suspects that the master's ship is, will be or has been involved in a contravention, or an attempted contravention, in Australia's exclusive economic zone of an Act prescribed by the regulations consistently with UNCLOS.

*Mother ships on high seas supporting contraventions in EEZ*

- (7) The commander may make the request if:
  - (a) the master's ship is a foreign ship; and
  - (b) the master's ship is:
    - (i) outside the outer edge of the exclusive economic zone of Australia; and
    - (ii) not within 500 metres of an Australian resources installation or Australian sea installation; and
    - (iii) outside the territorial sea of a foreign country; and
  - (c) the commander reasonably suspects that the master's ship is being or was used in direct support of, or in preparation for, a contravention in Australia's exclusive economic zone of an Act prescribed by the regulations consistently with UNCLOS, where the contravention involves another ship (whether a foreign ship or an Australian ship); and
  - (d) the request is made as soon as practicable after the contravention happens.

*Foreign ships on high seas and covered by an agreement etc.*

- (8) The commander may make the request if:
  - (a) the master's ship is:
    - (i) outside the outer edge of the contiguous zone of Australia; and
    - (ii) outside the territorial sea of a foreign country; and
  - (b) the commander reasonably suspects that the master's ship is a foreign ship that is entitled to fly the flag of a country; and
  - (c) Australia has an agreement or arrangement with that country which enables the exercise of Australian jurisdiction over ships of that country.

The commander must not make the request under this subsection if it may be made under subsection (5), (6) or (7).

*Ships without nationality on high seas*

- (9) The commander may make the request if:
- (a) the master's ship is:
    - (i) outside the outer edge of the contiguous zone of Australia; and
    - (ii) outside the territorial sea of a foreign country; and
  - (b) any of the following applies:
    - (i) the master's ship is not flying a flag of a country;
    - (ii) the master's ship is flying a flag of a country and the commander reasonably suspects that the master's ship is not entitled to fly that flag;
    - (iii) the commander reasonably suspects that the master's ship is not entitled to fly the flag of a country or has been flying the flag of more than one country; and
  - (c) the Commander wishes to establish the identity of the master's ship.

The commander must not make the request under this subsection if it may be made under subsection (5), (6), (7) or (8).

*Means of making request*

- (10) The commander of a Commonwealth ship or Commonwealth aircraft may use any reasonable means to make a request under this section.

*Request still made even if no master on the ship etc.*

- (11) To avoid doubt, a request is still made under this section even if:
- (a) there was no master on board the ship to receive the request;
  - or
  - (b) the master did not receive or understand the request.

*Master must comply with request*

- (12) The master of a ship must comply with a request made under this section (other than subsection (9)) unless he or she has a reasonable excuse.

Penalty: Imprisonment for 2 years.

Note: The master's ship can still be boarded under section 185 or 185A even though the master has not complied with a request to board under this section.

### **184B Power to chase foreign ships for boarding**

*Generally, foreign ships may be chased if request to board is made*

- (1) To enable the boarding of a foreign ship whose master has not complied with a request to board under section 184A (other than subsection 184A(9)), the commander of a Commonwealth ship or Commonwealth aircraft may use it to chase, or continue the chase of, the master's ship to any place outside the territorial sea of a foreign country.

Note: Subsection 184A(9) is about requests to board ships without nationality that are on the high seas. Section 185A allows those ships to be boarded, even though the master of the ship has not complied with the request to board.

*Using different Commonwealth ships or aircraft to continue chase*

- (2) To avoid doubt, a Commonwealth ship or Commonwealth aircraft may be used in the chase even if its commander did not make the request under section 184A.

*When foreign ships may be chased without a request being made*

- (3) The commander of a Commonwealth ship or Commonwealth aircraft may use it to chase, or continue the chase of, a foreign ship to a place outside the territorial sea of a foreign country to enable the boarding of the foreign ship if, immediately before the start of the chase, the commander could have made a request to board the foreign ship under subsection 184A(5) or (7).

*Chase may continue even if the foreign ship is out of sight*

- (4) A chase under this section may continue even if the crew of all of the Commonwealth ships and Commonwealth aircraft involved in the chase lose sight of the chased ship or lose trace of it from radar or other sensing devices.

*Chase may not continue after interruption*

- (5) The commander of a Commonwealth ship or Commonwealth aircraft must not use it to chase, or continue the chase of, a foreign ship under this section if the chase is interrupted (within the meaning of Article 111 of UNCLOS) at a place outside the outer edge of the contiguous zone. This subsection has effect despite subsections (1), (3) and (4).

*Means that may be used to enable boarding of the foreign ship*

- (6) Anywhere outside the territorial sea of a foreign country, the commander of a Commonwealth ship or Commonwealth aircraft chasing a ship under this section may use any reasonable means consistent with international law to enable boarding of the chased ship, including:
- (a) using necessary and reasonable force; and
  - (b) where necessary and after firing a gun as a signal, firing at or into the chased ship to disable it or compel it to be brought to for boarding.

