



Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001

No. 95, 2001



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**An Act to amend and repeal certain legislation
relating to Customs, and for related purposes**

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Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001

No. 95, 2001

An Act to amend and repeal certain legislation relating to Customs, and for related purposes

[Assented to 20 July 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*.

2 Commencement

- (1) Sections 1 to 3, and items 82, 84, 109, 123 and 152 to 171 in Schedule 3, commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (6), Part 4 of Schedule 1 commences on a day to be fixed by Proclamation.
- (3) Subject to subsection (6), Part 2 of Schedule 3, item 119 in Part 6 of Schedule 3, and Schedule 4, commence on a day to be fixed by Proclamation.
- (4) Subject to subsection (6), Part 4 of Schedule 3 (other than items 82 and 84) commences on a day to be fixed by Proclamation.
- (5) Subject to subsection (6), the following items in the Schedules commence on a day or days to be fixed by Proclamation:
 - (a) the items in Schedule 1 other than the items in Part 4 of that Schedule;
 - (b) the items in Schedule 2;
 - (c) the items (other than items 109, 119, 123 and 152 to 171) in Parts 1, 3, 5 and 6 of Schedule 3.
- (6) If an item in a Schedule does not commence under subsection (2), (3), (4) or (5) within the period of 2 years beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Goods subject to Customs control

Customs Act 1901

1 Paragraph 30(1)(d)

Omit “, being protected objects, or being goods the exportation of which is subject to compliance with any condition or restriction under any Act or regulation”.

2 Saving

To avoid doubt, the amendment of paragraph 30(1)(d) of the *Customs Act 1901* made by item 1 does not affect the validity of any regulations in force for the purpose of that paragraph immediately before the commencement of that item.

3 Section 33

Repeal the section, substitute:

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

(1) If:

- (a) a person intentionally moves, alters or interferes with goods that are subject to the control of Customs; and
- (b) the movement, alteration or interference is not authorised by this Act;

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

(2) If:

- (a) a person moves, alters or interferes with goods that are subject to the control of Customs; and
- (b) the movement, alteration or interference is not authorised by this Act;

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

Schedule 1 Provisions for improving customs compliance
Part 1 Goods subject to Customs control

(3) If:

- (a) an employee of a person moves, alters or interferes with goods that are subject to the control of Customs; and
- (b) in moving, altering or interfering with the goods the employee is acting on behalf of the person; and
- (c) the movement, alteration or interference is not authorised by this Act;

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

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

(5) If:

- (a) a person intentionally directs or permits another person to move, alter or interfere with goods that are subject to the control of Customs; and
- (b) the movement, alteration or interference is not authorised by this Act;

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

(6) If:

- (a) a person directs or permits another person to move, alter or interfere with goods that are subject to the control of Customs; and
- (b) the movement, alteration or interference is not authorised by this Act;

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

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

(8) In this section:

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

goods does not include installations.

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

Part 2—Goods to be entered for export

Customs Act 1901

4 After subsection 113(2)

Insert:

- (2A) However, subsection (2) does not exempt from subsection (1) goods for the export of which a permission (however described) is required by an Act or an instrument made under an Act, other than goods or classes of goods prescribed by the regulations for the purposes of this subsection.

Part 3—Powers relating to goods for export that are not yet subject to Customs control

Customs Act 1901

5 Before Division 4 of Part VI

Insert:

Division 3A—Examining goods for export that are not yet subject to Customs control

122F Object of Division

- (1) The object of this Division is to confer powers on authorised officers to enter premises and examine goods that are reasonably believed to be intended for export.
- (2) The powers are exercisable before the goods become subject to the control of Customs and are conferred for the purpose of enabling officers to assess whether the goods meet the requirements of this Act relating to exports.
- (3) The powers are exercisable only with the consent of the occupier of the premises at which the goods are situated.
- (4) The CEO must not authorise an officer to exercise powers under this Division unless the CEO is satisfied that the officer is suitably qualified, because of the officer's abilities and experience, to exercise those powers.

122G Occupier of premises

In this Part:

occupier of premises includes a person who is apparently in charge of the premises.

122H Consent required to enter premises and examine goods for export

- (1) Subject to section 122J, an authorised officer may enter premises, and exercise the powers conferred by the other sections of this Division in or on the premises, in accordance with this section.
- (2) The authorised officer must believe on reasonable grounds that there are, or have been, in or on particular premises goods (the *export goods*) that the authorised officer reasonably believes are intended to be exported.
- (3) The premises must not be a place prescribed for the purposes of paragraph 30(1)(d), or part of such a place.
Note: Paragraph 30(1)(d) subjects to the control of Customs goods that are made or prepared in, or brought to, a prescribed place for export.
- (4) The occupier of the premises must have consented in writing to the entry of the authorised officer to the premises and the exercise of the powers in or on the premises.
- (5) Before obtaining the consent, the authorised officer must have told the occupier that he or she could refuse consent.
- (6) Before the authorised officer enters the premises or exercises any of the powers, he or she must produce his or her identity card to the occupier.

122J Officer must leave premises if consent withdrawn

- (1) An authorised officer who has entered premises under section 122H must leave the premises if the occupier withdraws his or her consent.
- (2) A withdrawal of a consent does not have any effect unless it is in writing.

122K Power to search premises for export goods

The authorised officer may search the premises for the export goods and documents relating to them.

122L Power to examine export goods

- (1) While the authorised officer is in or on the premises, he or she may inspect, examine, count, measure, weigh, gauge, test or analyse, and take samples of, the export goods.
- (2) The authorised officer may remove from the premises any samples taken, and arrange for tests or analyses to be conducted on them elsewhere.

122M Power to examine documents relating to export goods

The authorised officer may examine and take extracts from, or make copies of, documents that are in or on the premises and relate to the export goods.

122N Power to question occupier about export goods

If the authorised officer is in or on the premises because the occupier consented to the officer's entry, the officer may request the occupier:

- (a) to answer questions about the export goods; and
 - (b) to produce to the officer documents that are in or on the premises and relate to the export goods;
- but the occupier is not obliged to comply with the request.

122P Power to bring equipment to the premises

The authorised officer may bring into or onto the premises equipment and materials for exercising a power described in section 122K, 122L or 122M.

122Q Compensation

- (1) If a person's property is damaged as a result of an exercise of a power under this Division, the person is entitled to compensation of a reasonable amount payable by Customs for the damage.
- (2) Customs must pay the person such reasonable compensation as Customs and the person agree on. If they fail to agree, the person may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

Schedule 1 Provisions for improving customs compliance

Part 3 Powers relating to goods for export that are not yet subject to Customs control

- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees or agents of the occupier, if they were available at the time, had provided any warning or guidance that was appropriate in the circumstances.

122R Powers in this Division are additional to other powers

The powers of an authorised officer under this Division do not limit powers under other provisions of this Act or under provisions of other Acts.

Example: Some other provisions and Acts giving similar powers are Parts III and XII of this Act, and the *Commerce (Trade Descriptions) Act 1905* and the *Export Control Act 1982*.

Part 4—Time to recover short-paid duty etc.

Customs Act 1901

6 Subsection 165(1)

Omit “twelve months”, substitute “4 years”.

7 Subsection 165(3)

Omit “12 months”, substitute “4 years”.

8 Application

Section 165 of the *Customs Act 1901* as amended by this Part does not apply:

- (a) in relation to a short levy, refund or rebate made or paid before the commencement of this Part; or
- (b) in relation to a short levy or erroneous refund that results from the review under section 161L of that Act of a decision or determination that was made before the commencement of this Part.

Part 5—Powers to monitor and audit

Customs Act 1901

9 Subsection 4(1)

Insert:

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

10 Subsection 4(1)

Insert:

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

11 After section 4A

Insert:

4B What is a Customs-related law

In this Act:

Customs-related law means:

- (a) this Act; or
- (b) the *Excise Act 1901* and regulations made under that Act; or
- (c) any other Act, or any regulations made under any other Act, in so far as the Act or regulations relate to the importation or exportation of goods, where the importation or exportation is subject to compliance with any condition or restriction or is subject to any tax, duty, levy or charge (however described).

4C Identity cards

- (1) The CEO must cause an identity card to be issued to an officer who is an authorised officer for the purposes of Division 3A of Part VI or is a monitoring officer for the purposes of Subdivision J of Division 1 of Part XII.
 - (2) An identity card:
 - (a) must be in a form approved by the CEO; and
-

- (b) must contain a recent photograph of the authorised officer or monitoring officer.
- (3) If a person to whom an identity card has been issued ceases to be an authorised officer or monitoring officer for the purposes of the provisions of this Act in respect of which the card was issued, the person must return the card to the CEO as soon as practicable.
- Penalty: One penalty unit.
- (4) An offence for a contravention of subsection (3) is an offence of strict liability.
- (5) An authorised officer or monitoring officer must carry his or her identity card at all times when exercising powers in respect of which the card was issued.

12 Subdivision J of Division 1 of Part XII (heading)

Repeal the heading, substitute:

Subdivision J—Powers to monitor and audit

13 Sections 214AA, 214AB and 214AC

Repeal the sections, substitute:

214AA Occupier of premises

In this Subdivision:

occupier of premises includes a person who is apparently in charge of the premises.

214AB What are *monitoring powers*?

Monitoring powers

- (1) For the purposes of this Subdivision, the following are *monitoring powers*:
- (a) the power to search premises;
 - (b) the power to take photographs (including a video recording), or make sketches, of premises or anything at premises;

- (c) the power to inspect, examine, count, measure, weigh, gauge, test or analyse, and take samples of, anything in or on premises;
- (d) the power to inspect any document or record in or on premises;
- (e) the power to take extracts from, or make copies of, any document or record in or on premises;
- (f) the power to take into or onto premises any equipment or material reasonably necessary for the purpose of exercising a power under paragraph (a), (b), (c), (d) or (e);
- (g) the power to test and operate record-keeping, accounting, computing or other operating systems of any kind that are at premises and may be used to generate or record information or documents of a kind that may be communicated to Customs;
- (h) the power to secure a thing that:
 - (i) is found during a search of premises; and
 - (ii) a monitoring officer believes on reasonable grounds affords evidence of the commission of an offence against a Customs-related law and may be lost, destroyed or tampered with;until a warrant is obtained to seize the thing or 72 hours elapses after the securing of the thing, whichever first occurs;
- (i) the powers in subsections (2) and (3).

Power to operate equipment to check information

- (2) For the purposes of this Subdivision, **monitoring powers** include the power to operate equipment at premises to see whether:
 - (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with the equipment or is associated with it;contains information that is relevant to assessing:
 - (c) whether a person is complying with a Customs-related law; or
 - (d) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or
-

- (e) the correctness of information communicated by a person to Customs (whether in documentary or other form).

Power to copy information found by operating equipment

- (3) For the purposes of this Subdivision, **monitoring powers** include the following powers in relation to information described in subsection (2) that is found in the exercise of the power under that subsection:
 - (a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;
 - (b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device:
 - (i) that is brought to the premises for the exercise of the power; or
 - (ii) that is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
 - (c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

214AC Monitoring officers

Who is a monitoring officer?

- (1) A **monitoring officer** is an officer who is authorised by the CEO under this section to enter premises and exercise monitoring powers (whether the authorisation applies generally, during a specified period or in or on specified premises).

Who may be authorised to be a monitoring officer

- (2) The CEO must not authorise an officer to enter premises and exercise monitoring powers unless the CEO is satisfied that the officer is suitably qualified, because of the officer's abilities and experience, to exercise those powers.

Authorising officers to exercise monitoring powers

- (3) The CEO may authorise in writing an officer to enter premises and exercise monitoring powers:
- (a) generally; or
 - (b) during a specified period; or
 - (c) in or on specified premises; or
 - (d) during a specified period in or on specified premises.

Availability of assistance and use of force in exercising monitoring powers

- (4) In entering premises and exercising monitoring powers:
- (a) a monitoring officer may obtain such assistance; and
 - (b) a monitoring officer or a person assisting a monitoring officer may use such force against things;
- as is necessary and reasonable in the circumstances.

Monitoring powers to be used only as authorised

- (5) This Subdivision does not allow:
- (a) an officer who is authorised to enter premises and exercise monitoring powers during a specified period to enter the premises or exercise the powers at a time outside that period; or
 - (b) an officer who is authorised to enter, and exercise monitoring powers in or on, specified premises to enter, or to exercise the powers in or on, other premises.

214ACA Monitoring officer to notify occupier of premises of the occupier's rights and obligations

Before exercising monitoring powers in respect of premises, a monitoring officer must give to the occupier of the premises a written notice setting out the occupier's rights and obligations under this Subdivision.

214AD Notice of proposal to exercise monitoring powers

Before seeking consent under section 214AE to enter premises and exercise monitoring powers there, a monitoring officer may give to

the occupier of the premises written notice stating that the officer wishes to enter the premises and exercise monitoring powers and specifying the period from the giving of the notice during which the officer wishes to exercise the powers.

Note: If the occupier had, before a notice is given under section 214AD, made to Customs a statement that was false or misleading, a voluntary notification made by the occupier after the notice is given is not a defence to a prosecution for an offence against section 243T or 243U in respect of the statement.

214AE Exercise of monitoring powers with consent

- (1) A monitoring officer may enter, and exercise monitoring powers in or on, premises to the extent that it is reasonably necessary for the purpose of assessing:
 - (a) whether a person is complying with a Customs-related law; or
 - (b) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or
 - (c) the correctness of information communicated by a person to Customs (whether in documentary or other form).
- (2) However, a monitoring officer must not enter premises under this section unless the occupier of the premises has consented to monitoring officer entering, and exercising monitoring powers in or on, the premises.
- (3) Before obtaining such a consent, a monitoring officer must tell the occupier of the premises that he or she can refuse consent.
- (4) A consent may be expressed to be limited to entry to, and the exercise of monitoring powers in or on, the premises to which the consent relates during a particular period unless the consent is withdrawn before the end of that period.
- (5) A consent that is not limited as mentioned in subsection (4) has effect in relation to any entry to, and any exercise of monitoring powers in or on, the premises to which the consent relates until the consent is withdrawn.

- (6) Before a monitoring officer enters premises or exercises any monitoring powers, he or she must produce his or her identity card to the occupier.
- (7) A monitoring officer must leave the premises if the occupier withdraws the consent.
- (8) A consent, or a withdrawal of consent, does not have effect unless the consent or withdrawal is in writing.

214AF Exercise of monitoring powers under a warrant

- (1) A monitoring officer may apply to a magistrate for a warrant under this section in relation to particular premises.
- (2) The magistrate must issue a warrant if satisfied, by information on oath or affirmation, that it is reasonably necessary that the monitoring officer should have access to the premises for the purpose of assessing:
 - (a) whether a person is complying with a Customs-related law; or
 - (b) whether a person's record-keeping, accounting, computing or other operating systems of any kind accurately record and generate information to enable compliance with a Customs-related law; or
 - (c) the correctness of information communicated by a person to Customs (whether in documentary or other form).
- (3) If the magistrate requires further information about the grounds on which the issue of the warrant is applied for, he or she must not issue the warrant until the monitoring officer or someone else has given the magistrate the further information, either orally (on oath or affirmation) or by affidavit.
- (4) The warrant must:
 - (a) state the purpose for which the warrant is issued; and
 - (b) identify the premises to which the warrant relates; and
 - (c) name the monitoring officer who is responsible for executing the warrant; and
 - (d) authorise any monitoring officer named in the warrant to enter the premises and exercise monitoring powers from time to time while the warrant remains in force, with such

assistance, and using such force against things, as are necessary and reasonable; and

- (e) state the hours during which entry under the warrant is authorised to be made; and
 - (f) specify the day (not more than 6 months after the day of issue of the warrant) on which the warrant ceases to have effect.
- (5) A magistrate in a particular State or Territory may issue a warrant in respect of premises in another State or Territory.

214AG Warrants may be granted by telephone or other electronic means

- (1) A monitoring officer may apply to a magistrate for a warrant in relation to premises by telephone, telex, fax or other electronic means (of any kind):
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.
- (3) An application under this section must include all information required to be provided in an application for a warrant under section 214AF but the application may, if necessary, be made before the information is sworn.
- (4) The magistrate must complete and sign the same form of warrant used under section 214AF as soon as he or she:
 - (a) has considered the information included in the application under this section, and the further information (if any) required by him or her; and
 - (b) is satisfied that:
 - (i) a warrant in the terms of the application should be issued urgently; or
 - (ii) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (5) If the magistrate decides to issue the warrant, the magistrate is to tell the applicant, by telephone, telex, fax or other electronic

means, of the terms of the warrant and the day and time when it was signed.

- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day and time when the warrant was signed.
- (7) The applicant must give or send to the magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn. The applicant must do so not later than the day after the earlier of the following days:
 - (a) the day of expiry of the warrant;
 - (b) the day on which the warrant was first executed.
- (8) The magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.
- (9) If:
 - (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
 - (b) the form of warrant signed by the magistrate is not produced in evidence;the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

214AH Monitoring officer may ask questions

- (1) If a monitoring officer is in or on premises that he or she entered with the consent of the occupier of the premises, the officer may request the occupier to answer any questions put by the monitoring officer, but the occupier is not obliged to comply with the request.
- (2) If a monitoring officer is in or on premises that he or she has entered under a warrant issued under section 214AF or 214AG, the officer may require any person on the premises to answer any questions put by the monitoring officer if the occupier of the premises, or a representative previously nominated to Customs by the occupier, is unavailable to do so or absent from the premises.

Note: Failure to answer a question put under this subsection is an offence. See section 243SA.

214AI Monitoring officer may ask for assistance

- (1) If a monitoring officer is in or on premises that he or she entered with the consent of the occupier of the premises under section 214AE, the officer may request the occupier to provide reasonable assistance to the officer at any time while the officer is entitled to remain in or on the premises, but the occupier is not obliged to comply with the request.
- (2) If a monitoring officer is in or on premises that he or she entered under a warrant issued under section 214AF or 214AG, the officer may require the occupier to provide reasonable assistance to the officer at any time while the officer is entitled to remain on the premises.
- (3) The monitoring officer may request or require the assistance for the purpose of the exercise of monitoring powers by the officer in relation to the premises.
- (4) A person must not fail to comply with a requirement made of the person under subsection (2).

Penalty: 30 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

214AJ Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) damage is caused to equipment as a result of it being operated as mentioned in subsection 214AB(2); or
 - (b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;because:
 - (c) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (d) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay to the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as they agree on.

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Part 5 Powers to monitor and audit

- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings against the Commonwealth in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1), *damage to data* includes damage by erasure of data or addition of other data.

Part 6—Keeping commercial documents and records verifying communications to Customs

Customs Act 1901

14 Subsection 240(1) (penalty)

Omit “\$2,000”, substitute “30 penalty units”.

15 Subsection 240(1AA)

Omit “, 70 or 77D”, substitute “or 70”.

16 Subsection 240(1AA) (penalty)

Omit “20 penalty units”, substitute “30 penalty units”.

17 Subsection 240(1A)

Repeal the subsection, substitute:

- (1A) A person who is the owner of goods exported from Australia must keep all the relevant commercial documents relating to the goods that:

- (a) come into the person’s possession or control at any time; and
- (b) are necessary to enable a Collector to satisfy himself or herself as to the correctness of information communicated by, or on behalf of, the person to Customs (whether in documentary or other form);

for the period of 5 years after the time when the goods were exported from Australia.

Penalty: 30 penalty units.

18 Before subsection 240(2)

Insert:

- (1B) A person who, in Australia:
- (a) causes goods to be imported into, or exported from, Australia; or
 - (b) receives goods that have been imported into, or are to be exported from, Australia;

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Part 6 Keeping commercial documents and records verifying communications to
Customs

must keep all the relevant commercial documents that come into the person's possession or control at any time and relate to the goods concerned or to their carriage to or from Australia, being documents that are necessary to enable a Collector to satisfy himself or herself:

- (c) whether the person is complying with a Customs-related law; or
- (d) as to the correctness of information communicated by, or on behalf of, the person to Customs (whether in documentary or other form);

for the period of 5 years from the time when the goods were imported into, or exported from, Australia.

Penalty: 30 penalty units.

19 Subsections 240(2) and (3)

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

20 Subsections 240(4), (5) and (6)

Repeal the subsections, substitute:

- (4) A person who is required by this section to keep a commercial document relating to particular goods may keep the document at any place (which may be a place outside Australia) and, subject to subsection (5), may keep the document in any form or store it in any manner.
 - (5) A person referred to in subsection (4) must:
 - (a) keep the document in such a manner as will enable a Collector readily to ascertain whether the goods have been properly described for the purpose of importation or exportation, as the case requires, and, in the case of goods entered for home consumption, properly valued or rated for duty; and
 - (b) if the document is in a language other than the English language—keep the document in such a way that a translation of the document into the English language can readily be made; or
 - (c) if the document is a record of information kept by a mechanical, electronic or other device—keep the record in such a way that a document setting out in the English
-

language the information recorded or stored can be readily produced.

Penalty: 30 penalty units.

(6) An authorised officer may, by written notice given to a person who is required under this section to keep a commercial document, require the person to inform the officer within a reasonable period, and in a manner specified in the notice, of the whereabouts of the document.

(6A) If:

- (a) a notice is given to a person under subsection (6); and
- (b) the person fails to comply with the notice;

the person commits an offence punishable, on conviction, by a penalty not exceeding 30 penalty units.

(6B) A person who is required to keep a commercial document must not alter or deface the document.

Penalty: 30 penalty units.

(6C) A document is not taken to be altered or defaced for the purposes of subsection (6B) merely because a notation or marking is made on it in accordance with ordinary commercial practice.

21 After section 240

Insert:

240AA Authorised officer may require person to produce commercial documents

(1) An authorised officer may, by written notice given to a person who is required under section 240 to keep a commercial document, require the person to produce, either at the business premises in Australia of the person or at a place in Australia specified in the notice, and within a period specified in the notice, for inspection by an authorised officer:

- (a) if the document is in writing—the document; or
- (b) if the document is a record of information kept by a mechanical, electronic or other device—the information.

Schedule 1 Provisions for improving customs compliance

Part 6 Keeping commercial documents and records verifying communications to Customs

Note 1: A person who keeps a record of information by means of a mechanical, electronic or other device must comply with a requirement made under subsection (1) by producing the information in a document setting out the information in a form the authorised officer can understand. See section 25A of the *Acts Interpretation Act 1901*.

Note 2: Failure to produce a commercial document following a requirement made under subsection (1) is an offence. See section 243SB.

- (2) The period that may be specified in a notice given under subsection (1) must not be less than 14 days after the notice is given.

240AB Verifying communications to Customs

- (1) This section applies to a person who makes a communication (however described) to Customs under this Act.
- (2) The purpose of this section is to help officers of Customs to verify the content of communications made to Customs.
- (3) The person must keep, in accordance with this section, for the period of one year after the communication is made, a record that verifies the contents of the communication.

Penalty: 30 penalty units

- (4) A person who is required by this section to keep a record may keep the record at any place (which may be a place outside Australia) and, subject to subsection (5), may keep the record in any form or store it in any manner.
- (5) A person referred to in subsection (4) must:
- (a) if the record is in a language other than the English language—keep the record in such a way that a translation of the record into the English language can readily be made; or
 - (b) if the record is kept by a mechanical, electronic or other device—keep the record in such a way that a document setting out in the English language the information recorded or stored can be readily produced.
- (6) An authorised officer may, by written notice given to a person who is required under this section to keep a record, require the person to inform the officer within a reasonable period, and in a manner specified in the notice, of the whereabouts of the record.
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- (7) If:
- (a) a notice is given to a person under subsection (6); and
 - (b) the person fails to comply with the notice;
- the person commits an offence punishable, on conviction, by a penalty not exceeding 30 penalty units.

240AC Authorised officer may require person to produce record

- (1) An authorised officer may, by written notice given to a person who is required under section 240AB to keep a record, require the person to produce, either at the business premises in Australia of the person or at a place in Australia specified in the notice, and within a period specified in the notice, for inspection by an authorised officer:
- (a) if the record is in writing—the record; or
 - (b) if the record is kept by a mechanical, electronic or other device—the information contained in the record.

Note 1: A person who keeps a record of information by means of a mechanical, electronic or other device must comply with a requirement made under subsection (1) by producing the information in a document setting out the information in a form the authorised officer can understand. See section 25A of the *Acts Interpretation Act 1901*.

Note 2: Failure to produce a record following a requirement made under subsection (1) is an offence. See section 243SB.

- (2) The period that may be specified in a notice given under subsection (1) must not be less than 14 days after the notice is given.

22 Section 240B

Repeal the section.

Schedule 2—Penalties

Customs Act 1901

1A Paragraph 234(1)(g)

Repeal the paragraph.

1B Paragraph 234(2)(c)

Omit “\$5,000”, substitute “100 penalty units”.

1C Paragraph 234(2)(d)

Repeal the paragraph, substitute:

(d) in the case of an offence against paragraph (1)(h), by a penalty not exceeding 10 penalty units.

1 Subsection 234(2A)

Omit “subsection 119D(3)”, substitute “section 119D”.

2 Subsection 234(4) (second occurring)

Renumber as subsection 234(4A).

3 Paragraph 234(8)(a)

After “71A”, insert “or 71DB”.

4 Division 4 of Part XIII (heading)

Repeal the heading, substitute:

Division 4—Provisions relating to certain strict liability offences

5 Sections 243T, 243U and 243V

Repeal the sections, substitute:

243SA Failure to answer questions

A person must not fail to answer a question that an officer, pursuant to a power conferred on the officer by this Act, requires the person to answer.

Penalty: 30 penalty units.

243SB Failure to produce documents or records

A person must not fail to produce a document or record that an officer, pursuant to a power conferred on the officer by this Act other than a power conferred by section 71DA, 71DL, 114A or 118, requires the person to produce.

Penalty: 30 penalty units.

243SC Preservation of the privilege against self-incrimination

- (1) Subject to subsection (2), a person who would, apart from this subsection, be required to:
 - (a) answer a question under section 243SA; or
 - (b) produce a document or record under section 243SB; need not comply with the requirement if so complying would:
 - (c) tend to incriminate the person; or
 - (d) result in further attempts to obtain evidence that would tend to incriminate the person.
- (2) Subsection (1) does not apply, and the person must comply with the requirement, if the person has waived his or her rights under that subsection.

243T False or misleading statements resulting in loss of duty

- (1) If:
 - (a) a person:
 - (i) makes to an officer a statement (other than a statement in a cargo report or an outturn report), in respect of particular goods, that is false or misleading in a material particular; or
 - (ii) omits from a statement (other than a statement in a cargo report or an outturn report), in respect of

particular goods, made to an officer any matter or thing without which the statement is false or misleading in a material particular; and

- (b) any of the following applies:
 - (i) the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;
 - (ii) a refund of duty on the goods was paid that would not have been payable, or that exceeded the amount of the refund of duty that would have been payable, if the amount of the refund were determined on the basis that the statement was not false or misleading;
 - (iii) a drawback of duty on the goods was paid that would not have been payable, or that exceeded the amount of the drawback of duty that would have been payable, if the amount of the drawback were determined on the basis that the statement was not false or misleading;

the owner of the goods (not being a person who is to be treated as the owner of the goods because that person is an agent of the owner) commits an offence.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) The penalty for a conviction for an offence against subsection (1) is an amount not exceeding:
 - (a) if subparagraph (1)(b)(i) applies—the amount of the excess; or
 - (b) if subparagraph (1)(b)(ii) applies—the refund that would not have been payable, or the amount of the excess, as the case may be; or
 - (c) if subparagraph (1)(b)(iii) applies—the drawback that would not have been payable, or the amount of the excess, as the case may be.
- (4) Subsection (1) does not apply to a statement made by a person to an officer if:
 - (a) the person gives notice in writing to the officer, or to another officer doing duty in relation to the matter to which the statement relates, stating that the statement is false or

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- misleading in a material particular or is false or misleading because of the omission of a matter or thing; and
- (b) no notice under section 214AD was given to the person after the statement was made and before the notice under paragraph (a) of this subsection was given.
- (5) Subsection (1) does not apply to a statement made by a person to an officer if:
- (a) the statement specifies that the person is uncertain about information included in the statement, and considers that, as a result of including that information, the statement might be false or misleading in a material particular; and
- (b) the statement identifies the information whose inclusion might make the statement false or misleading in a material particular; and
- (c) the statement sets out the reasons why the person is uncertain about the identified information.
- (6) Subsection (1) does not apply to a statement made by a person to an officer if:
- (a) the statement specifies that the person is uncertain whether, as a result of omitting information from the statement, the statement might be false or misleading in a material particular; and
- (b) the statement identifies the omission of information that might make the statement false or misleading in a material particular; and
- (c) the statement sets out the reasons for the person's uncertainty about the effect of omitting the information.

243U False or misleading statements not resulting in loss of duty

- (1) A person commits an offence if:
- (a) the person:
- (i) makes to an officer a statement (other than a statement in a cargo report or an outturn report) that is false or misleading in a material particular; or
- (ii) omits from a statement (other than a statement in a cargo report or an outturn report) made to an officer any matter or thing without which the statement is false or misleading in a material particular; and

- (b) none of the following applies:
 - (i) the amount of duty properly payable on particular goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading;
 - (ii) a refund of duty on particular goods was paid that would not have been payable, or that exceeded the amount of the refund of duty that would have been payable, if the amount of the refund were determined on the basis that the statement was not false or misleading;
 - (iii) a drawback of duty on particular goods was paid that would not have been payable, or that exceeded the amount of the drawback of duty that would have been payable, if the amount of the drawback were determined on the basis that the statement was not false or misleading.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) The penalty for a conviction for an offence against subsection (1) is an amount not exceeding 50 penalty units for each statement that is found by the court to be false or misleading.
- (4) Subsection (1) does not apply to a statement made by a person to an officer if:
 - (a) the person gives notice in writing to the officer, or to another officer doing duty in relation to the matter to which the statement relates, stating that the statement is false or misleading in a material particular or is false or misleading because of the omission of a matter or thing; and
 - (b) no notice under section 214AD was given to the person after the statement was made and before the notice under paragraph (a) of this subsection was given.
- (5) In this section:
 - statement** does not include:
 - (a) a statement made under Part XVA or XVB; or
 - (b) a statement that a person who is or was a passenger on, or a member of the crew of, a ship or aircraft made in relation to his or her accompanied personal or household effects that were carried on the ship or aircraft.

243V False or misleading statements in cargo reports or outturn reports

- (1) A person commits an offence if the person:
 - (a) makes to an officer a statement, in a cargo report or an outturn report, that is false or misleading in a material particular; or
 - (b) omits from a statement, in a cargo report or an outturn report, made to an officer any matter or thing without which the statement is false or misleading in a material particular.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) The penalty for a conviction for an offence against subsection (1) is an amount not exceeding 50 penalty units.

243W Electronic communications to Customs to be treated as statements to CEO

For the purposes of this Division, any electronic communication to Customs is taken to be a statement made to the CEO.

5A Saving

Despite the repeal by item 5 of sections 243T, 243U and 243V of the *Customs Act 1901*, those sections continue to apply in respect of statements made before the repeal.

6 At the end of Part XIII

Add:

Division 5—Penalties in lieu of prosecution for certain offences**243X Application of Division**

- (1) This Division applies to an offence against, or an offence for a contravention of, subsection 33(2), (3) or (6), 64(13), 64AA(10), 64AAB(7), 64AAC(6), 64AB(10), 64ABAA(9), 71G(1), 74(6), 99(3), 102A(4), 113(1), 114B(7), 114E(1), 114F(2), 115(1), 116(2), 117AA(1), (2), (3) or (4), 117A(1), 118(1), 119(3), 243T(1), 243U(1) or 243V(1).

- (2) A reference in subsection (1) to a subsection of a section of this Act is a reference to:
- (a) the subsection as inserted or substituted by the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*; or
 - (b) if the subsection so inserted or substituted is amended or replaced by a later Act—the subsection as so amended or replaced.

243XA Guidelines for serving infringement notices

- (1) The CEO must develop written guidelines in respect of the administration of this Division to which he or she must have regard when exercising powers under this Division.
- (2) The guidelines are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

243Y When an infringement notice can be served

- (1) If the CEO has reasonable grounds to believe that a person has committed an offence, the CEO may cause an infringement notice to be served on the person in accordance with this Division.
- (2) Subject to subsection (3), an infringement notice does not have any effect unless it is served within one year after the day on which the offence is alleged to have been committed.
- (3) An infringement notice for an offence against subsection 243T(1) or 243U(1) that was detected as a result of the exercise of monitoring powers does not have any effect unless it is served within:
 - (a) 4 years after the day on which the false or misleading statement was made; or
 - (b) one year after the day on which the offence was detected; whichever period ends first.

243Z Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) state the name of the person on whom it is to be served; and
 - (b) state that it is being served on behalf of the CEO; and
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- (c) state:
- (i) the nature of the alleged offence; and
 - (ii) the time (if known) and date on which, and the place at which, the offence is alleged to have been committed; and
 - (iii) the maximum penalty that a court could impose for the alleged offence; and
- (d) if the alleged offence is an offence against section 243T and there is still any unpaid duty or any unrepaid refund or drawback of duty—state that the obligation to pay the duty or repay the refund or drawback continues despite the service of the infringement notice; and
- (e) specify a penalty that is payable under the notice in respect of the alleged offence; and
- (f) state that, if the person on whom the notice is served:
- (i) does not wish the matter to be dealt with by a court; and
 - (ii) in the case of an alleged offence against section 243T—has paid any unpaid duty or any unrepaid refund or drawback of duty within the period of 28 days after the date of service of the notice;
- the person may pay to the CEO, within the period of 28 days after the date of service of the notice, the amount of the penalty specified in the notice; and
- (g) state that the person may make written representations to the CEO seeking the withdrawal of the notice.