**184C Power to chase Australian ships for boarding**

*Australian ships may be chased*

- (1) To enable the boarding of an Australian ship, the commander of a Commonwealth ship or Commonwealth aircraft may use it to chase, or continue the chase of, the Australian ship to any place outside the territorial sea of a foreign country.

*Chase may continue even if the Australian ship is out of sight*

- (2) A chase under this section may continue even if the crew of all of the Commonwealth ships and Commonwealth aircraft involved in the chase lose sight of the chased ship or lose trace of it from radar or other sensing devices.

*Means that may be used to enable boarding of the Australian ship*

- (3) Anywhere outside the territorial sea of a foreign country, the commander of a Commonwealth ship or Commonwealth aircraft chasing a ship under this section may use any reasonable means to enable boarding of the chased ship, including:

- (a) using necessary and reasonable force; and
- (b) where necessary and after firing a gun as a signal, firing at or into the chased ship to disable it or compel it to be brought to for boarding.

### **184D Identifying an aircraft and requesting it to land for boarding**

#### *Application of section*

- (1) This section allows the commander of a Commonwealth aircraft to make requests of the pilot of another aircraft that:
  - (a) if the other aircraft is an Australian aircraft—is over anywhere except a foreign country; and
  - (b) if the other aircraft is not an Australian aircraft—is over Australia.

#### *Requesting information to identify an aircraft*

- (2) If the commander cannot identify the other aircraft, the commander may:
  - (a) use his or her aircraft to intercept the other aircraft in accordance with the practices recommended in Annex 2 (headed “Rules of the Air”) to the Convention on International Civil Aviation done at Chicago on 7 December 1944 (that was adopted in accordance with that Convention); and
  - (b) request the pilot of the other aircraft to disclose to the commander:
    - (i) the identity of the other aircraft; and
    - (ii) the identity of all persons on the other aircraft; and
    - (iii) the flight path of the other aircraft; and
    - (iv) the flight plan of the other aircraft.

#### *Requesting aircraft to land for boarding*

- (3) The commander may request the pilot of the other aircraft to land it at the nearest airport, or at the nearest suitable landing field, in Australia for boarding for the purposes of this Act if:
  - (a) the pilot does not comply with a request under subsection (2);  
or



- (b) the commander reasonably suspects that the other aircraft is or has been involved in a contravention, or attempted contravention, of this Act.

Note: Section 185 gives power to board the aircraft and search it once it has landed.

*Means of making request*

- (4) Any reasonable means may be used to make a request under this section.

*Request still made even if pilot did not receive etc. request*

- (5) To avoid doubt, a request is still made under this section even if the pilot did not receive or understand the request.

*Pilot must comply with request*

- (6) The pilot of the other aircraft must comply with a request made under this section unless he or she has a reasonable excuse.

Penalty: Imprisonment for 2 years.

*Definition*

- (7) In this section, **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*.

## **11 Subsection 185(1)**

Repeal the subsection, substitute:

*Application of section to ships*

- (1) This section applies to a ship that is outside the territorial sea of a foreign country if:
- (a) a request to board the ship has been made under section 184A; or
  - (b) the ship is a foreign ship described in subsection 184B(3) (which allows foreign ships on the high seas to be chased); or
  - (c) the ship is an Australian ship.

However, this section does not apply to a ship if a request to board the ship has been made under subsection 184A(8) or (9) (certain ships on the high seas), unless an officer is satisfied under subsection 185A(3) that the ship is an Australian ship.

Note: Section 185A deals with the boarding of ships where a request has been made under subsection 184A(8) or (9).

*Application to aircraft*

- (1A) This section applies to an aircraft that has landed in Australia for boarding as a result of a request made under section 184D.

Note 1: The heading to section 185 is replaced by the heading “**Power to board and search etc. ships and aircraft**”.

Note 2: The following heading to subsection 185(2) is inserted “*Officer’s powers*”.

Note 3: The following heading to subsection 185(4) is inserted “*Complying with requirement by officer*”.

Note 4: The following heading to subsection 185(6) is inserted “*Interpretation*”.

**12 At the end of paragraph 185(2)(a)**

Add “and”.

**13 Paragraph 185(2)(b)**

After “search”, insert “and examine”.

**14 At the end of paragraphs 185(2)(b) and (ba)**

Add “and”.

**15 Paragraph 185(2)(c)**

After “in relation to”, insert “the following”.

**16 Subparagraph 185(2)(c)(i)**

Omit “; or”, substitute “;”.

**17 Subparagraph 185(2)(c)(ii)**

Before “presence”, insert “identity and”.