Note: The CEO has power to extend periods stated in notices given under paragraph (1)(f) (see section 243ZE).

- (2) If:
- (a) an infringement notice is served on a person in accordance with this Division in respect of an alleged offence for a contravention of subsection 243T(1) in respect of goods; and
 - (b) the person applies under subsection 273GA(2) for review of the decision as to the amount of duty payable on the goods;
- the period beginning on the making of the application and ending on the final determination of the amount of duty by a tribunal, or by a court on appeal from a tribunal, is not to be taken into account in working out the period of 28 days referred to in paragraph (1)(f).

- (3) An infringement notice may contain any other matters that the CEO considers necessary.
- (4) The penalty to be specified in an infringement notice under paragraph (1)(e) is:
 - (a) if the infringement notice is given in respect of an alleged offence under subsection 243U(1)—the lesser of the following amounts:
 - (i) 10 penalty units;
 - (ii) $\frac{1}{2}$ penalty unit for each material particular that is alleged to be false or misleading or each matter or thing that is alleged to have been omitted, as the case may be; or
 - (b) otherwise—one-fifth of the maximum amount of the penalty that a court could impose for the offence.

243ZA Withdrawal of infringement notice

- (1) A person on whom an infringement notice has been served may make written representations to the CEO seeking the withdrawal of the notice.
- (2) The CEO may withdraw an infringement notice served on a person (whether or not the person has made representations seeking the withdrawal) by causing written notice of the withdrawal to be served on the person within the period within which the penalty specified in the infringement notice is required to be paid.
- (3) The matters to which the CEO may have regard in deciding whether or not to withdraw an infringement notice include, but are not limited to, the following:
 - (a) whether the person has previously been convicted of an offence for a contravention of this Act;
 - (b) the circumstances in which the offence specified in the notice is alleged to have been committed;
 - (c) whether the person has previously been served with an infringement notice in respect of which the person paid the penalty specified in the notice;
 - (d) any written representations made by the person.
- (4) If:

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- (a) the person pays the penalty specified in the infringement notice within the period within which the penalty is required to be paid; and
 - (b) the notice is withdrawn after the person pays the penalty; the CEO must refund to the person, out of money appropriated by the Parliament, an amount equal to the amount paid.

243ZB What happens if unpaid duty or unrepaid refund or drawback and penalty are paid

- (1) This section applies if:
 - (a) an infringement notice is served on a person; and
 - (b) the person pays the penalty specified in the notice before the end of the period referred to in paragraph 243Z(1)(f); and
 - (c) where the alleged offence is an offence against section 243T—the person pays any unpaid duty, or any unrepaid refund or drawback, before the end of that period; and
 - (d) the infringement notice is not withdrawn.
- (2) Any liability of the person for the offence specified in the notice is taken to be discharged.
- (3) Further proceedings cannot be taken against the person for the offence.
- (4) The person is not regarded as having been convicted of the offence.

243ZC More than one infringement notice may not be served for the same offence

This Division does not permit the service of more than one infringement notice on a person for the same offence.

243ZD Infringement notice not required to be served

This Division does not:

- (a) require an infringement notice to be served on a person in relation to an offence; or
- (b) affect the liability of a person to be prosecuted for an offence if:

- (i) an infringement notice is not served on the person in relation to the offence; or
- (ii) an infringement notice served on the person in relation to the offence has been withdrawn; or
- (c) affect the liability of a person to be prosecuted for an offence if the person does not comply with an infringement notice served on the person in relation to the offence; or
- (d) limit the amount of the penalty that may be imposed by a court on a person convicted of an offence.

243ZE CEO may extend period for payment of penalty

- (1) The CEO may, by writing, extend, in relation to a particular person, the period referred to in paragraph 243Z(1)(f).
- (2) The power of the CEO under subsection (1) to extend the period may be exercised before or after the end of the period.
- (3) If the CEO extends a period under subsection (1), a reference in this Division, or in a notice or other instrument under this Division, to the period is taken, in relation to the person, to be a reference to the period as so extended.

7 Paragraph 273GA(1)(ka)

Repeal the paragraph.

Schedule 3—Communicating import and export information to Customs

Part 1—Maintenance of electronic communications systems by Customs

Customs Act 1901

1 After Part VI

Insert:

Part VIA—Maintenance of electronic communications systems by Customs

126D CEO to maintain information systems

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

126DA Communications standards and operation

- (1) After consulting with persons likely to be affected, the CEO must determine, and cause to be published in the *Gazette*:
 - (a) the information technology requirements that have to be met by persons who wish to communicate with Customs electronically; and
 - (b) the action that a person has to take in order to verify the receipt of information communicated to Customs electronically; and
 - (c) the information technology requirements that have to be met to satisfy a requirement that a person's signature be given to Customs in connection with information when the information is communicated electronically; and
 - (d) the information technology requirements that have to be met to satisfy a requirement that a document be produced to Customs when the document is produced electronically.

- (2) The CEO may:
- (a) determine alternative information technology requirements that may be used; and
 - (b) without limiting paragraph (a), determine different information technology requirements that may be used in different circumstances or by different classes of persons.

126E Communication to Customs when information system is temporarily inoperative

- (1) If:
- (a) an information system becomes temporarily inoperative; or
 - (b) an information system that has become temporarily inoperative again becomes operative;
- the CEO must cause notice of the occurrence to be given:
- (c) on the website maintained by Customs on the Internet; and
 - (d) where practicable, by e-mail to persons who communicate with Customs electronically.
- (2) If an information system is temporarily inoperative, information that a person could otherwise have communicated electronically to Customs by means of the system may be communicated to Customs in either of the following ways:
- (a) if another information system by means of which the person can communicate information to Customs is operative—electronically by means of that other system;
 - (b) by document given or sent to an officer doing duty in relation to the matter to which the information relates.
- (3) If:
- (a) because an information system is temporarily inoperative, a person communicates information to an officer by document in accordance with paragraph (2)(b); and
 - (b) the CEO causes notice to be given under paragraph (1)(b) stating that the information system has again become operative;
- the person must communicate the information electronically to Customs within 24 hours after the notice was given.

Penalty: 50 penalty units.

126F Payment to Customs when information system is temporarily inoperative

- (1) This section applies when a person who is liable to make a payment to Customs and would ordinarily make the payment electronically is unable to do so because an information system is temporarily inoperative.
- (2) The person may give an undertaking to Customs to make the payment as soon as practicable after, and in any case not later than 24 hours after, the CEO causes notice to be given under paragraph 126E(1)(b) stating that the information system has again become operative.
- (3) If the person is notified by Customs that the undertaking is accepted:
 - (a) this Act has the effect that it would have if the payment had been made; and
 - (b) the person must comply with the undertaking.

Penalty: 50 penalty units.

126G Meaning of *temporarily inoperative*

An information system that has become inoperative is not taken to be *temporarily inoperative* for the purposes of this Part unless the CEO is satisfied that the period for which it has been, or is likely to be, inoperative is significant.

Part 2—Importation of goods

Customs Act 1901

2 Subsection 4(1) (paragraph (b) of the definition of *authority to deal*)

Repeal the paragraph, substitute:

- (b) in relation to goods the subject of an import declaration—an authority of the kind referred to in subsection 71C(4); or
- (c) in relation to goods the subject of an RCR—an authority of the kind referred to in subsection 71DE(3); or
- (d) in relation to goods the subject of a warehouse declaration—an authority of the kind referred to in subsection 71DJ(4).

3 Subsection 4(1)

Insert:

cargo release advice means a cargo release advice given under subsection 71DE(1).

4 Subsection 4(1) (definition of *cargo report processing charge*)

Repeal the definition.

5 Subsection 4(1)

Insert:

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

6 Subsection 4(1) (definition of *entry processing charge*)

Repeal the definition.

7 Subsection 4(1)

Insert:

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

8 Subsection 4(1)

Insert:

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

9 Subsection 4(1)

Insert:

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

10 Subsection 4(1) (definition of *import entry*)

Repeal the definition, substitute:

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

11 Subsection 4(1) (definition of *import entry advice*)

Repeal the definition, substitute:

import entry advice means an import declaration advice, a cargo release advice or a warehouse declaration advice.

12 Subsection 4(1)

Insert:

import information contract means a contract made under section 71DD.

13 Subsection 4(1)

Insert:

periodic declaration has the meaning given by section 71DF.

14 Subsection 4(1)

Insert:

periodic declaration processing charge means a periodic declaration processing charge payable as set out in section 71DG.

15 Subsection 4(1)

Insert:

RCR means a request for cargo release communicated to Customs under section 71DB.

16 Subsection 4(1)

Insert:

RCR processing charge means an RCR processing charge payable as set out in section 71DC.

17 Subsection 4(1) (definition of *screening charge*)

Repeal the definition, substitute:

screening charge means the charge payable as set out in section 64ABC.

18 Subsection 4(1)

Insert:

self-assessed clearance declaration means a declaration communicated to Customs under subsection 71(2).

19 Subsection 4(1)

Insert:

self-assessed clearance declaration charge means a self-assessed clearance declaration charge payable as set out in section 71AAA.

20 Subsection 4(1) (definition of *visual examination application*)

Omit “71C”, substitute “71D or 71DK”.

21 Subsection 4(1)

Insert:

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

22 Subsection 4(1)

Insert:

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

23 Subsection 4(1)

Insert:

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

24 Subsection 4(1)

Insert:

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

25 Subsection 4(1) (definition of *warehoused goods entry fee*)

Repeal the definition.

26 Subparagraphs 30(1)(a)(ii) to (iv)

Repeal the subparagraphs, substitute:

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

- (iv) if the goods are examinable food that has been entered for warehousing—until there is delivered to the person who has possession of the food an imported food inspection advice requiring its treatment, destruction or exportation or, if no such advice is delivered, until the goods are entered for home consumption or the food is exported to a place outside Australia, whichever happens first;

27 Paragraphs 30(1)(ab) and (ad)

Omit “(2)”, substitute “(4) or (5)”.

28 After paragraph 30(1)(ad)

Insert:

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

29 Paragraph 35A(1A)(a)

Omit “given under section 71B”, substitute “to deal”.

30 Subsection 42(1)

Omit “under section 71B”.

31 After the heading to Division 4 of Part IV

Insert:

Subdivision A—Preliminary

32 At the end of subsection 68(1)

Add:

- ; and (j) goods stated in a cargo report to be goods whose destination is a place outside Australia.

33 Paragraphs 68(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) for warehousing.

34 After subsection 68(3)

Insert:

- (3A) An entry of goods for home consumption is made by communicating to Customs:
- (a) an import declaration in respect of the goods; or
 - (b) an RCR in respect of the goods.
- (3B) An entry of goods for warehousing is made by communicating to Customs a warehouse declaration in respect of the goods.

35 After section 68

Insert:

68A Goods imported for transshipment

If a cargo report in relation to goods states that the destination of the goods is a place outside Australia, an officer may direct a person who has possession of the goods:

- (a) not to move the goods; or
- (b) to move them to a place specified in the direction.

36 Subsection 70(9)

Repeal the subsection, substitute:

- (9) In this section, a reference to the hours of business for dealing with import entries is a reference to a time when, under regulations made for the purposes of section 28, the applicant would be able to give a documentary import declaration to Customs.

37 Section 71

Repeal the section, substitute:

71 Report and clearance of goods not requiring import entry

- (1) The owner of goods of a kind referred to in paragraph 68(1)(d) must, in any circumstances specified in the regulations, provide such information:
- (a) at such time; and
 - (b) in such manner and form;
- as the regulations specify.

- (2) Despite section 181, the owner of goods of a kind referred to in paragraph 68(1)(e), (f) or (i), or a person acting on behalf of the owner, must communicate electronically to Customs a declaration (a *self-assessed clearance declaration*):
- (a) stating:
 - (i) whether the value of the goods is less than \$250, or such other amount as is prescribed; and
 - (ii) whether the goods are subject to quarantine; and
 - (b) containing such other particulars (if any) of the goods as are set out in an approved statement.
- (3) The regulations may exempt from subsection (2):
- (a) a person who is, or is included in a class of persons who are, specified in the regulations; or
 - (b) goods that are, or are included in a class of goods that are, specified in the regulations.
- (4) Subject to subsection (7), if goods of a kind referred to in paragraph 68(1)(d) are imported into Australia, Customs must, having regard to any information given to Customs in accordance with the regulations and any further information supplied under section 196C:
- (a) authorise the delivery of the goods into home consumption; or
 - (b) refuse to authorise the delivery of the goods into home consumption and give reasons for its refusal.
- (5) If goods of a kind referred to in paragraph 68(1)(e), (f) or (i) are imported into Australia, Customs must, having regard to any information contained in a self-assessed clearance declaration, any further information supplied under section 196C or any other information given to or obtained by Customs:
- (a) authorise the delivery of the goods into home consumption; or
 - (b) refuse to authorise the delivery of the goods into home consumption and give reasons for its refusal.
- (6) A decision of Customs under subsection (4) or (5) may be communicated by notice in writing, electronically or in any other way permitted by the regulations.

- (7) Customs must not authorise the delivery of goods referred to in subsection (4) or (5) unless the duty (if any) and any other charge (other than self-assessed clearance charge payable under an arrangement made under subsection 71AAB(2)) or tax (if any) payable on the importation of goods has been paid.
- (8) If, after Customs has authorised delivery of goods into home consumption under paragraph (4)(a) or (5)(a) and before the goods are so dealt with, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer may suspend the authority for a specified period by:
- (a) signing a notice:
 - (i) stating that the authority is so suspended; and
 - (ii) setting out the reasons for the suspension;and serving a copy of the notice on the owner of the goods or, if the owner does not have possession of the goods, on the person who has possession of the goods; or
 - (b) by sending electronically to the person who made the self-assessed clearance declaration a message stating that the authority is so suspended and setting out the reasons for the suspension.
- (9) If, during the suspension under subsection (8) of an authority, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension by:
- (a) signing a notice stating that the suspension is revoked and serving a copy of the notice on the owner of the goods or, if the owner does not have possession of the goods, on the person who has possession of the goods; or
 - (b) by sending electronically to the person who made the self-assessed clearance declaration a message stating that the suspension is revoked.
- (10) A suspension of an authority, or the revocation of a suspension of an authority, has effect from the time when the relevant notice was given or the relevant message was sent, as the case may be.

71AAA Liability for self-assessed clearance declaration charge

- (1) Subject to this section, when a self-assessed clearance declaration is communicated to Customs in accordance with subsection 71(2), the person who sent the communication becomes liable to pay self-assessed clearance declaration charge in respect of the declaration.
- (2) If a person pays self-assessed clearance declaration charge in respect of a self-assessed clearance declaration relating to goods, no other person is liable to pay charge in respect of the declaration.
- (3) Self-assessed clearance declaration charge is not payable in respect of a declaration relating to goods if:
 - (a) the owner of the goods, or a person acting on behalf of the owner, communicated an abbreviated cargo report (as defined by section 63A) in respect of the goods; or
 - (b) the owner of the goods is a person, or is a person included in a class of persons, declared by the regulations to be exempt from payment of self-assessed clearance declaration charge.

71AAB Payment of self-assessed clearance declaration charge

- (1) If:
 - (a) the CEO has not made an arrangement with a person under subsection (2); or
 - (b) an arrangement made under subsection (2) with a person is terminated in the circumstances set out in subsection (4);the person must, within 21 days after the person is notified by Customs of the total amount of all the self-assessed clearance declaration charges for which the person becomes liable during each month, pay that amount to the Commonwealth.
- (2) The CEO may make an arrangement with a person under which the person agrees to pay self-assessed clearance declaration charge to the Commonwealth in the manner provided in the arrangement.
- (3) An amount payable by a person:
 - (a) in accordance with subsection (1); or
 - (b) under an arrangement made under subsection (2);

may be recovered by the Commonwealth by action against that person in a court of competent jurisdiction as a debt due to the Commonwealth.

- (4) If:
- (a) a person has entered into an arrangement under subsection (2); and
 - (b) the person refuses or fails to pay the self-assessed clearance declaration charge in accordance with the arrangement;
- the arrangement is terminated by this subsection.

38 Sections 71A to 71D

Repeal the sections, substitute:

Subdivision B—Import declarations

71A Making an import declaration

- (1) An import declaration is a communication to Customs in accordance with this section of information about:
 - (a) goods to which section 68 applies; or
 - (b) warehoused goods;that are intended to be entered for home consumption.
- (2) An import declaration can be communicated by document or electronically.
- (3) A documentary import declaration must:
 - (a) be made by the owner of the goods concerned; and
 - (b) be communicated to Customs:
 - (i) by giving or sending it to an officer doing duty in relation to import declarations; or
 - (ii) by leaving it at a place that has been allocated for lodgment of import declarations in a Customs Office; at the place at which the goods are to be delivered for home consumption.
- (4) An electronic import declaration can be communicated only by the owner of the goods concerned.