**18 Subparagraph 185(2)(c)(ii)**

Omit “and”.

**19 At the end of paragraph 185(2)(c)**

Add:

- (iii) a contravention, an attempted contravention or an involvement in a contravention or attempted contravention, either in or outside Australia, of this Act; and

**20 After paragraph 185(2)(c)**

Insert:

- (ca) copy, or take extracts from, any document:
  - (i) found on the ship or aircraft; or
  - (ii) produced by a person found on the ship or aircraft as required under paragraph (c); and

**21 Paragraph 185(2)(d)**

Omit all the words after “aircraft”, substitute:

if:

- (i) in the case of a person found on a ship that is in Australia—the officer reasonably suspects that the person has committed, is committing or attempting to commit, or is involved in the commission of, an offence, either in or outside Australia, against this Act or an Act prescribed by the regulations consistently with UNCLOS; or
- (ii) in the case of a person found on a ship that is outside Australia—the officer reasonably suspects that the person has committed, is committing or attempting to commit, or is involved in the commission of:
  - (A) an offence in Australia against this Act or an Act prescribed by the regulations consistently with UNCLOS; or

- (B) an offence in Australia's exclusive economic zone against an Act prescribed by the regulations consistently with UNCLOS; or
- (iii) in the case of a person found on an aircraft that is in Australia—the officer reasonably suspects that the person has committed, is committing or attempting to commit, or is involved in the commission of, an offence, either in or outside Australia, against this Act; and

**22 At the end of subsection 185(2)**

Add:

- (e) seize without warrant any narcotic goods found on the ship or aircraft.

**23 Subsection 185(2A)**

Omit “or convention or other agreement”, substitute “, convention or other agreement or arrangement”.

**24 Before subsection 185(3)**

Insert:

*Help to search*

- (2B) Without limiting the generality of paragraph (2)(a), an officer may use a dog to assist in searching the ship or aircraft.

*Help to examine goods*

- (2C) In the exercise of the power under paragraph (2)(b) to examine goods, the officer may do, or arrange for another officer or other person having the necessary experience to do, whatever is reasonably necessary to permit the examination of the goods.

*Examples of examining goods*

- (2D) Without limiting the generality of subsection (2C), examples of what may be done in the examination of goods include the following:
  - (a) opening any package in which goods are or may be contained;

- (b) using a device, such as an X-ray machine or ion scanning equipment, on the goods;
- (c) testing or analysing the goods;
- (d) measuring or counting the goods;
- (e) if the goods are a document—reading the document either directly or with the use of an electronic device;
- (f) using a dog to assist in examining the goods.

**25 Subsection 185(3)**

Repeal the subsection, substitute:

*Power to detain and move ship or aircraft*

- (3) An officer may detain the ship or aircraft and bring it, or cause it to be brought, to a port, airport or other place that he or she considers appropriate if:
  - (a) in the case of a ship that is in Australia—the officer reasonably suspects that the ship is or has been involved in a contravention, either in or outside Australia, of this Act or an Act prescribed consistently with UNCLOS; and
  - (b) in the case of an Australian ship that is outside Australia—the officer reasonably suspects that the ship is, will be or has been involved in a contravention, either in or outside Australia, of this Act or any other Act; and
  - (c) in the case of a foreign ship that is outside Australia—the officer reasonably suspects that the ship is, will be or has been involved in a contravention:
    - (i) in Australia of this Act or an Act prescribed consistently with UNCLOS; or
    - (ii) in Australia's exclusive economic zone of an Act prescribed consistently with UNCLOS; and
  - (d) in the case of an aircraft that is in Australia—the officer reasonably suspects that the aircraft is or has been involved in a contravention, either in or outside Australia, of this Act.

However, a ship need not be brought to a port or other place if the CEO makes a direction in relation to the ship under section 185B.

*Power to detain people on detained ships or aircraft*

- (3A) If an officer detains a ship or aircraft under this section, the officer may also detain any person who is found on the ship or aircraft and

bring the person, or cause the person to be brought, to the migration zone (within the meaning of section 5 of the *Migration Act 1958*).

*Use of necessary and reasonable force*

- (3B) An officer may use such force as is necessary and reasonable in the exercise of a power under this section.

*Limit on use of force to board and search ships or aircraft*

- (3C) In boarding and searching the ship or aircraft and searching or examining goods found on the ship or aircraft, an officer must not damage the ship, aircraft or goods by forcing open a part of the ship, aircraft or goods unless:
- (a) the person (if any) apparently in charge of the ship or aircraft has been given a reasonable opportunity to open that part or the goods; or
  - (b) it is not reasonably practicable to give that person such an opportunity.

This subsection has effect despite paragraphs (2)(a) and (b) and subsection (3B).