- (5) If the information communicated to Customs in an import declaration relating to goods adequately identifies any permission (however it is described) that has been given for the importation of those goods, the identification of the permission in that information is taken, for the purposes of any law of the Commonwealth (including this Act), to be the production of the permission to an officer.
- (6) However, subsection (5) does not affect any power of an officer, under this Act, to require the production of a permission referred to in that subsection.
- (7) If:
- (a) an import declaration is, or is taken under section 71L to have been, communicated to Customs; and
 - (b) before the time when the declaration is, or is so taken to have been, communicated to Customs, the goods to which the declaration relates have been imported or have been brought to the first port or airport in Australia at which any goods are to be discharged;
- the goods are taken to have been entered for home consumption.
- (8) If:
- (a) an import declaration is, or is taken under section 71L to have been, communicated to Customs; and
 - (b) at the time when the declaration is, or is so taken to have been, communicated to Customs, the goods to which the declaration relates have not been brought to the first port or airport in Australia at which any goods are to be discharged;
- the goods are taken to be entered for home consumption only when they are brought to that port or airport.

71B Liability for import declaration processing charge

- (1) When an import declaration (including an altered import declaration) in respect of goods to which section 68 applies (other than warehoused goods) is, or is taken to have been, communicated to Customs under section 71A, the owner of the goods becomes liable to pay import declaration processing charge in respect of the declaration.

- (2) If a person who is an owner of goods pays import declaration processing charge in respect of an import declaration relating to particular goods, any other person who is an owner of those goods ceases to be liable to pay charge in respect of that declaration.
- (3) If an import declaration is withdrawn under subsection 71F(1), or is taken, under subsection 71F(2) or (7), to have been withdrawn, before the issue of an authority to deal in respect of goods covered by the declaration, then, despite subsection (1), the owner of the goods is not liable to pay import declaration processing charge in respect of the declaration.

71BA Warehoused goods declaration fee

- (1) An owner of warehoused goods who makes an import declaration in respect of the goods is liable to pay a fee (the *warehoused goods declaration fee*) for the processing by Customs of the declaration.
- (2) The amount of the warehoused goods declaration fee is:
 - (a) if the import declaration is made electronically—\$23.20 or, if another amount (not exceeding \$34.80) is prescribed by the regulations, the amount so prescribed; or
 - (b) if the import declaration is made by document—\$60.00 or, if another amount (not exceeding \$90.00) is prescribed by the regulations, the amount so prescribed.
- (3) If a person who is an owner of warehoused goods pays the warehoused goods declaration fee for the processing of an import declaration in respect of the goods, any other person who is an owner of the goods ceases to be liable to pay the fee for the processing of the import declaration.

- (4) In this section:

warehoused goods includes goods that, under section 100, may be dealt with as warehoused goods.

71C Authority to deal with goods in respect of which an import declaration has been made

- (1) If an import declaration in respect of goods has been communicated to Customs, Customs must give an import

declaration advice, by document or electronically, in accordance with this section.

- (2) An import declaration advice relating to goods entered by documentary import declaration:
 - (a) must be given to the owner of the goods or be made available for collection by leaving it at a place in a Customs office that has been allocated for collection of such advices; and
 - (b) must contain:
 - (i) a statement to the effect that the goods are cleared for home consumption; or
 - (ii) a statement that the goods are directed to be held in their current location or are directed for further examination.
 - (3) An import declaration advice relating to goods entered by an electronic import declaration:
 - (a) must refer to the number given by Customs to identify the particular import declaration; and
 - (b) must be communicated electronically to the person who made the declaration; and
 - (c) must contain:
 - (i) a statement to the effect that the goods are cleared for home consumption; or
 - (ii) a statement that the goods are directed to be held in their current location or are directed for further examination.
 - (4) Subject to subsection (5), if:
 - (a) an import declaration advice is given or communicated under this section; and
 - (b) a payment is made of any duty, GST, luxury car tax, wine tax, import declaration processing charge or other charge or fee payable at the time of entry of, or in respect of, the goods covered by the import declaration advice;Customs must:
 - (c) if the advice was given under subsection (2)—give the person to whom the advice was given an authority, in writing, to take the goods into home consumption; and
 - (d) if the advice was communicated electronically under subsection (3)—communicate electronically, to the person to whom the advice was communicated, an authority to take the goods into home consumption.
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(5) Customs is not required to give or communicate an authority under subsection (4) while the goods concerned are subject to a direction referred to in subparagraph (2)(b)(ii) or (3)(c)(ii).

(6) Customs must give an authority under subsection (4) in relation to goods covered by item 2 of the table in subsection 132AA(1) if subsection (4) would require Customs to do so apart from paragraph (4)(b).

Note: Subsection 132AA(1) provides that import duty on goods covered by item 2 of the table in that subsection must be paid by a time worked out under the regulations.

(7) Customs must give an authority under subsection (4) in relation to goods if:

(a) that subsection would require Customs to do so apart from the fact that any or all of the following were not paid when duty on the goods was paid (or would have been payable if the goods had been subject to duty):

(i) the GST payable on the taxable importation (as defined in the GST Act), if any, that is associated with the import of the goods;

(ii) if a taxable importation of a luxury car (as defined in the Luxury Car Tax Act) is associated with the import of the goods—the luxury car tax payable on that taxable importation;

(iii) if a taxable dealing (as defined in the Wine Tax Act) is associated with the import of the goods—the wine tax payable on that dealing; and

(b) because of the following provisions, the unpaid GST, luxury car tax or wine tax (as appropriate) was not payable until after duty on the goods was payable (or would have been payable if the goods had been subject to duty):

(i) paragraph 33-15(b) of the GST Act;

(ii) paragraph 13-20(b) of the Luxury Car Tax Act;

(iii) paragraph 23-5(b) of the Wine Tax Act.

(8) If goods are authorised to be taken into home consumption, the authority to deal, whether given by a document or electronically, must set out:

(a) any condition of the kind referred to in subsection (9) to which the authority is subject; and

- (b) the date on which the authority is given; and
 - (c) such other information as is prescribed.
 - (9) An authority to deal with goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however it is described) be obtained under another law of the Commonwealth.
 - (10) If an authority to deal with goods is expressed to be subject to the condition that a specified permission be obtained, the authority is taken not to have been given until the permission has been obtained.
 - (11) An officer may, at any time before goods authorised to be taken into home consumption are so dealt with, cancel the authority:
 - (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the authority is cancelled and setting out the reasons for the cancellation; and
 - (ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or
 - (b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is cancelled and setting out the reasons for the cancellation.
 - (12) If, at any time before goods authorised to be taken into home consumption are so dealt with, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of any Customs-related law, the officer may suspend the authority for a specified period:
 - (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the authority is so suspended and setting out the reasons for the suspension; and
 - (ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or
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- (b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is so suspended and setting out the reasons for the suspension.
- (13) If, during the suspension under subsection (12) of an authority, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension:
 - (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the suspension is revoked; and
 - (ii) serving a copy of the notice on the person to whom the notice of the suspension was given; or
 - (b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person to whom the message notifying the suspension was sent, a message stating that the suspension is revoked.
- (14) A cancellation or suspension of an authority, or a revocation of a suspension of an authority, has effect from the time when the relevant notice is served or the relevant message is sent, as the case may be.

71D Visual examination in presence of officer

- (1) If a person who is permitted or required to make an import declaration in respect of goods to which section 68 applies does not have the information to complete the declaration, the person may apply to Customs, by document or electronically, for permission to examine the goods in the presence of an officer.
- (2) A documentary application must be communicated to Customs by giving it to an officer doing duty in relation to import declarations.
- (3) When an application is given to an officer under subsection (2) or is sent electronically, an officer must, by writing or by message sent electronically, give the applicant permission to examine the goods on a day and at a place specified in the notice.

- (4) A person who has received a permission may examine the goods in accordance with the permission in the presence of an officer.

71DA An officer may seek additional information

- (1) Without limiting the information that may be required to be included in an import declaration, if an import declaration has been made in respect of goods, authority to deal with the goods may be refused until an officer doing duty in relation to import declarations:
- (a) has verified particulars of the goods shown in the import declaration; or
 - (b) is satisfied of any other matter that may be relevant to the granting of an authority to deal.
- (2) If an officer doing duty in relation to import declarations believes, on reasonable grounds, that the owner of goods to which an import declaration relates has custody or control of commercial documents, or has, or can obtain, information, relating to the goods that will assist the officer to determine whether this Act has been or is being complied with in respect of the goods, the officer may require the owner:
- (a) to deliver to the officer the commercial documents in respect of the goods that are in the owner's custody or control (including any such documents that had previously been delivered to an officer and had been returned to the owner); or
 - (b) to deliver to the officer such information, in writing, relating to the goods (being information of a kind specified in the notice) as is within the knowledge of the owner or as the owner is reasonably able to obtain.
- (3) A documentary requirement for the delivery of documents or information in respect of an import declaration must:
- (a) be communicated to the person by whom, or on whose behalf, the declaration was communicated; and
 - (b) be in an approved form and contain such particulars as the form requires.
- (4) An electronic requirement for the delivery of documents or information in respect of an import declaration must:

- (a) be communicated electronically to the person who made the declaration; and
 - (b) contain such particulars as are set out in an approved statement.
- (5) An officer doing duty in relation to import declarations may ask:
- (a) the owner of goods in respect of which an import declaration has been made; and
 - (b) if another person made the declaration on behalf of the owner—that other person;
- any questions relating to the goods.
- (6) If an officer doing duty in relation to import declarations believes, on reasonable grounds, that the owner of goods to which an import declaration relates has custody or control of documents, or has, or can obtain, information, relating to the goods that will assist the officer to verify the particulars shown in the import declaration, the officer may require the owner to produce the documents or supply the information to the officer.
- (7) If:
- (a) the owner of goods has been required to deliver documents or information in relation to the goods under subsection (2); or
 - (b) the owner of, or the person making an import declaration in respect of, goods has been asked a question in respect of the goods under subsection (5); or
 - (c) the owner of goods has been required to verify a matter in respect of the goods under subsection (6);
- authority to deal with the relevant goods in accordance with the declaration must not be granted unless:
- (d) the requirement referred to in paragraph (a) has been complied with or withdrawn; or
 - (e) the question referred to in paragraph (b) has been answered or withdrawn; or
 - (f) the requirement referred to in paragraph (c) has been complied with or withdrawn, or a security has been taken for compliance with the requirement;
- as the case requires.
- (8) Subject to section 215, if a person delivers a commercial document to an officer doing duty in relation to import declarations under this
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section, the officer must deal with the document and then return it to the person.

Subdivision C—Requests for cargo release

71DB Making a request for cargo release

- (1) A request for cargo release (an **RCR**) in respect of goods is a communication to Customs in accordance with this section of a request for the release of goods to which section 68 applies that are intended to be entered for home consumption.
- (2) An RCR must be communicated electronically.
- (3) An RCR can be made only:
 - (a) by a person who has entered into an import information contract or by a customs broker nominated in the contract to make communications to Customs on behalf of the person; and
 - (b) while the contract is in force.
- (4) An RCR must contain the information contained in an approved statement.
- (5) If the information communicated to Customs in an RCR in respect of goods adequately identifies any permission (however it is described) that has been given for the importation of those goods, the identification of the permission in that information is taken, for the purposes of any law of the Commonwealth (including this Act), to be the production of the permission to an officer.
- (6) However, subsection (5) does not affect any power of an officer, under this Act, to require the production of a permission referred to in that subsection.
- (7) If:
 - (a) an RCR in respect of goods is, or is taken under section 71L to have been, communicated to Customs; and
 - (b) before the time when the RCR is, or is so taken to have been, communicated to Customs, the goods to which the RCR relates have been imported or have been brought to the first port or airport in Australia at which any goods are to be discharged;

the goods are taken to have been entered for home consumption.

- (8) If:
- (a) an RCR in respect of goods is, or is taken under section 71L to have been, communicated to Customs; and
 - (b) at the time when the RCR is, or is so taken to have been, communicated to Customs, the goods have not been brought to the first port or airport in Australia at which any goods are to be discharged;
- the goods are taken to be entered for home consumption only when they are brought to that port or airport.

71DC Liability for an RCR processing charge

- (1) When a person who has entered into an import information contract sends an RCR to Customs, the person becomes liable to pay an RCR processing charge in respect of the RCR.
- (2) The charge is payable when the person is taken to have sent to Customs a periodic declaration in respect of goods to which the RCR relates.
- (3) If an RCR is withdrawn under subsection 71F(1), or is taken to be withdrawn under subsection 71F(2) or (7), before the issue of an authority to deal in respect of goods covered by the RCR, then, despite subsection (1), the person is not liable to pay an RCR processing charge in respect of the RCR.

71DD Making of import information contracts

- (1) Subject to subsection (2), the CEO may enter into a contract (an *import information contract*) with a person for the purpose of enabling the person to make RCRs in respect of goods.
- (2) The CEO must not enter into an import information contract with a person (other than a company specified in subsection (3)) unless the CEO is satisfied, as a result of an audit carried out by a person chosen in accordance with the business rules, that the person can provide Customs with accurate information that is necessary to enable Customs to perform duties in relation to goods imported into Australia.

- (3) The following companies are specified for the purposes of subsection (2):
- (a) Colorado Group Limited (ABN 8500 432 7566);
 - (b) Du Pont (Australia) Pty Limited (ABN 5900 071 6469);
 - (c) Ericsson Australia Pty Limited (ABN 5600 407 185);
 - (d) Grocery Holdings Pty Limited (ABN 27007 427 581);
 - (e) K mart Australia Limited (ABN 73004 700 485);
 - (f) Kodak (Australasia) Pty Limited (ABN 4900 405 7621);
 - (g) Liquorland (Australia) Pty Limited (ABN 82007 512 414);
 - (h) My Car Automotive Pty Limited (ABN 94061 462 593);
 - (i) Myer Stores Limited (ABN 83004 143 239);
 - (j) Nortel Networks Australia Pty Limited (ABN 400 031 64145);
 - (k) NS Komatsu Pty Limited (ABN 630 535 14739);
 - (l) Officeworks Superstores Pty Limited (ABN 36004 763 526);
 - (m) Panasonic Australia Pty Limited (ABN 8300 159 2187);
 - (n) Target Australia Pty Limited (ABN 75004 250 944);
 - (o) Tyremaster (Wholesale) Pty Limited (ABN 18000 781 037).
- (4) The provisions in an import information contract are to include provisions relating to:
- (a) the goods covered by the contract; and
 - (b) how the person's compliance with the business rules is to be reported, monitored and audited; and
 - (c) the power of the CEO to terminate the contract if the person fails to comply with any of the business rules or with any of the requirements of this Act.
- (5) The existence of an import information contract does not affect the exercise by the CEO of any powers conferred on him or her by or under this Act.

71DE Authority to deal with goods in respect of which an RCR has been made

- (1) If an RCR in respect of goods has been communicated to Customs, Customs must give a cargo release advice electronically in accordance with this section.
 - (2) A cargo release advice:
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- (a) must refer to the number given by Customs to identify the particular RCR; and
 - (b) must be communicated electronically to the person who made the RCR; and
 - (c) must contain:
 - (i) a statement to the effect that the goods are cleared for home consumption; or
 - (ii) a statement that the goods are directed to be held in their current location or are directed for further examination.
- (3) Subject to subsection (4), if a cargo release advice is communicated under this section, Customs must communicate electronically, to the person to whom the advice was communicated, an authority to take the goods into home consumption.
- (4) Customs is not required to communicate an authority under subsection (3) while the goods concerned are subject to a direction referred to in subparagraph (2)(c)(ii).
- (5) If goods are authorised to be taken into home consumption, the authority to deal must set out:
- (a) any condition of the kind referred to in subsection (6) to which the authority is subject; and
 - (b) the date on which the authority is given; and
 - (c) such other information as is prescribed.
- (6) An authority to deal with goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however it is described) be obtained under another law of the Commonwealth.
- (7) If an authority to deal with goods is expressed to be subject to the condition that a specified permission be obtained, the authority is taken not to have been given until the permission has been obtained.
- (8) An officer may, at any time before goods authorised to be taken into home consumption are so dealt with, cancel the authority by sending electronically, to the person to whom the cargo release advice was sent, a message stating that the authority is cancelled and setting out the reasons for the cancellation.
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- (9) If, at any time before goods authorised to be taken into home consumption are so dealt with, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer may suspend the authority for a specified period by sending electronically, to the person to whom the cargo release advice was sent, a message stating that the authority is so suspended and setting out the reasons for the suspension.
- (10) If, during the suspension under subsection (9) of an authority, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension by sending electronically, to the person to whom the message notifying the suspension was sent, a message stating that the suspension is revoked.
- (11) A cancellation or suspension of an authority, or a revocation of a suspension of an authority, has effect from the time when the relevant notice is served or the relevant message is sent, as the case may be.

71DF Periodic declarations by persons who are parties to import information contracts

If a person who is a party to an import information contract makes, during a particular month, one or more RCRs in respect of goods, the person:

- (a) may, from time to time during the month, send electronically to Customs declarations (*periodic declarations*) containing such information in relation to the goods as is set out in an approved statement; but
- (b) must send electronically to Customs at least one periodic declaration not later than the first day of the following month or such other day of that month as is prescribed.

71DG Liability for periodic declaration processing charge

When a person sends to Customs a periodic declaration under section 71DF, the person becomes liable to pay periodic declaration processing charge in respect of the declaration.

Subdivision D—Warehouse declarations

71DH Making a warehouse declaration

- (1) A warehouse declaration is a communication to Customs in accordance with this section of information about goods to which section 68 applies that are intended to be entered for warehousing.
- (2) A warehouse declaration may be communicated by document or electronically.
- (3) A documentary warehouse declaration must:
 - (a) be made by the owner of the goods concerned; and
 - (b) be communicated to Customs:
 - (i) by giving or sending it to an officer doing duty in relation to warehouse declarations; or
 - (ii) by leaving it at a place that has been allocated for lodgment of warehouse declarations in a Customs Office;
at the place at which the goods are to be delivered for warehousing.
- (4) A warehouse declaration in respect of particular goods can be communicated electronically only by the owner of the goods.
- (5) If the information communicated to Customs in a warehouse declaration relating to goods adequately identifies any permission (however it is described) that has been given for the importation of those goods, the identification of the permission in that information is taken, for the purposes of any law of the Commonwealth (including this Act), to be the production of the permission to an officer.
- (6) However, subsection (5) does not affect any power of an officer, under this Act, to require the production of a permission referred to in that subsection.
- (7) If:
 - (a) a warehouse declaration is, or is taken under section 71L to have been, communicated to Customs; and
 - (b) before the time when the declaration is, or is so taken to have been, communicated to Customs, the goods to which the

declaration relates have been imported or have been brought to the first port or airport in Australia at which any goods are to be discharged;

the goods are taken to have been entered for warehousing.

(8) If:

- (a) a warehouse declaration is, or is taken under section 71L to have been, communicated to Customs; and
- (b) at the time when the warehouse declaration is, or is so taken to have been, communicated to Customs, the goods to which the declaration relates have not been brought to the first port or airport in Australia at which any goods are to be discharged;

the goods are taken to be entered for warehousing only when they are brought to that port or airport.

71DI Liability for warehouse declaration processing charge

- (1) When a warehouse declaration (including an altered warehouse declaration) in respect of goods is, or is taken to have been, communicated to Customs under section 71DH, the owner of the goods becomes liable to pay warehouse declaration processing charge in respect of the declaration.
- (2) If a person who is an owner of goods pays warehouse declaration processing charge in respect of a warehouse declaration relating to particular goods, any other person who is an owner of those goods ceases to be liable to pay charge in respect of that declaration.
- (3) If a warehouse declaration is withdrawn under subsection 71F(1), or is taken, under subsection 71F(2) or (7), to have been withdrawn, before the issue of an authority to deal in respect of goods covered by the declaration, then, despite subsection (1), the owner of the goods is not liable to pay warehouse declaration processing charge in respect of the declaration.

71DJ Authority to deal with goods in respect of which a warehouse declaration has been made

- (1) If a warehouse declaration in respect of goods has been communicated to Customs, Customs must give a warehouse

declaration advice, by document or electronically, in accordance with this section.

- (2) A warehouse declaration advice relating to goods entered by documentary warehouse declaration:
 - (a) must be given to the owner of the goods or be made available for collection by leaving it at a place in a Customs office that has been allocated for collection of such advices; and
 - (b) must contain:
 - (i) a statement to the effect that the goods are cleared for warehousing; or
 - (ii) a statement that the goods are directed to be held in their current location or are directed for further examination.
 - (3) A warehouse declaration advice relating to goods entered by an electronic warehouse declaration:
 - (a) must refer to the number given by Customs to identify the particular warehouse declaration; and
 - (b) must be communicated electronically to the person who made the declaration; and
 - (c) must contain:
 - (i) a statement to the effect that the goods are cleared for warehousing; or
 - (ii) a statement that the goods are directed to be held in their current location or are directed for further examination.
 - (4) Subject to subsection (5), if:
 - (a) a warehouse declaration advice is given or communicated under this section; and
 - (b) a payment is made of any warehouse declaration processing charge or other charge or fee payable at the time of entry of, or in respect of, the goods covered by the warehouse declaration advice;Customs must:
 - (c) if the advice was given under subsection (2)—give the person to whom the advice was given an authority, in writing, to take the goods into warehousing; and
 - (d) if the advice was communicated electronically under subsection (3)—communicate electronically, to the person to whom the advice was communicated, an authority to take the goods into warehousing.
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- (5) Customs is not required to give or communicate an authority under subsection (4) while the goods concerned are subject to a direction referred to in subparagraph (2)(b)(ii) or (3)(c)(ii).
- (6) If goods are authorised to be taken into warehousing, the authority to deal, whether given by a document or electronically, must set out:
 - (a) any condition of the kind referred to in subsection (7) to which the authority is subject; and
 - (b) the date on which the authority is given; and
 - (c) such other information as is prescribed.
- (7) An authority to deal with goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however it is described) be obtained under another law of the Commonwealth.
- (8) If an authority to deal with goods is expressed to be subject to the condition that a specified permission be obtained, the authority is taken not to have been given until the permission has been obtained.
- (9) An officer may, at any time before goods authorised to be taken into warehousing are so dealt with, cancel the authority:
 - (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the authority is cancelled and setting out the reasons for the cancellation; and
 - (ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or
 - (b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is cancelled and setting out the reasons for the cancellation.
- (10) If, at any time before goods authorised to be taken into warehousing are so dealt with, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of any Customs-related law, the officer may suspend the authority for a specified period:

- (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the authority is so suspended and setting out the reasons for the suspension; and
 - (ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or
 - (b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person who made the declaration, a message stating that the authority is so suspended and setting out the reasons for the suspension.
- (11) If, during the suspension under subsection (10) of an authority, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension:
- (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the suspension is revoked; and
 - (ii) serving a copy of the notice on the person to whom the notice of the suspension was given; or
 - (b) if the authority was given in respect of an electronic declaration—by sending electronically, to the person to whom the message notifying the suspension was sent, a message stating that the suspension is revoked.
- (12) A cancellation or suspension of an authority, or a revocation of a suspension of an authority, has effect from the time when the relevant notice is served or the relevant message is sent, as the case may be.

71DK Visual examination in presence of officer

- (1) If a person who is permitted or required to make a warehouse declaration in respect of goods to which section 68 applies does not have the information to complete the declaration, the person may

apply to Customs, by document or electronically, for permission to examine the goods in the presence of an officer.

- (2) A documentary application must be communicated to Customs by giving it to an officer doing duty in relation to warehouse declarations.
- (3) When an application is given to an officer under subsection (2) or is sent electronically, an officer must, by writing or by message sent electronically, give the applicant permission to examine the goods on a day and at a place specified in the notice.
- (4) A person who has received a permission may examine the goods in accordance with the permission in the presence of an officer.

71DL An officer may seek additional information

- (1) Without limiting the information that may be required to be included in a warehouse declaration, if a warehouse declaration has been made in respect of goods, authority to deal with the goods may be refused until an officer doing duty in relation to warehouse declarations:
 - (a) has verified particulars of the goods shown in the warehouse declaration; or
 - (b) is satisfied of any other matter that may be relevant to the granting of an authority to deal.
- (2) If an officer doing duty in relation to warehouse declarations believes, on reasonable grounds, that the owner of goods to which a warehouse declaration relates has custody or control of commercial documents, or has, or can obtain, information, relating to the goods that will assist the officer to determine whether this Act has been or is being complied with in respect of the goods, the officer may require the owner:
 - (a) to deliver to the officer the commercial documents in respect of the goods that are in the owner's custody or control (including any such documents that had previously been delivered to an officer and had been returned to the owner); or
 - (b) to deliver to the officer such information, in writing, relating to the goods (being information of a kind specified in the

notice) as is within the knowledge of the owner or as the owner is reasonably able to obtain.

- (3) A documentary requirement for the delivery of documents or information in respect of a warehouse declaration must:
 - (a) be communicated to the person by whom, or on whose behalf, the declaration was communicated; and
 - (b) be in an approved form and contain such particulars as the form requires.
 - (4) An electronic requirement for the delivery of documents or information in respect of a warehouse declaration must:
 - (a) be communicated electronically to the person who made the declaration; and
 - (b) contain such particulars as are set out in an approved statement.
 - (5) An officer doing duty in relation to warehouse declarations may ask:
 - (a) the owner of goods in respect of which a warehouse declaration has been made; and
 - (b) if another person made the declaration on behalf of the owner—that other person;any questions relating to the goods.
 - (6) If an officer doing duty in relation to warehouse declarations believes, on reasonable grounds, that the owner of goods to which a warehouse declaration relates has custody or control of commercial documents, or has, or can obtain, information, relating to the goods that will assist the officer to verify the particulars shown in the warehouse declaration, the officer may require the owner to produce the documents or supply the information to the officer.
 - (7) If:
 - (a) the owner of goods has been required to deliver documents or information in relation to the goods under subsection (2); or
 - (b) the owner of, or the person making a warehouse declaration in respect of, goods has been asked a question in respect of the goods under subsection (5); or
 - (c) the owner of goods has been required to verify a matter in respect of the goods under subsection (6);
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authority to deal with the relevant goods in accordance with the declaration must not be granted unless:

- (d) the requirement referred to in paragraph (a) has been complied with or withdrawn; or
 - (e) the question referred to in paragraph (b) has been answered or withdrawn; or
 - (f) the requirement referred to in paragraph (c) has been complied with or withdrawn, or a security has been taken for compliance with the requirement;
- as the case requires.
- (8) Subject to section 215, if a person delivers a commercial document to an officer doing duty in relation to warehouse declarations under this section, the officer must deal with the document and then return it to the person.

Subdivision E—General

39 Sections 71F to 71L

Repeal the sections, substitute:

71F Withdrawal of import entries

- (1) At any time after an import entry is communicated to Customs and before the goods to which it relates are dealt with in accordance with the entry, a withdrawal of the entry may be communicated to Customs by document or electronically.
- (2) If, at any time after a person has communicated an import entry to Customs and before the goods are dealt with in accordance with the entry, the person changes information included in the entry, the person is taken, at the time when the import entry advice is given or communicated in respect of the altered entry, to have withdrawn the entry as it previously stood.
- (3) A documentary withdrawal of an import entry must:
 - (a) be communicated by the person by whom, or on whose behalf, the entry was communicated; and
 - (b) be communicated to Customs by giving it to an officer doing duty in relation to import entries.

- (4) A withdrawal of an import entry in respect of particular goods can be communicated electronically only by the owner of the goods.
- (5) A withdrawal of an import entry has no effect during any period while a requirement under subsection 71DA(2) or (6) or 71DL(2) or (6) in respect of the goods to which the entry relates has not been complied with.
- (6) A withdrawal of an import entry is effected when it is, or is taken under section 71L to have been, communicated to Customs.
- (7) If:
 - (a) an import entry is communicated to Customs; and
 - (b) any duty, fee, charge or tax in respect of goods covered by the entry remains unpaid in respect of the goods concerned for 30 days starting on:
 - (i) the day on which the import entry advice relating to the goods is communicated; or
 - (ii) if under subsection 132AA(1) the duty is payable by a time worked out under the regulations—the day on which that time occurs; and
 - (c) after that period ends, the CEO gives written notice to the owner of the goods requiring payment of the unpaid duty, fee, charge or tax (as appropriate) within a further period set out in the notice; and
 - (d) the unpaid duty, fee, charge or tax (as appropriate) is not paid within the further period;the import entry is taken to have been withdrawn under subsection (1).

71G Goods not to be entered while an entry is outstanding

- (1) If goods have been entered for home consumption under subsection 68(2) or (3), a person must not communicate a further import declaration, a further RCR or a warehouse declaration in respect of the goods or any part of the goods unless the import declaration or RCR that resulted in the goods being entered for home consumption is withdrawn.

Penalty: 15 penalty units.

- (2) An offence for a contravention of subsection (1) is an offence of strict liability.

71H Effect of withdrawal

- (1) When a withdrawal of an import entry in respect of goods takes effect, any authority to deal with the goods is revoked.
- (2) Despite the withdrawal:
- (a) a person may be prosecuted under Division 4 of Part XIII, or action may be taken under Division 5 of that Part, in respect of the import entry; and
 - (b) a penalty may be imposed on a person who is convicted of an offence in respect of the import entry;
as if it had not been withdrawn.
- (3) The withdrawal of a documentary import declaration or of a documentary warehouse declaration does not entitle the person who communicated it to have it returned.

71J Annotation of import entry by Customs for certain purposes not to constitute withdrawal

Any annotation of an import entry that is made by Customs as a result of the acceptance by Customs of an application for a refund or rebate of all or a part of the duty paid, or for a remission of all or part of the duty payable, on goods covered by the entry, is not to be taken to constitute a withdrawal of the entry for the purposes of this Act.

71K Manner of communicating with Customs by document

- (1) An import entry, a withdrawal of an import entry, a visual examination application, a movement application, or a return for the purposes of subsection 69(5) or 70(7), that is communicated to Customs by document:
- (a) must be in an approved form; and
 - (b) must contain such information as the approved form requires;
and
 - (c) must be signed in the manner indicated in the approved form.

- (2) The CEO may approve different forms for documentary communications to be made in different circumstances or by different classes of persons.

71L Manner and effect of communicating with Customs electronically

- (1) An import entry, a withdrawal of an import entry, a visual examination application, a movement application, or a return for the purposes of subsection 69(5) or 70(7) that is communicated to Customs electronically must communicate such information as is set out in an approved statement.
- (2) The CEO may approve different statements for electronic communications to be made in different circumstances or by different classes of persons.
- (3) For the purposes of this Act, an import entry, a withdrawal of an import entry, or a return for the purposes of subsection 69(5) or 70(7), is taken to have been communicated to Customs electronically when an import entry advice, or an acknowledgment of the withdrawal or of the return, is communicated by Customs electronically to the person identified in the import entry, withdrawal or return as the person sending it.
- (4) A movement application that is communicated to Customs electronically must communicate such information as is set out in an approved statement.
- (5) For the purposes of this Act, a movement application is taken to have been communicated to Customs electronically when an acknowledgment of the application is communicated by Customs electronically to the person identified in the application as the person sending it.

40 Paragraph 72(4)(b)

Omit “under section 71B”.

41 Paragraphs 128(b) and (c)

Repeal the paragraphs, substitute:
or (b) for warehousing.

41A Subsection 132(4)

Omit “whose owner is required by section 71 to provide information about them”, substitute “about which the owner, or a person acting on behalf of the owner, is required by section 71 to provide information”.

41B Paragraph 132(5)(b)

Repeal the paragraph, substitute:

- (b) about which neither the owner, nor any person acting on behalf of the owner, is required to provide information;

41C Subsection 132AA(1) (table item 3)

Omit “whose owner must provide information about them under section 71”, substitute “about which the owner, or a person acting on behalf of the owner, is required by section 71 to provide information”.

42 Subsections 132B(4) and (8)

Omit “71B”, substitute “71C or 71DE”.

43 Subsections 163(1B), (1C) and (1D)

Repeal the subsections.

44 Subsection 167(3A)

Repeal the subsection, substitute:

- (3A) If an electronic import entry has been made in respect of goods, a protest under this section is taken to have been made if, and only if, the person making the entry sends to Customs at the time of making payment in respect of the goods following an import declaration advice or a periodic declaration:
 - (a) the number given by Customs to identify the relevant import declaration or periodic declaration; and
 - (b) the words ***Paid under protest***; and
 - (c) a description of the goods to which the protest relates (where the protest does not relate to all the goods covered by the import declaration or periodic declaration) and a statement of the grounds on which the protest is made.

45 Saving

Subsection 167(3A) of the *Customs Act 1901* as in force immediately before the commencement of this Part continues to apply in respect of computer import entries made by a registered COMPILE user before the repeal of Division 4A of Part IV of the *Customs Act 1901* by item 81 of this Schedule.

46 Subsection 196C(1)

Omit “subsection 71(1)”, substitute “section 71”.

47 Paragraph 273GA(1)(aag)

Repeal the paragraph, substitute:

- (aafa) a decision by an officer under section 71 to suspend an authority to deliver goods into home consumption;
- (aag) a decision by an officer under section 71C, 71DE or 71DJ to cancel or suspend an authority to deal with goods;

Part 3—Exportation of goods

Customs Act 1901

48 Subsection 4(1)

Insert:

ACEAN means an accredited client export approval number allocated by the CEO to a person under an export information contract.