*Limit on use of force to arrest or detain person on ships or aircraft*

- (3D) In arresting or detaining a person found on the ship or aircraft, an officer:
- (a) must not use more force, or subject the person to greater indignity, than is necessary and reasonable to make the arrest or detention or to prevent the person escaping after the arrest or detention; and
  - (b) must not do anything likely to cause the person grievous bodily harm unless the officer believes on reasonable grounds that doing the thing is necessary to protect life or prevent serious injury of another person (including the officer).

This subsection has effect despite paragraph (2)(d) and subsection (3B).

*Limit on use of force to arrest fleeing person*

- (3E) In arresting a person found on the ship or aircraft who is fleeing to escape arrest, an officer must not do anything likely to cause the person grievous bodily harm unless:
- (a) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other way; or
  - (b) the officer believes on reasonable grounds that doing the thing is necessary to protect life or prevent serious injury of another person (including the officer).

This subsection applies in addition to subsection (3D) and has effect despite paragraph (2)(d) and subsection (3B).

*If ship covered by agreement, officer may exercise other powers*

- (3F) If:
- (a) an officer is satisfied that the ship is a foreign ship that is entitled to fly the flag of a country; and
  - (b) Australia has an agreement or arrangement with that country which enables the exercise of Australian jurisdiction over ships of that country;
- then the officer may exercise any powers prescribed by the regulations consistently with the agreement or arrangement in relation to the ship or persons found on the ship.

**26 Subsection 185(4)**

Omit “\$1,000”, substitute “100 penalty units”.

**27 After subsection 185(4)**

Insert:

*Evidence may be used in prosecutions etc.*

- (4A) To avoid doubt, if, when exercising powers under this section, an officer obtains evidence of the commission of an offence against a law of the Commonwealth, a State or a Territory, then that evidence may be used, or given to another body for use, in:
- (a) investigating the offence; or
  - (b) proceedings for the prosecution for the offence.

However, this subsection does not override or limit the operation of a law of a State about the evidence that may be used in proceedings for the prosecution for an offence against a law of that State.

## **28 Subsection 185(5)**

Repeal the subsection, substitute:

### *Definition of officer*

- (5) In this section, *officer* means an officer within the meaning of subsection 4(1), and includes:
- (a) any person who is in command, or a member of the crew, of:
    - (i) the ship or aircraft from which the relevant request under section 184A or 184D was made; or
    - (ii) a ship or aircraft that was used under section 184B or 184C to chase the ship in relation to which this section applies; and
  - (b) a police officer or a member of the Australian Defence Force.

## **29 After section 185**

Insert:

### **185A Boarding of certain ships on the high seas**

#### *Application of section*

- (1) This section applies to a ship if:
- (a) a request has been made under:
    - (i) subsection 184A(8) (request to board a ship of a country with which Australia has an agreement); or
    - (ii) subsection 184A(9) (request to board a ship without nationality); and
  - (b) the ship is:
    - (i) outside the outer edge of the contiguous zone of Australia; and
    - (ii) outside the territorial sea of any country (including Australia).



*Powers to establish the identity of the ship*

- (2) An officer may:
- (a) board the ship; and
  - (b) ask all persons found on the ship questions about:
    - (i) the identity of the ship; and
    - (ii) the voyage of the ship; and
  - (c) require all persons found on the ship to produce documents relevant to:
    - (i) finding out the identity of the ship; or
    - (ii) the voyage of the ship; and
  - (d) require the master or a member of the master's crew to show the commander or a member of the commander's crew readings of the ship's navigation instruments relating to the voyage of the ship.

*Officer discovers that the ship is an Australian ship*

- (3) If, after exercising the powers in subsection (2), the officer is satisfied that the ship is an Australian ship, then section 185 applies to the ship.

Note: If section 185 applies to a ship, then the officer will be able to exercise all of the powers under that section in relation to the ship.

*Officer confirms that the ship is covered by an agreement etc.*

- (4) If:
- (a) after exercising the powers in subsection (2), the officer is satisfied that the ship is a foreign ship that is entitled to fly the flag of a country; and
  - (b) Australia has an agreement or arrangement with that country which enables the exercise of Australian jurisdiction over ships of that country;
- then the officer may exercise the powers prescribed by the regulations consistently with that agreement or arrangement.

*Officer discovers that the ship is not covered by an agreement etc.*

- (5) If:

- (a) after exercising the powers in subsection (2), the officer is satisfied that the ship is a foreign ship that is entitled to fly the flag of a country; and
  - (b) Australia does not have an agreement or arrangement with that country which enables the exercise of Australian jurisdiction over ships of that country;
- then the officer must leave the ship as soon as is practicable.