48A Subsection 4(1) (paragraph (a) of the definition of *authority to deal*)

Repeal the paragraph, substitute:

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

49 Subsection 4(1)

Insert:

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

50 Subsection 4(1)

Insert:

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

51 Subsection 4(1) (definition of *export entry*)

Repeal the definition, substitute:

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

52 Subsection 4(1)

Insert:

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

53 Subsection 4(1)

Insert:

export information contract means a contract made under subsection 114BB(1).

54 After the heading to Division 2 of Part VI

Insert:

Subdivision A—Preliminary

55 Subsection 113(1)

Repeal the subsection, substitute:

- (1) The owner of goods intended for export:
 - (a) must ensure that the goods are entered for export; and
 - (b) must not allow the goods:
 - (i) if the goods are a ship or aircraft that is to be exported otherwise than in a ship or aircraft—to leave the place of exportation; or
 - (ii) if the goods are other goods—to be loaded on the ship or aircraft in which they are to be exported;unless:
 - (iii) an authority to deal with them is in force; or
 - (iv) the goods are, or are included in a class of goods that are, excluded by the regulations from the application of this paragraph.

Penalty: 50 penalty units.

- (1A) An offence against subsection (1) is an offence of strict liability.

56 Paragraphs 113(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) goods (other than prescribed goods) constituting, or included in, a consignment that:

- (i) is consigned by post, by ship or by aircraft from one person to another; and
- (ii) has an FOB value not exceeding \$2,000 or such other amount as is prescribed.

57 Sections 114 and 114A

Repeal the sections, substitute:

113AA How an entry of goods for export is made

An entry of goods for export is made by:

- (a) making in respect of the goods an export declaration other than a declaration that Customs refuses under subsection 114(8) to accept; or
- (b) using an ACEAN in respect of the goods.

Subdivision B—Export declarations

114 Making an export declaration

- (1) An export declaration is a communication to Customs in accordance with this section of information about goods that are intended for export.
- (2) An export declaration can be communicated by document or electronically.
- (3) A documentary export declaration:
 - (a) can be made only by the owner of the goods concerned; and
 - (b) must be communicated to Customs by giving or sending it to an officer doing duty in relation to export declarations; and
 - (c) must be in an approved form; and
 - (d) must contain such information as is required by the form; and
 - (e) must be signed by the person making it.
- (4) An electronic export declaration:
 - (a) can be communicated only by the owner of the goods concerned; and
 - (b) must communicate such information as is set out in an approved statement.

- (5) If the information communicated to Customs in an export declaration relating to goods adequately identifies any permission (however it is described) that has been given for the exportation of those goods, the identification of the permission in that information is taken, for the purposes of any law of the Commonwealth (including this Act), to be the production of the permission to an officer.
- (6) However, subsection (5) does not affect any power of an officer, under this Act, to require the production of a permission referred to in that subsection.
- (7) When, in accordance with section 119D, an export declaration is taken to have been communicated to Customs, the goods to which the declaration relates are taken to have been entered for export.
- (8) Customs may refuse to accept or deal with an export declaration in circumstances prescribed by the regulations.
- (9) Customs must communicate a refusal to accept or deal with an export declaration by notice given by document or electronically to the person who made the declaration.

114A An officer may seek additional information

- (1) Without limiting the information that may be required to be included in an export declaration, if an export declaration has been made in respect of goods, authority to deal with the goods in accordance with the declaration may be refused until an officer doing duty in relation to export declarations has verified particulars of the goods shown in the declaration:
 - (a) by reference to information contained in commercial documents relating to the goods that have been given to Customs by the owner of the goods on, or at any time after, the communication of the declaration to Customs; or
 - (b) by reference to information, in writing, in respect of the goods that has been so given to Customs.
- (2) If an officer doing duty in relation to export declarations believes, on reasonable grounds, that the owner of goods to which an export declaration relates has custody or control of commercial documents, or has, or can obtain, information, relating to the goods that will assist the officer to determine whether this Act has been or

is being complied with in respect of the goods, the officer may require the owner:

- (a) to deliver to the officer the commercial documents in respect of the goods that are in the owner's possession or under the owner's control (including any such documents that had previously been delivered to an officer and had been returned to the owner); or
 - (b) to deliver to the officer such information, in writing, relating to the goods (being information of a kind specified in the notice) as is within the knowledge of the owner or as the owner is reasonably able to obtain.
- (3) A documentary requirement for the delivery of documents or information in respect of an export declaration must:
- (a) be communicated to the person by whom, or on whose behalf, the declaration was communicated; and
 - (b) be in an approved form and contain such particulars as the form requires.
- (4) An electronic requirement for the delivery of documents or information in respect of an export declaration must:
- (a) be sent electronically to the person who made the declaration; and
 - (b) communicate such particulars as are set out in an approved statement.
- (5) An officer doing duty in relation to export declarations may ask:
- (a) the owner of goods in respect of which an export declaration has been made; and
 - (b) if another person made the declaration on behalf of the owner—the other person;
- any questions relating to the goods.
- (6) An officer doing duty in relation to export declarations may require the owner of goods in respect of an export declaration that has been made to verify the particulars shown in the export declaration by making a declaration or producing documents.
- (7) If:
- (a) the owner of goods has been required to deliver documents or information in relation to the goods under subsection (2); or

- (b) the owner of, or person who made an export declaration in respect of, goods has been asked a question in respect of the goods under subsection (5); or
 - (c) the owner of goods has been required under subsection (6) to verify a matter in respect of the goods;
- authority to deal with the relevant goods in accordance with the declaration must not be granted unless:
- (d) the requirement referred to in paragraph (a) has been complied with or withdrawn; or
 - (e) the question referred to in paragraph (b) has been answered or withdrawn; or
 - (f) the requirement referred to in paragraph (c) has been complied with or withdrawn;
- as the case requires.
- (8) Subject to section 215, if a person delivers a commercial document to an officer doing duty in relation to export declarations under this section, the officer must deal with the document and then return it to that person.

58 Subsection 114B(1)

Repeal the subsection, substitute:

- (1) A person who:
 - (a) proposes to make an export declaration relating to particular goods or is likely to make, from time to time, export declarations in relation to goods of a particular kind; and
 - (b) will be unable to include in the export declaration or export declarations particular information in relation to the goods because the information cannot be ascertained until after the exportation of the goods;
- may apply to the CEO for confirming exporter status in respect of the information and the goods.

59 Paragraph 114B(5)(a)

Omit “export entry”, substitute “export declaration”.

60 Subsection 114B(7) (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

62 Sections 114C to 119D

Repeal the sections, substitute:

Subdivision C—ACEANS

114BA Using ACEANS in respect of goods

- (1) The *use of an ACEAN* by a person in respect of goods is the communication in accordance with this section to the CEO of the ACEAN in respect of goods that are intended for export.
- (3) An ACEAN must be communicated electronically.
- (4) An ACEAN can be communicated only while the export information contract entered into in respect of goods to which the ACEAN relates is in force.
- (5) A communication made by the use of an ACEAN must relate only to one consignment of goods.
- (6) If a person makes, by the use of an ACEAN, a communication that relates to more than one consignment of goods:
 - (a) the use of the ACEAN is invalid and does not constitute an entry of any of the goods for export; and
 - (b) the person is guilty of an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (7) An offence against paragraph (6)(b) is an offence of strict liability.

114BB Making of export information contracts

- (1) Subject to subsection (2), the CEO may enter into a contract (an *export information contract*) with a person for the purpose of enabling the use of accredited client export approved numbers (*ACEANS*) in connection with the export of the person's goods.
- (2) The CEO must not enter into an export information contract with a person (other than a company specified in subsection (3)) unless the CEO is satisfied, as a result of an audit carried out by a person chosen in accordance with the business rules, that the person can provide Customs with accurate information that is necessary to

enable Customs to perform duties in relation to goods exported from Australia.

- (3) The following companies are specified for the purposes of subsection (2):
- (a) Colorado Group Limited (ABN 8500 432 7566);
 - (b) Du Pont (Australia) Pty Limited (ABN 5900 071 6469);
 - (c) Ericsson Australia Pty Limited (ABN 5600 407 185);
 - (d) Grocery Holdings Pty Limited (ABN 27007 427 581);
 - (e) K mart Australia Limited (ABN 73004 700 485);
 - (f) Kodak (Australasia) Pty Limited (ABN 4900 405 7621);
 - (g) Liquorland (Australia) Pty Limited (ABN 82007 512 414);
 - (h) My Car Automotive Pty Limited (ABN 94061 462 593);
 - (i) Myer Stores Limited (ABN 83004 143 239);
 - (j) Nortel Networks Australia Pty Limited (ABN 400 031 64145);
 - (k) NS Komatsu Pty Limited (ABN 630 535 14739);
 - (l) Officeworks Superstores Pty Limited (ABN 36004 763 526);
 - (m) Panasonic Australia Pty Limited (ABN 8300 159 2187);
 - (n) Target Australia Pty Limited (ABN 75004 250 944);
 - (o) Tyremaster (Wholesale) Pty Limited (ABN 18000 781 037).
- (4) The provisions in an export information contract are to include provisions relating to:
- (a) the goods covered by the contract; and
 - (b) how the person's compliance with the business rules is to be reported, monitored and audited; and
 - (c) the power of the CEO to terminate the contract if the person fails to comply with any of the business rules or with any of the requirements of this Act; and
 - (d) the way ACEANS are to be allocated to the person.
- (5) The existence of an export information contract does not affect the exercise by the CEO of any powers conferred on him or her by or under this Act.

114BC Declarations by persons who use ACEANS

If a person, during a particular month, enters goods for export by using one or more ACEANS, the person:

- (a) may, from time to time during the month, send electronically to Customs declarations containing such information in relation to the goods as is set out in an approved statement; but
- (b) must send electronically to Customs at least one such declaration not later than the first day of the following month.

Subdivision D—General

114C Authority to deal with goods entered for export

- (1) If goods have been entered for export by the making of an export declaration in respect of the goods, Customs must give an export entry advice, in a manner and form specified in the regulations, that constitutes either:
 - (a) an authority to deal with the goods to which the entry relates in accordance with the entry; or
 - (b) a refusal to provide such an authority.
 - (2) Without limiting the generality of subsection (1), regulations specifying the form of an export entry advice must include in the information set out in that advice a number (the *export entry advice number*) by which the advice can be identified.
 - (3) An authority under subsection (1) to deal with goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however it is described) be obtained under another law of the Commonwealth.
 - (3A) An authority under subsection (1) to deal with goods may be expressed to be subject to a condition that any security required under section 16 of the *Excise Act 1901* be given.
 - (4) If an authority under subsection (1) to deal with goods is expressed to be subject to a condition that a specified permission be obtained, the authority is taken not to have been given until the permission has been obtained.
 - (4A) If an authority under subsection (1) to deal with goods is expressed to be subject to a condition that any security required under section 16 of the *Excise Act 1901* be given, the authority is taken not to have been given until the security has been given.
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- (4B) If goods have been entered for export by the use of an ACEAN, the ACEAN constitutes an authority to deal with the goods.
- (5) An officer may, at any time before goods authorised to be dealt with in accordance with an export entry are so dealt with, cancel the authority:
- (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the authority is cancelled and setting out the reasons for the cancellation; and
 - (ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or
 - (b) if the authority was given in respect of an electronic declaration or an ACEAN—by sending electronically, to the person who made the declaration or used the ACEAN, a message stating that the authority is cancelled and setting out the reasons for the cancellation.
- (6) If, at any time before goods authorised to be dealt with in accordance with an export entry are so dealt with, an officer has reasonable grounds to suspect that the goods have been dealt with in contravention of a Customs-related law, the officer may suspend the authority for a specified period:
- (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the authority is so suspended and setting out the reasons for the suspension; and
 - (ii) serving a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; or
 - (b) if the authority was given in respect of an electronic declaration or an ACEAN—by sending electronically, to the person who made the declaration or used the ACEAN, a message stating that the authority is so suspended and setting out the reasons for the suspension.

- (7) If, during the suspension under subsection (6) of an authority, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods have been dealt with in contravention of this Act, the officer must revoke the suspension:
- (a) if the authority was given in respect of a documentary declaration, by:
 - (i) signing a notice stating that the suspension is revoked; and
 - (ii) serving a copy of the notice on the person to whom the notice of the suspension was given; or
 - (b) if the authority was given in respect of an electronic declaration or an ACEAN—by sending electronically, to the person to whom the message notifying the suspension was sent, a message stating that the suspension is revoked.
- (8) A cancellation or suspension of an authority, or a revocation of a suspension of an authority, has effect from the time when the relevant notice is served or the relevant message is sent, as the case may be.

114D Goods to be dealt with in accordance with export entry

- (1) The owner of goods in respect of which an export entry has been communicated to Customs:
- (a) must, as soon as practicable after an authority to deal with the goods is granted, deal with the goods in accordance with the entry; and
 - (b) must not remove any of the goods from the possession of the person to whom they are delivered or of any person to whom they are subsequently passed in accordance with the entry unless the entry has been withdrawn, or withdrawn in so far as it applies to those goods.

Penalty: 10 penalty units.

- (3) If excisable goods on which excise duty has not been paid have been delivered to a place prescribed for the purposes of paragraph 30(1)(d) and the export entry that applies to those goods is withdrawn, or withdrawn in so far as it applies to those goods, then:
- (a) despite any implication to the contrary in subsection (1), the goods become, on the communication to Customs of the
-

- withdrawal, goods under the Commissioner's control under section 61 of the *Excise Act 1901*; and
- (b) the withdrawal constitutes a permission, under section 61A of that Act, to move the goods back to the place from which they were first moved in accordance with the entry.
- (4) If goods are goods on which Customs duty is payable but has not been paid and the export entry that applies to those goods is withdrawn, or withdrawn in so far as it applies to those goods, then:
- (a) despite any implication to the contrary in subsection (1), the goods remain under Customs control; and
 - (b) the withdrawal constitutes a permission, under section 71E, to move the goods back to the place from which they were first moved in accordance with the entry.

114E Sending goods to a wharf or airport for export

- (1) A person (the *deliverer*) commits an offence if the deliverer delivers goods to a person (the *deliverree*) at a wharf or airport for export and:
- (a) if the goods have been entered for export—neither of the following applies:
 - (i) an authority to deal with the goods is in force and the owner of the goods has, at or before the time of the delivery, given particulars of the authority to the deliverree in the prescribed manner;
 - (ii) the goods are, or are included in a class of goods that are, excluded by the regulations from the application of this section and the deliverer has, at or before the time of the delivery, given particulars of the goods to the deliverree in the prescribed manner; or
 - (b) if the goods are not required to be entered for export—the deliverer has not, at or before the time of the delivery, given particulars of the goods to the deliverree in the prescribed manner; or
 - (c) if the goods have not been entered for export—the deliverree fails to enter the goods for export within the prescribed period after the time of the delivery.

- (2) If the deliverer is a person referred to in subsection 117A(1), the prescribed manner of giving, for the purposes of subsection (1), particulars of goods to the deliverer is to give to the deliverer the submanifest number given to the deliverer by Customs under subsection 117A(3).
- (3) The penalty for an offence against subsection (1) is a penalty not exceeding 60 penalty units.
- (4) An offence against subsection (1) is an offence of strict liability.

114F Notices to Customs by person who receives goods at a wharf or airport for export

- (1) This section applies to a person who takes delivery of goods for export at a wharf or airport other than a wharf or airport that is, or is included in a class of wharves or airports that is, excluded by the regulations from the application of this section.
- (1A) The person must give notice to Customs electronically, within the period prescribed by the regulations, stating that the person has received the goods and giving such particulars of the receipt of the goods as are required by an approved statement.
- (1B) If the goods are removed from the wharf or airport otherwise than for the purpose of being loaded onto a ship or aircraft for export, the person must give notice to Customs electronically, within the period prescribed by the regulations, stating that the goods have been removed and giving such particulars of the removal of the goods as are required by an approved statement.
- (2) A person who contravenes subsection (1A) or (1B) commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.

115 Goods not to be taken on board without authority to deal

- (1) The owner of a ship or aircraft must not permit goods required to be entered for export to be taken on board the ship or aircraft for the purpose of export unless:
 - (a) an authority to deal with the goods is in force under section 114C; or
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- (b) the goods are, or are included in a class of goods that are, excluded by the regulations from the application of this section.

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

116 What happens when goods entered for export by an export declaration are not dealt with in accordance with the export entry

- (1) If:
 - (a) goods are entered for export by the making of an export declaration in respect of the goods; and
 - (b) none of the goods or some only of the goods have been exported in accordance with the entry at the end of a period of 30 days after the intended day of exportation notified in the entry;the authority to deal with the goods in accordance with the entry, so far as it relates to goods not exported before the end of the period, is, at the end of the period, taken to have been revoked.
- (2) If an authority to deal with goods entered for export is taken, under subsection (1), to have been totally or partially revoked, the owner of the goods must, within 7 days after the end of the period referred to in that subsection:
 - (a) if the authority to deal was taken to be totally revoked—withdraw the entry relating to the goods; and
 - (b) if the authority to deal was taken to be partially revoked—amend the entry so that it relates only to the goods exported before the end of the period.

Penalty: 50 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) If the owner of goods entered for export amends the original entry in accordance with paragraph (2)(b), the owner is, in accordance with subsection 119C(1), taken to have withdrawn the original entry but this Act has effect as if:
 - (a) the amended entry had been communicated to Customs; and

(b) an authority to deal with the goods to which the amended entry relates in accordance with the amended entry had been granted under section 114C;
on the day, or the respective days, on which the original entry was communicated and the original authority to deal was granted.

116A What happens when goods entered for export by the use of an ACEAN are not exported within 30 days

If:

(a) goods are entered for export by the use of an ACEAN; and
(b) the goods have not been exported within 30 days after the day on which the ACEAN was communicated to Customs;
the entry is taken to have been withdrawn and the ACEAN concerned cannot again be used to enter those goods or any other goods for export.

117 Security

The Collector may require the owner of any goods entered for export and subject to the control of the Customs to give security that the goods will be landed at the place for which they are entered or will be otherwise accounted for to the satisfaction of the Collector.

117AA Consolidation of certain goods for export can only occur at a prescribed place

(1) A person must not consolidate, or take part in the consolidation of, prescribed goods for export unless the consolidation is to be carried out at a place prescribed by the regulations for the purposes of this section.

Penalty: 60 penalty units.

(2) If prescribed goods are received at a place referred to in subsection (1) for the purpose of being consolidated for export, the person in charge of the place must give notice electronically to Customs, within the prescribed period after the goods were received at the place, stating that the goods were received and setting out such particulars of the goods as are required by an approved statement.

Penalty: 60 penalty units.

- (3) The person in charge of a place referred to in subsection (1) must not permit prescribed goods to be released from the place unless the person has ascertained, from information made available by Customs, that:
- (a) the goods have been entered for export; and
 - (b) an authority to deal with the goods is in force.

Penalty: 60 penalty units.

- (4) If prescribed goods have been released from a place referred to in subsection (1), the person in charge of the place must give notice electronically to Customs, within the prescribed period after the goods were released, stating that the goods were released and giving particulars of the entry and authority referred to in subsection (3) that relates to the goods.

Penalty: 60 penalty units.

- (5) An offence for a contravention of this section is an offence of strict liability.

117A Submanifests to be communicated to Customs

- (1) The person in charge of the place at which the consolidation of goods for exportation by a ship or aircraft is to be carried out must, so as to enable the exportation, prepare and communicate electronically to Customs a submanifest in respect of the goods.

Penalty: 60 penalty units.

- (1A) An offence against subsection (1) is an offence of strict liability.
- (2) A submanifest must communicate such information as is set out in an approved statement.
- (3) When a submanifest is sent to Customs, Customs must send to the compiler of the submanifest a notice acknowledging its receipt and giving the compiler a submanifest number for inclusion in any outward manifest purportedly relating to the goods concerned.

118 Certificate of Clearance

- (1) The master of a ship or the pilot of an aircraft must not depart with the ship or aircraft from any port, airport or other place in Australia without receiving from the Collector a Certificate of Clearance in respect of the ship or aircraft.

Penalty: 60 penalty units.

- (1A) An offence against subsection (1) is an offence of strict liability.
- (2) The master of a ship or the pilot of an aircraft may apply to the Collector for a Certificate of Clearance in respect of the ship or aircraft.
- (3) An application under subsection (2) must be in writing and must contain such information as is prescribed by the regulations.
- (4) The master and the owner of a ship, or the pilot and the owner of an aircraft, that is at a port, airport or other place in Australia must:
- (a) severally answer questions asked by an officer relating to the ship or aircraft and its cargo, crew, passengers, stores and voyage; and
 - (b) severally produce documents requested by an officer that relate to the ship or aircraft and its cargo; and
 - (c) comply with such requirements (if any) as are prescribed by the regulations.
- (5) If a Certificate of Clearance has not been given to the master of a ship or the pilot of an aircraft within 24 hours after an application is made by the master or pilot under subsection (2), the master or pilot may apply to the CEO for a Certificate of Clearance. The decision of the CEO on the application is final.
- (6) If, after an application to the CEO for a Certificate of Clearance is made under subsection (5), the CEO does not grant, or delays granting, the Certificate of Clearance, the owner of the ship or aircraft is entitled, in a court of competent jurisdiction, to recover damages against the Commonwealth in respect of the failure to grant, or the delay in granting, the Certificate, if the court is satisfied that the failure or delay was without reasonable and probable cause.

- (7) Except as provided in subsection (6), an action or other proceeding cannot be brought against the Commonwealth, or an officer of the Commonwealth, because of the failure to grant, or because of a delay in granting, a Certificate of Clearance.

119 Communication of outward manifest to Customs

- (1) The master or the owner of a ship, or the pilot or the owner of an aircraft that departs from a port, airport or other place in Australia, must communicate electronically to Customs, not later than 3 days after the day of departure, an outward manifest:
- (a) specifying all of the goods, other than goods prescribed for the purposes of section 120, that were loaded on board the ship or aircraft at the port, airport or other place; or
 - (b) if there were no goods of the kind to which paragraph (a) applies that were loaded on board the ship or aircraft at the port, airport or other place—making a statement to that effect.
- (2) An outward manifest must contain such information as is set out in an approved statement.
- (3) If subsection (1) is contravened in respect of a ship or aircraft, the master and the owner of the ship, or the pilot and the owner of the aircraft, each commit an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.

119A Withdrawal of entries, submanifests and manifests

- (1) At any time after an export entry, a submanifest or an outward manifest is communicated to Customs and before the goods to which it relates are exported, a withdrawal of the entry, submanifest or manifest may be communicated to Customs:
- (a) in the case of a withdrawal of an entry that was communicated to Customs by document—by document; or
 - (b) in any other case—electronically.
- (2) A documentary withdrawal of an entry must:
- (a) be communicated by the person by whom, or on whose behalf, the entry was communicated; and

- (b) be communicated to Customs by giving it to an officer doing duty in relation to export entries; and
 - (c) be in an approved form; and
 - (d) contain such information as is required by the form; and
 - (e) be signed in a manner specified in the form.
- (3) An electronic withdrawal of an entry, submanifest or manifest must communicate such information as is set out in an approved statement.
- (4) A withdrawal of an entry, submanifest or manifest has effect when, in accordance with section 119D, it is communicated to Customs.

119B Effect of withdrawal

- (1) When a withdrawal of an export entry takes effect, any authority to deal with the goods to which the entry relates is revoked.
- (2) Despite the withdrawal of an entry, submanifest or manifest:
- (a) a person may be prosecuted in respect of the entry, submanifest or manifest; and
 - (b) a penalty may be imposed on a person who is convicted of an offence in respect of the entry, submanifest or manifest; as if it had not been withdrawn.
- (3) The withdrawal of a documentary entry the original of which was sent or given to an officer does not entitle the person who communicated it to have it returned.

119C Change of electronic entries and change of submanifests and manifests treated as withdrawals

- (1) If a person who has communicated an electronic export entry changes information included in that entry, the person is taken, at the time when an export entry advice is communicated in respect of the altered entry, to have withdrawn the entry as it previously stood.
- (2) If a person who has communicated a submanifest or an outward manifest changes information included in the submanifest or manifest, the person is taken, at the time when an acknowledgment of the altered submanifest or altered manifest, as the case requires,

is communicated, to have withdrawn the submanifest or manifest as it previously stood.

119D Notification of export entries, submanifests, manifests and withdrawals

- (1) For the purposes of this Act, a documentary export entry, or a documentary withdrawal of such an entry, may be sent to an officer referred to in subsection 114(3) or 119A(2) in any manner prescribed and, when so sent, is taken to have been communicated to Customs at such time, and in such circumstances, as are prescribed.
- (2) For the purposes of this Act, an electronic export entry, or an electronic withdrawal of such an entry, or a submanifest, an outward manifest, or a withdrawal of such a submanifest or manifest, that is sent to Customs is taken to have been communicated to Customs when an export entry advice or an acknowledgment of receipt of the submanifest, manifest or withdrawal is sent to the person who sent the entry, submanifest, manifest or withdrawal.

63 Section 120 (penalty)

Repeal the penalty, substitute:

Penalty: 100 penalty units.

64 Section 122

Omit “and outward”.

65 After subsection 181(4)

Insert:

- (4A) Subsection (2) does not apply to the making of an export entry.

66 Paragraph 273GA(1)(bc)

After “cancel”, insert “or suspend”.

Part 4—Abolition of existing computer systems

Customs Act 1901

67 Subsection 4(1) (definition of *Air Cargo Automation System*)

Repeal the definition.

68 Subsection 4(1) (definition of *Applicable EXIT agreement*)

Repeal the definition.

69 Subsection 4(1) (definition of *cargo automation system*)

Repeal the definition.

70 Subsection 4(1) (definition of *COMPILE computer system*)

Repeal the definition.

71 Subsection 4(1) (definition of *COMPILE user agreement*)

Repeal the definition.

72 Subsection 4(1) (definition of *EXIT agreement*)

Repeal the definition.

73 Subsection 4(1) (definition of *EXIT computer system*)

Repeal the definition.

74 Subsection 4(1) (definition of *Identifying code*)

Repeal the definition.

75 Subsection 4(1) (definition of *PIN number*)

Repeal the definition.

76 Subsection 4(1) (definition of *Registered COMPILE user*)

Repeal the definition.

77 Subsection 4(1) (definition of *Registered EXIT user*)

Repeal the definition.

78 Subsection 4(1) (definition of *Sea Cargo Automation System*)

Repeal the definition.

79 Section 63A (definition of *registered user*)

Repeal the definition.

80 Subdivision B of Division 3 of Part IV

Repeal the Subdivision.

81 Division 4A of Part IV

Repeal the Division.

82 Saving—COMPILE computer system

- (1) A communication to Customs of information referred to in subsection 71A(1) of the *Customs Act 1901* that is effected by means of the COMPILE computer system, after the commencement of this item and before the repeal of Division 4A of Part IV of that Act by item 81 of this Schedule takes effect, is an import declaration for the purposes of that Act as that Act applies after the commencement of Part 2 of this Schedule.
- (2) A communication to which subitem (1) applies may be sent only by a registered COMPILE user as the owner, or on behalf of the owner, of the goods concerned.
- (3) The following documents are not commercial documents for the purposes of the *Customs Act 1901*:
 - (a) a record of the transmission to or from Customs, after the commencement of this item and before the repeal of Division 4A of Part IV of that Act by item 81 of this Schedule takes effect, under the COMPILE computer system in respect of an import declaration, an RCR, or a warehouse declaration, relating to goods;
 - (b) a record of the withdrawal of such an import declaration, RCR or warehouse declaration.

83 Division 3 of Part VI

Repeal the Division.

84 Saving—EXIT computer system

- (1) A communication to Customs of information about goods intended for export that is effected by means of the EXIT computer system, after the commencement of this item and before the repeal of Division 3 of Part VI of the *Customs Act 1901* by item 83 of this Schedule takes effect, is an export declaration for the purposes of that Act as that Act applies after the commencement of Part 3 of this Schedule.
- (2) A communication to which subitem (1) applies may be sent only by a registered EXIT user.
- (3) The following documents are not commercial documents for the purposes of the *Customs Act 1901*:
 - (a) a record of the transmission to or from Customs, after the commencement of this item and before the repeal of Division 3 of Part VI of that Act by item 83 of this Schedule takes effect, under the EXIT computer system in respect of an export declaration, a submanifest, or an outward manifest, relating to goods;
 - (b) a record of the withdrawal of such a declaration, submanifest or manifest.

85 Subsection 234(2B)

Omit “, 70(7) or 77D(5)”, substitute “or 70(7)”.

86 Paragraph 234(8)(b)

Omit “Act; or”, substitute “Act.”.

87 Paragraph 234(8)(c)

Repeal the paragraph.

88 Section 234AC

Repeal the section.

89 Paragraphs 273GA(1)(aaaa) and (aaab)

Repeal the paragraphs.

90 Paragraphs 273GA(1)(aai), (aaj), (aak), (aal), (aam), (aan), (aao) and (aap)

Repeal the paragraphs.

91 Paragraphs 273GA(1)(ca) and (cb)

Repeal the paragraphs.

Part 5—Matters relating to importation and exportation of goods

Customs Act 1901

92 Subsection 4(1)

Insert:

approved statement means a statement approved under section 4A.

93 Subsection 4(1)

Insert:

business rules means business rules made under section 273EB.

94 Subsection 4(1) (definition of *commercial document*)

Repeal the definition, substitute:

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

- (a) in respect of an import declaration, RCR, or warehouse declaration, relating to the goods or the withdrawal of such an import declaration, RCR or warehouse declaration; or
- (b) in respect of an export entry, submanifest, or outward manifest, relating to the goods or in respect of the withdrawal of such an entry, submanifest or manifest.

95 Subsection 4(1) (definition of *electronic*)

Repeal the definition, substitute:

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

96 Subsection 4(1)

Insert:

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

97 Subsections 99(2) and (3)

Repeal the subsections, substitute:

- (2) Subject to sections 69 and 70, the holder of a warehouse licence must not permit warehoused goods to be delivered for home consumption unless:
- (a) they have been entered for home consumption; and
 - (b) an authority to deal with them is in force.

Penalty: 60 penalty units.

- (3) Subject to section 96A, the holder of a warehouse licence must not permit goods to be taken from the warehouse for export unless:
- (a) they have been entered for export; and
 - (b) an authority to deal with them is in force; and
 - (c) if the goods are, or are included in a class of goods that are, prescribed by the regulations—the holder of the relevant warehouse licence has ascertained, from information made available by Customs, the matters mentioned in paragraphs (a) and (b).

Penalty: 60 penalty units.

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

97A At the end of Part V

Add:

102A Notices to Customs by holder of warehouse licence

- (1) This section applies only to goods that are, or are included in a class of goods that are, prescribed by the regulations.
- (2) If goods are released from a warehouse for export, the holder of the warehouse licence must give notice to Customs electronically, within the period prescribed by the regulations, stating that the goods have been released and giving such particulars of the release of the goods as are required by an approved statement.

- (3) If goods that have previously been released from a warehouse for export are returned to the warehouse, the holder of the warehouse licence must give notice to Customs electronically, within the period prescribed by the regulations, stating that the goods have been returned and giving such particulars of the return of the goods as are required by an approved statement.
- (4) A person who contravenes subsection (2) or (3) commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

98 Section 241

Repeal the section.

99 Saving

Section 241 of the *Customs Act 1901* continues to apply in respect of transmissions referred to in that section that have been or are made before the repeals of Division 4A of Part IV and Division 3 of Part VI of that Act by items 81 and 83, respectively, of this Schedule take effect.

100 Part XVI (heading)

Repeal the heading, substitute:

Part XVI—Regulations, by-laws and business rules

101 After section 273EA

Insert:

273EB Business rules

- (1) The CEO may, in writing, make business rules that are to be complied with by persons who wish to enter into, or are parties to, import information contracts or export information contracts.
- (2) The matters that may be dealt with by business rules include, but are not limited to:
 - (a) the qualifications to be held, and the conditions and standards to be complied with, by persons who wish to enter into, or

- are parties to, import information contracts or export information contracts; and
- (b) the persons who are eligible to be chosen to carry out audits in respect of persons who wish to enter into such contracts.
- (3) An instrument making, varying or revoking any business rules is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 6—Reports and other compliance measures

Customs Act 1901

102 Subsection 4(1)

Insert:

arrival means:

- (a) in relation to a ship—the securing of the ship for the loading or unloading of passengers, cargo or ship's stores; or
- (b) in relation to an aircraft—the aircraft coming to a stop after landing.

103 Subsection 4(1)

Insert:

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

104 Subsection 4(1) (definition of *cargo report processing charge*)

Repeal the definition.

105 Subsection 4(1)

Insert:

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

- (a) the operator or charterer of the ship or aircraft; or
 - (b) a slot charterer in respect of the ship; or
 - (c) a freight forwarder in respect of the ship or aircraft;
- for the voyage or flight.

106 Subsection 4(1)

Insert:

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

107 Subsection 4(1)

Insert:

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

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

108 Subsection 4(1)

Insert:

outturn report means a report under section 64ABAA.

109 Subsection 4(1) (definition of *port authority*)

Repeal the definition, substitute:

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

110 Subparagraph 30(1)(a)(i)

Repeal the subparagraph.