*Officer confirms that the ship is without nationality*

- (6) If, after exercising the powers in subsection (2), the officer is satisfied that the ship is a foreign ship that:
- (a) is not entitled to fly the flag of a country; or
  - (b) has been flying the flag of a country that it is not entitled to fly; or
  - (c) has been flying the flag of more than one country;
- then the officer may search the ship and seize without warrant any narcotic goods found on the ship.

*Definition of officer*

- (7) In this section, **officer** has the meaning given by subsection 4(1), and includes any person who is in command, or a member of the crew, of:
- (a) the ship from which the relevant request under section 184A was made; or
  - (b) a ship that was used under section 184B to chase the ship in relation to which this section applies.

### **185B Moving or destroying hazardous ships etc.**

*Application of section to ships in Australia*

- (1) This section applies to a ship that is in Australia and that an officer reasonably suspects is or has been involved in a contravention or an attempted contravention, either in or outside Australia, of this Act or a prescribed Act.

*Application of section to ships outside Australia*

- (2) This section also applies to a ship that is outside Australia if:
- (a) an officer has detained it under subsection 185(3); and

- (b) in the case of an Australian ship—the officer reasonably suspects it is or has been involved in a contravention or an attempted contravention, either in or outside Australia, of this Act or a prescribed Act; and
- (c) in the case of a foreign ship—the officer reasonably suspects it is or has been involved in a contravention:
  - (i) in Australia of this Act or a prescribed Act; or
  - (ii) in Australia’s exclusive economic zone of a prescribed Act.

*When ship may be destroyed or moved*

- (3) The CEO may direct an officer to move, destroy, or move and destroy the ship, or cause such thing to be done, if the CEO has reasonable grounds to believe any of the following:
  - (a) that the ship is unseaworthy;
  - (b) that the ship poses a serious risk to navigation, quarantine, safety or public health;
  - (c) that the ship poses a serious risk of damage to property or the environment.
- (4) The CEO may direct an officer to destroy, or move and destroy, the ship, or cause such thing to be done, if the CEO has reasonable grounds to believe that the ship is in such poor condition that its custody or maintenance by the Commonwealth would involve an expense that would be likely to be greater than its value.

*Giving of notice after the ship has been destroyed*

- (5) As soon as practicable, but not later than 7 days after the ship has been destroyed, the CEO must give a written notice to:
  - (a) the owner of the ship; or
  - (b) if the owner cannot be identified after reasonable inquiry—the person in whose possession or under whose control the ship was when it was detained or located.
- (6) The notice must state:
  - (a) that the ship has been destroyed under subsection (3) or (4); and
  - (b) the reason for the destruction; and
  - (c) that compensation may be payable under section 4AB.

Note: A person may be paid compensation under section 4AB if the destruction of the ship results in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution).

*Failure to give notice not to affect validity*

- (7) A failure to give a notice under this section does not affect the validity of the ship's destruction.

*Section to override certain other provisions*

- (8) This section applies despite Subdivisions D and G (other than section 205G) of Division 1 of Part XII.

**30 Paragraph 186A(1)(b)**

Repeal the paragraph, substitute:

- (b) as a result of that examination, an officer of Customs is satisfied that the document or part of the document may contain information relevant to:
- (i) an importation or exportation, or to a proposed importation or exportation, of prohibited goods; or
  - (ii) the commission or attempted commission of any other offence against this Act or of any offence against a prescribed Act;

**31 At the end of section 187**

Add:

- (2) A reference in subsection (1) to a ship or aircraft is a reference to a ship or aircraft to which section 185 does not apply.

**32 After section 189**

Insert:

**189A Officers may carry arms in certain circumstances**

- (1) Subject to any directions from the CEO, the commander of a Customs vessel:
- (a) may issue approved firearms and other approved items of personal defence equipment to officers under his or her command for the purpose of:

- (i) enabling the use, by such officers, of a firearm in the circumstances set out in subsection 184B(6) or 184C(3);  
or
    - (ii) enabling the safe exercise, by such officers, of powers conferred on them under this Act, including powers related to the suspected commission or attempted commission of an offence against another Act; and
  - (b) must take all reasonable steps to ensure that approved firearms, and other approved items of personal defence equipment, that are available for issue under paragraph (a), are kept in secure storage at all times when not required for use.
- (2) Without limiting the matters that may be the subject of directions under subsection 4(4) of the *Customs Administration Act 1985* as modified by section 183UC, the CEO may give directions under that modified subsection relating to the deployment of approved firearms and other approved items of personal defence equipment under this section. The directions may deal with:
- (a) the circumstances in which approved firearms and other approved items of personal defence equipment may be issued; and
  - (b) the circumstances in which such firearms and other items of equipment are to be recalled; and
  - (c) the circumstances in which such firearms and other items of equipment can be used and the manner of their use; and
  - (d) the nature of the secure storage of such firearms and other items of equipment when recalled; and
  - (e) any other matters relating to the deployment of such firearms and other items of equipment the CEO thinks appropriate.
- (3) An officer is not required under, or by reason of, a law of a State or Territory:
- (a) to obtain a licence or permission for the possession or use of an approved firearm or approved item of personal defence equipment; or
  - (b) to register such a firearm or other item of equipment.
- (4) Nothing in this section affects the operation of any other provision of, or of the regulations under, this Act to the extent that that

provision relates to the use of firearms in circumstances other than the circumstances referred to in this section.

(5) In this section:

***approved firearm*** means a firearm of a kind declared by the regulations to be an approved firearm for the purposes of this section.

***approved item of personal defence equipment*** means an extendable baton, an oleoresin capsicum spray or anti-ballistic clothing, and includes any other item that is declared by the regulations to be an approved item of personal defence equipment for the purposes of this section.

***Customs vessel*** means a Commonwealth ship that is under the command of a Customs officer and flying a Customs flag within the meaning of section 14.

### **33 Paragraph 207(1)(a)**

After “subsection”, insert “185(2), 185A(6)”.

### **34 Section 208D**

After “subsection”, insert “185(2), 185A(6)”.

### **35 After paragraph 219L(1A)(b)**

Insert:

- and (c) in the case where the person is on board a ship—the ship:
- (i) is an Australian ship that is outside the territorial sea of a foreign country; or
  - (ii) is a foreign ship that is on the landward side of the outer edge of Australia’s territorial sea;

### **36 Paragraph 219L(1B)(b)**

Repeal the paragraph, substitute:

- (b) a detention officer suspects on reasonable grounds that a person who is on board the ship or aircraft is carrying on his or her body any weapon or thing that is capable of being used to inflict bodily injury on an officer conducting that search or exercising that other power; and
- (c) in the case where the person is on board a ship—the ship:

- (i) is an Australian ship that is outside the territorial sea of a foreign country; or
- (ii) is a foreign ship that is on the landward side of the outer edge of Australia's territorial sea;

**37 After subsection 219L(1B)**

Insert:

(1C) If:

- (a) a person has boarded a Customs vessel or Commonwealth ship for a purpose connected with the conduct of a search or the exercise of any other power under section 185; and
  - (b) a detention officer suspects on reasonable grounds that the person is carrying on his or her body any weapon or thing that is capable or being used to inflict bodily injury on an officer conducting that search or exercising that other power;
- the detention officer may detain the person for the purpose of being searched under this Subdivision.

**38 Subsection 219L(2)**

Omit "or (1B)", substitute ", (1B) or (1C)".

**39 Subsection 219M(4)**

After "219L(1B)", insert "or (1C)".

**40 Section 219NA**

After "219L(1B)" (wherever occurring), insert "or (1C)".

**41 Paragraph 219ZE(1)(cb)**

After "219L(1B)", insert "or 219L(1C)".

**42 Subsection 228(1)**

Omit "or boats not exceeding 80 metres in overall length and the following", substitute ", boats and".

**43 Paragraph 228(1)(2)**

After "his", insert "or her".

**44 Paragraph 228(1)(2)**

After “him”, insert “or her”.

**45 Paragraph 228(1)(2)**

Omit “59(1) or (2)”, substitute “184A(2) or (3)”.

**46 Paragraph 228(1)(3)**

After “airport”, insert “or landing field”.

**47 Paragraph 228(1)(3)**

Omit “59”, substitute “184D”.

**48 Paragraph 228(1)(6)**

Omit “in pursuance of section 59, 185 or 187”.

**49 Subsection 228(1)**

Omit all the words from and including “The owner” to and including “its payment”.

**50 Subsection 228(2)**

Repeal the subsection.

**51 Transitional and saving provisions for this Part**

- (1) For the purposes of the definition of *Commonwealth ship* in subsection 4(1) of the *Customs Act 1901*, the ensign prescribed for a class of ships consisting of ships of a kind described in regulations in force for the purposes of section 59 of that Act immediately before the commencement of this Schedule is the ensign prescribed by those regulations for a ship of that kind.
- (2) Subitem (1) ceases to have effect on the commencement of regulations made under the *Customs Act 1901* prescribing ensigns for the purposes of the definition of *Commonwealth ship* in subsection 4(1) of that Act.
- (3) For the purposes of the definition of *Commonwealth aircraft* in subsection 4(1) of the *Customs Act 1901*, the ensign and insignia prescribed for a class of aircraft consisting of aircraft of a kind described in regulations in force for the purposes of section 59 of that Act immediately before the commencement of this Schedule are the ensign and insignia prescribed by those regulations for an aircraft of that kind.



- (4) Subitem (3) ceases to have effect on the commencement of regulations made under the *Customs Act 1901* prescribing ensigns for the purposes of the definition of ***Commonwealth aircraft*** in subsection 4(1) of that Act.
- (5) Despite the amendment made by this Part to subsection 185(4) of the *Customs Act 1901*, that subsection continues to apply in relation to offences committed before the commencement of this Part as if the amendment had not been made.

## **Part 2—Transfer of goods into or out of coasting trade**

### **52 Subsection 175(1) (definition of *Australian ship*)**

Repeal the definition.

### **53 After subsection 175(2)**

Insert:

(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.

### **54 After subsection 175(3)**

Insert:

(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.

### **55 After subsection 175(3A)**

Insert:

(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.

## **Schedule 3—Fisheries Management Act 1991**

### **Part 1—Customs officers to be fisheries officers**

#### **1 Subsection 4(1) (at the end of the definition of *officer*)**

Add:

; or (d) an officer of Customs (as defined in the *Customs Act 1901*).

#### **2 Subsection 84(8) (at the end of the definition of *prescribed person*)**

Add “or an officer of Customs (as defined in the *Customs Act 1901*)”.

## Part 2—Suspected illegal foreign fishers

### Division 1—Basic provisions

#### 3 Subsection 4(1)

Insert:

*Australian resident* means:

- (a) a person who holds a permanent visa (as defined in the *Migration Act 1958*) that is in effect; or
- (b) a New Zealand citizen who is usually resident in Australia or a Territory and who holds a special category visa (as defined in the *Migration Act 1958*) that is in effect; or
- (c) any other person who is usually resident in Australia or a Territory and whose continued presence in Australia or a Territory is not subject to a limitation as to time imposed by law.

#### 4 After paragraph 84(1)(i)

Insert:

- (ia) subject to section 84A, detain a person in Australia or a Territory for the purposes of determining during the period of detention whether or not to charge the person with an offence against section 99, 100, 100A, 101, 101A or 101B, if the officer has reasonable grounds to believe that the person:
  - (i) is not an Australian citizen or an Australian resident; and
  - (ii) was on a foreign boat when it was used in the commission of such an offence; and
- (ib) subject to section 84A:
  - (i) take a person who has been detained in Australia under paragraph (ia) to another place in Australia or to a place in an external Territory; and
  - (ii) take a person who has been detained in an external Territory under paragraph (ia) to another place in the Territory or to a place in Australia or another Territory; and
- (ic) subject to section 84B, search without warrant:

- (i) a person detained under paragraph (ia); and
- (ii) the person's clothing; and
- (iii) any property under the person's immediate control;  
to find out whether a weapon or other thing capable of being  
used to inflict bodily injury or to help the person to escape  
from that detention is hidden on the person or in the clothing  
or property; and
- (id) do anything reasonably necessary for:
  - (i) photographing or measuring a person detained under  
paragraph (ia); or
  - (ii) otherwise recording matters in relation to such a person;  
for the purpose of facilitating the present or future  
identification of the person; and

#### **5 Subsection 84(7)**

After "this Act" (first occurring), insert "or a particular provision of this Act".

#### **6 Subsection 84(7)**

After "this Act" (second occurring), insert "or that provision".

#### **7 After section 84**

Insert:

#### **84A Detention under paragraph 84(1)(ia)**

- (1) A person (the *detainee*) detained under paragraph 84(1)(ia) must be released from detention:
  - (a) as soon as an officer knows or reasonably believes that the detainee is an Australian citizen or an Australian resident; or
  - (b) at the time the detainee is brought before a magistrate following a decision to charge the detainee with an offence referred to in paragraph 84(1)(ia); or
  - (c) at the time a decision is made not to charge the detainee with an offence referred to in that paragraph; or
  - (d) at the end of 168 hours after the detention began;whichever occurs first.
- (2) Part IC of the *Crimes Act 1914* applies in relation to the detainee while detained under paragraph 84(1)(ia) of this Act as if:

- (a) he or she were under arrest because of paragraph 23B(2)(b) for a Commonwealth offence for the purposes of that Part; and
  - (b) an officer were an investigating official for the purposes of that Part.
- (3) Subsection (2) does not affect the operation of sections 23C, 23D and 23E of the *Crimes Act 1914* as they apply of their own force in relation to a person who is lawfully arrested.
- (4) Paragraph 84(1)(ia) and this section do not authorise an officer to use more force in detaining a person than is reasonably necessary.

#### **84B Searches under paragraph 84(1)(ic)**

- (1) A search under paragraph 84(1)(ic) of a person (the *detainee*) may only be conducted by an officer of the same sex as the detainee.
- (2) However, if an officer of the same sex as the detainee is not available to conduct the search, it may be conducted by another person who:
- (a) is of the same sex as the detainee; and
  - (b) agrees, at the request of an officer, to conduct the search.
- (3) Paragraph 84(1)(ic) and this section do not authorise the officer or other person:
- (a) to remove any of the detainee's clothing; or
  - (b) to require the detainee to remove any of his or her clothing; or
  - (c) to use more force, or subject a detainee to greater indignity, than is reasonably necessary to conduct the search.
- (4) If, in conducting a search, an officer finds a weapon or other thing mentioned in paragraph 84(1)(ic), an officer may:
- (a) take possession of the weapon or other thing; and
  - (b) keep the weapon or other thing for such time as he or she thinks necessary for the purposes of this Act.
- (5) If, in conducting a search, the other person finds a weapon or other thing mentioned in subsection (4):
- (a) he or she must take possession of it and give it to an officer; and

- (b) an officer may keep it for such time as he or she thinks necessary for the purposes of this Act.

**8 At the end of Division 4 of Part 6**

Add:

**98A Escape from detention**

- (1) A person is guilty of an offence if:
- (a) the person is in detention under paragraph 84(1)(ia) and is reckless as to that fact; and
  - (b) the person intentionally escapes from that detention.
- (2) The offence is punishable on conviction by imprisonment for up to 2 years.

**Division 2—Amendments relating to the Fish Stocks Agreement**

**9 Paragraph 84(1)(ia)**

Omit “section 84A”, substitute “sections 84A and 87E”.

**10 Paragraph 84(1)(ia)**

Omit “or 101B”, substitute “, 101B, 105E or 105F”.

**11 Paragraph 84(1)(ib)**

Omit “section 84A”, substitute “sections 84A and 87E”.

**12 After paragraph 87E(1)(a)**

Insert:

- (aa) detain under paragraph 84(1)(ia) a person whom the officer has reasonable grounds to believe was on an FSA boat when it was used in the commission of an offence against section 105E or 105F; or
- (ab) take from one place to another under paragraph 84(1)(ib) a person detained under paragraph 84(1)(ia) because an officer had reasonable grounds to believe the person was on an FSA boat when it was used in the commission of an offence against section 105E or 105F; or

**13 At the end of section 87E**

Add:

- (5) Subsection (1) does not limit an officer's power under paragraph 84(1)(ia) or (ib) in relation to a person if the officer has reasonable grounds to believe that the person was on an FSA boat when it was used in the commission of an offence against section 99, 100, 100A, 101, 101A or 101B.

Note: Section 84A affects the officer's power in that situation.



## **Part 3—Customs officers exercising powers as fisheries officers may carry arms**

### **14 Before section 85**

Insert:

#### **84C Customs officers may carry arms in exercise of powers under this Act**

- (1) Subject to any directions from the Chief Executive Officer of Customs (*CEO*), the commander of a Customs vessel:
  - (a) may issue approved firearms and other approved items of personal defence equipment to officers of Customs under his or her command for the purpose of enabling the safe exercise, by such officers, of powers conferred on them as officers within the meaning of section 4; and
  - (b) must take all reasonable steps to ensure that approved firearms, and other approved items of personal defence equipment, that are available for issue under paragraph (1)(a), are kept in secure storage at all times when not required for use.
- (2) Directions given by the CEO for the purposes of subsection 189A(2) of the *Customs Act 1901* relating to the deployment of approved firearms and other approved items of personal defence equipment may extend to the deployment of such firearms and other items of equipment under this section.
- (3) If:
  - (a) approved firearms and other approved items of personal defence equipment are issued to officers of Customs in accordance with subsection 189A(1) of the *Customs Act 1901*; and
  - (b) those officers are subsequently required, while carrying such firearms or other items of equipment, to exercise powers conferred on them under this Act;

then:

- (c) the deployment of such firearms or other items of equipment has effect as if the firearms or other items of equipment had been issued under this section; and
  - (d) any directions given by the CEO that relate to any aspect of that deployment have effect accordingly.
- (4) An officer of Customs is not required under, or by reason of, a law of a State or Territory:
- (a) to obtain a licence or permission for the possession or use of an approved firearm or approved item of personal defence equipment in the circumstances set out in this section; or
  - (b) to register such a firearm or other item of equipment.
- (5) In this section:

***approved firearm*** means a firearm that is an approved firearm for the purposes of section 189A of the *Customs Act 1901*.

***approved item of personal defence equipment*** means an item that is an approved item of personal defence equipment for the purposes of section 189A of the *Customs Act 1901*.

***Customs vessel*** means a Commonwealth ship (within the meaning of the *Customs Act 1901*) that is under the command of an officer of Customs (including an officer of Customs exercising powers as an officer within the meaning of this Act) and flying a Customs flag within the meaning of section 14 of the *Customs Act 1901*.

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[*Minister's second reading speech made in—  
House of Representatives on 22 September 1999  
Senate on 23 November 1999*]

(179/99)

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