111 Subparagraph 30(1)(ab)(i)

Repeal the subparagraph, substitute:

- (i) if they are unshipped—until they are delivered into home consumption in accordance with an authority under subsection 71(5); or

112 Subparagraph 30(1)(ac)(i)

Omit “until there has been compliance with a Collector’s permit for their unshipment”, substitute “until they are delivered into home consumption”.

113 Section 62

Omit “unlading”, substitute “to the proper wharf appointed under subsection 15(2)”.

114 Section 63

Omit “unlading”, substitute “at the proper wharf appointed under subsection 15(2)”.

115 Section 63A (definition of *abbreviated cargo report*)

Omit “a computer”, substitute “an electronic”.

116 Section 63A (definition of *low value cargo*)

Repeal the definition, substitute:

low value cargo means:

- (a) cargo consigned from a particular mail-order house; or
- (b) cargo comprising other goods of a kind prescribed by the regulations;

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

117 Section 63A (definition of *reportable document*)

Repeal the definition.

118 Sections 64 to 64ABB

Repeal the sections, substitute:

64 Impending arrival report

- (1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.
- (2) If the ship or aircraft is due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), the operator must report to Customs, in accordance with this section, the impending arrival of the ship or aircraft.
- (3) Subject to subsection (4), the report of the impending arrival of the ship or aircraft may be made by document or electronically.

- (4) If the operator is required to report to Customs under section 64AAB, or to make a cargo report, in respect of the voyage or flight, the report of the impending arrival of the ship or aircraft must be made electronically.
- (5) A report of the impending arrival of a ship must be made:
- (a) not earlier than 10 days before the time stated in the report to be the estimated time of arrival of the ship; and
 - (b) not later than the prescribed period before that time.
- (6) For the purposes of paragraph (5)(b), the *prescribed period* before the estimated time of arrival of a ship is:
- (a) if the journey from the last port is likely to take not less than 48 hours—48 hours or such other period as is prescribed by the regulations; or
 - (b) if the journey from the last port is likely to take less than 48 hours:
 - (i) 24 hours or such other period as is prescribed by the regulations; or
 - (ii) if the journey is of a kind described in regulations made for the purposes of this subparagraph—such shorter period as is specified in those regulations.
- (7) A report of the impending arrival of an aircraft must be made:
- (a) not earlier than 10 days before the time stated in the report to be the estimated time of arrival of the aircraft; and
 - (b) not later than the prescribed period before that time.
- (8) For the purposes of paragraph (7)(b), the *prescribed period* before the estimated time of arrival of an aircraft is:
- (a) if the flight from the last airport is likely to take not less than 3 hours—3 hours or such other period as is prescribed by the regulations; or
 - (b) if the flight from the last airport is likely to take less than 3 hours:
 - (i) one hour or such other period as is prescribed by the regulations; or
 - (ii) if the flight is of a kind described in regulations made for the purposes of this subparagraph—such shorter period as is specified in those regulations.

- (9) A documentary report must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport at which the ship or aircraft is expected to arrive; and
 - (d) contain such information as is required by the form; and
 - (e) be signed in a manner specified in the form.
- (10) An electronic report must communicate such information as is set out in an approved statement.
- (11) The CEO may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (9) and (10) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.
- (12) An operator of a ship or aircraft who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (13) An operator of a ship or aircraft who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (14) An offence against subsection (13) is an offence of strict liability.

64AA Arrival report

- (1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.
- (2) When the ship or aircraft has arrived at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), the operator must report to Customs, in accordance with this section, particulars of the arrival of the ship or aircraft and the time of arrival.
- (3) The report must be made:
 - (a) in the case of a ship—before:

- (i) the end of 24 hours (disregarding any period that occurs on a Sunday or holiday) after the ship's arrival; or
 - (ii) the issue of a Certificate of Clearance in respect of the ship and the port;whichever first happens; or
 - (b) in the case of an aircraft—before:
 - (i) the end of 3 hours after the aircraft's arrival; or
 - (ii) the issue of a Certificate of Clearance in respect of the aircraft and the airport;whichever first happens.
- (4) Subject to subsection (5), the report of the arrival of the ship or aircraft may be made by document or electronically.
- (5) If the operator is required to report to Customs under section 64AAB, or to make a cargo report, in respect of the voyage or flight, the report of the arrival of the ship or aircraft must be made electronically.
- (6) A documentary report must:
- (a) be in writing; and
 - (b) be in an approved form; and
 - (c) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and
 - (d) contain such information as is required by the form; and
 - (e) be signed in a manner specified in the form.
- (7) An electronic report must communicate such information as is set out in an approved statement.
- (8) The CEO may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (6) and (7) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.
- (9) An operator of a ship or aircraft who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

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

64AAA Report of stores and prohibited goods

- (1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.
- (2) When the ship or aircraft has arrived at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), the operator must report to Customs, in accordance with this section, particulars of the ship's stores or aircraft's stores and of any prohibited goods on board at the time of arrival.
- (3) The report must be made:
 - (a) in the case of a ship—before:
 - (i) the end of 24 hours (disregarding any period that occurs on a Sunday or holiday) after the ship's arrival; or
 - (ii) the issue of a Certificate of Clearance in respect of the ship and the port;whichever first happens; or
 - (b) in the case of an aircraft—before:
 - (i) the end of 3 hours after the aircraft's arrival; or
 - (ii) the issue of a Certificate of Clearance in respect of the aircraft and the airport;whichever first happens.
- (4) The report may be made by document or electronically.
- (5) A documentary report must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and
 - (d) contain such information as is required by the form; and
 - (e) be signed in a manner specified in the form.

- (6) An electronic report must communicate such information as is set out in an approved statement.
- (7) The CEO may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (5) and (6) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.
- (8) An operator of a ship or aircraft who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (11) In this section:
aircraft's stores and *ship's stores* have the meanings given by section 130C.

64AAB Notifying Customs of particulars of cargo reporters

- (1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.
- (2) A cargo reporter who has entered into an agreement or arrangement with another cargo reporter under which cargo for whose carriage the other cargo reporter is responsible is to be carried on the ship or aircraft during the voyage or flight must report to Customs, in accordance with this section, particulars of the other cargo reporter.
- (3) A report must be made electronically and must communicate such information as is set out in an approved statement.
- (4) A report must be made before the latest time by which a cargo report may be made.
- (5) The CEO may approve different statements for reports to be made under this section in different circumstances or by different kinds of cargo reporters.
- (6) A cargo reporter who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

- (7) A cargo reporter who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (8) An offence against subsection (7) is an offence of strict liability.

64AAC Report to Customs of persons engaged to unload cargo

- (1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.
- (2) The operator must report to Customs, in accordance with this section, particulars of:
 - (a) in the case of a ship—the stevedore with whom the operator has entered into a contract for the unloading of the cargo from the ship at a place in Australia; or
 - (b) in the case of an aircraft—the depot operator who will first receive the cargo after it has been unloaded from the aircraft at a place in Australia.
- (3) A report must be made electronically and must communicate such information as is set out in an approved statement.
- (4) A report must be made during the period within which a report under section 64 of the impending arrival of the ship is required to be made.
- (5) The CEO may approve different statements for electronic reports to be made under this section in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.
- (6) An operator of a ship or aircraft who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (7) An offence against subsection (6) is an offence of strict liability.

64AB Cargo reports

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

- (2) If the ship or aircraft is due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), each cargo reporter must report to Customs, in accordance with this section, particulars of all goods that the cargo reporter has arranged to be carried on the ship or aircraft on the voyage or flight and that are intended to be unloaded from the ship or aircraft at the port or airport other than:
 - (a) goods that are accompanied personal or household effects of a passenger or member of the crew; or
 - (b) ship's stores or aircraft's stores.
- (3) A cargo report that is made by a person during the general moratorium period, or is made by a person during a further moratorium period that has been granted to the person, may be a documentary report or an electronic report.
- (4) A cargo report to which subsection (3) does not apply must be an electronic report.
- (5) If the information required by an approved form to be contained in a documentary cargo report, or required by an approved statement to be communicated electronically, refers to particulars of the consignor or consignee of goods:
 - (a) the reference in the form or statement to the consignor of goods is a reference to a supplier of goods who is located outside Australia and:
 - (i) initiates the sending of goods to a person in Australia; or
 - (ii) complies with a request from a person in Australia to send goods to the person; and
 - (b) the reference in the form or statement to the consignee of goods is a reference to the person who is the ultimate recipient of goods that have been sent from outside Australia, whether or not the person ordered or paid for the goods.
- (6) The CEO may approve different forms or statements for the cargo reports to be made in different circumstances or by different kinds of cargo reporters.
- (7) The form or statement approved for a report by a special reporter in relation to low value cargo of a particular kind must not require the special reporter to include information relating to cargo of that kind

at a level of specificity below the level of a submaster air waybill or an ocean bill of lading, as the case requires.

- (8) A cargo report is to be made not later than:
- (a) if the cargo is carried on a ship:
 - (i) 24 hours or such other period as is prescribed by the regulations; or
 - (ii) if the journey from the last port is of a kind described in regulations made for the purposes of this subparagraph—such shorter period as is specified in those regulations;
before the estimated time of arrival specified in the report under section 64 of the impending arrival of the ship; or
 - (b) if the cargo is carried on an aircraft:
 - (i) 2 hours or such other period as is prescribed by the regulations; or
 - (ii) if the flight from the last airport is of a kind described in regulations made for the purposes of this subparagraph—such shorter period as is specified in those regulations;
before the estimated time of arrival specified in the report under section 64 of the impending arrival of the aircraft.
- (9) A cargo reporter who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (10) A cargo reporter who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (11) An offence against subsection (10) is an offence of strict liability.
- (12) If:
- (a) a cargo reporter who is required to make a cargo report in respect of particular goods commits an offence against this section because the report is not made before the time by which it was required by subsection (8) to be made; and
 - (b) that time occurs before the end of the general moratorium period or, if a further moratorium period is granted to the cargo reporter, before the end of the further moratorium period;
-

the cargo reporter is not liable to be prosecuted for the offence and an infringement notice cannot be served on the cargo reporter under Division 5 of Part XIII for the offence.

- (13) The *general moratorium period* is the period of 6 months beginning on the date of commencement of this section.
- (14) If:
- (a) a cargo reporter applies to the CEO for the grant to the cargo reporter of a further moratorium period to have effect at the end of the general moratorium period; and
 - (b) the CEO is satisfied that the cargo reporter has, within the general moratorium period, made reasonable progress in:
 - (i) installing the facilities required for the making of electronic cargo reports; or
 - (ii) in putting in place business practices or entering into business arrangements to enable the making of electronic cargo reports;
- the CEO may grant to the cargo reporter a *further moratorium period* of not more than 18 months beginning at the end of the general moratorium period.
- (15) Nothing in this section affects the operation of Subdivision C.
- (16) In this section:
- aircraft's stores* and *ship's stores* have the meanings given by section 130C.

64ABAA Outturn reports

- (1) When cargo is unloaded from an aircraft at an airport, the depot operator whose particulars have been communicated to Customs by the operator of the aircraft under section 64AAC must communicate electronically to Customs an outturn report in respect of the cargo.
- (2) When a container is unloaded from a ship at a port, the stevedore whose particulars have been communicated to Customs by the operator of the ship under section 64AAC must communicate electronically to Customs an outturn report in respect of the container.

- (3) When cargo that is not in a container is unloaded from a ship, the stevedore whose particulars have been communicated to Customs by the operator of the ship under section 64AAC must communicate electronically to Customs an outturn report in respect of the cargo.
- (4) When cargo unloaded from an aircraft or ship has been moved, under a permission given to the operator of the aircraft or ship, or to a cargo reporter, under section 71E, to a Customs place other than a warehouse, the person in charge of the Customs place must communicate electronically to Customs an outturn report in respect of the cargo.
- (5) An outturn report must:
 - (a) if it is made under subsection (1), (3) or (4):
 - (i) specify any goods included in the cargo report that have not been unloaded or, if there are no such goods, contain a statement to that effect; and
 - (ii) specify any goods not included in the cargo report that have been unloaded or, if there are no such goods, contain a statement to that effect; and
 - (b) if it is made under subsection (2)—set out a list of the containers that have been unloaded; and
 - (c) in any case:
 - (i) be in accordance with an approved statement; and
 - (ii) state any times required by section 64ABAB; and
 - (iii) be made within the period or at the time required by that section.
- (6) The CEO may approve different statements for the outturn reports to be made by stevedores, depot operators, or persons in charge of Customs places.
- (7) The CEO or an officer may disclose a cargo report to a stevedore, a depot operator or a person in charge of a Customs place (other than a warehouse) for the purpose of enabling the stevedore, operator or person to communicate to Customs an outturn report in respect of the cargo.
- (8) A person who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.

- (9) A person who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (10) An offence against subsection (9) is an offence of strict liability.
- (11) In this section:

Customs place has the meaning given by subsection 183UA(1).

64ABAB When outturn report is to be communicated to Customs

- (1) In the case of cargo unloaded from an aircraft at an airport and received into a depot, the depot operator must communicate the outturn report to Customs within 24 hours, or such other period as is prescribed by the regulations, after the time of arrival of the aircraft as stated in the report under section 64AA.
- (2) In the case of containers unloaded from a ship at a wharf, the stevedore must communicate outturn reports to Customs as follows:
 - (a) an outturn report, at the end of 3 hours, or such other period as is prescribed by the regulations, from the time when the first container is unloaded from the ship; and
 - (b) one or more further outturn reports at the end of each subsequent 3 hours, or such other period as is prescribed by the regulations, until the unloading of the containers has been completed.

The first outturn report must state the time when the first container was unloaded and the last outturn report must state the time when the unloading of the containers was completed.
- (3) In the case of cargo (not in containers) unloaded from a ship at a wharf, the stevedore must communicate the outturn report to Customs within 5 days, or such other period as is prescribed by the regulations, after the day on which the unloading of the cargo from the ship was completed. The outturn report must state the time when the unloading of the cargo was completed.
- (4) In the case of cargo unloaded from a ship or aircraft and moved by the operator of the ship or aircraft, or by a cargo reporter, under section 71E to a Customs place (as defined in subsection

183UA(1)) other than a warehouse, the person in charge of the Customs place must communicate the outturn report to Customs:

- (a) if the cargo is in a container:
 - (i) if the container is not unpacked at that place—within 24 hours (or such longer period as is prescribed by the regulations) after the person in charge of that place recorded the receipt of the container at that place; or
 - (ii) if the container is unpacked at that place—within 24 hours, or such other period as is prescribed by the regulations, after it was unpacked; or
- (b) if the cargo is not in a container—not later than:
 - (i) the day after the day on which the person in charge of that place recorded a receipt of the cargo at that place; or
 - (ii) if a later time is prescribed by the regulations—that later time.

If the cargo is in a container that is unpacked at the Customs place, the outturn report must state the time when the unpacking of the cargo was completed.

64ABAC Explanation of shortlanded or surplus cargo

- (1) If an outturn report specifies:
 - (a) any goods included in the cargo report that have not been unloaded; or
 - (b) any goods not included in the cargo report that have been unloaded;the officer may require the cargo reporter who made the cargo report in relation to the goods to explain why the goods were not unloaded or were not included in the cargo report, as the case may be.
- (2) If a cargo reporter in respect of whom a requirement is made under subsection (1) fails to comply with the requirement, the cargo reporter commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

119 Section 64ABC

Repeal the section, substitute:

64ABC Liability for screening charge

A special reporter who communicates an abbreviated cargo report to Customs is liable to pay screening charge in respect of the report.

120 Section 64ABD

Repeal the section.

121 Saving

Section 64ABD of the *Customs Act 1901*, and any arrangements in force under that section immediately before its repeal by item 120 of this Schedule, continue to apply in respect of any charge that was imposed by the repealed *Import Processing Charges Act 1997* before its repeal by item 1 of Schedule 4 and for which a person became liable before the repeal.

122 Sections 64AC and 64AD

Repeal the sections, substitute:

64AC Passenger report

- (1) This section applies to a ship or aircraft in respect of a voyage or flight to Australia from a place outside Australia.
- (2) If the ship or aircraft is due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), the operator must, in accordance with this section, give a report to Customs with respect to the passengers who will be on board the ship or aircraft at the time of its arrival at the port or airport.
- (3) The report may be made by document or electronically.
- (4) A report in respect of a ship must be made not later than:
 - (a) if the journey from the last port is likely to take not less than 48 hours—48 hours; or
 - (b) if the journey from the last port is likely to take less than 48 hours—24 hours;before the time stated in the report made under section 64 to be the estimated time of arrival of the ship.

- (5) A report in respect of an aircraft must be made not later than:
- (a) if the flight from the last airport is likely to take not less than 3 hours—3 hours; or
 - (b) if the flight from the last airport is likely to take less than 3 hours—one hour;
- before the time stated in the report made under section 64 to be the estimated time of arrival of the aircraft.
- (6) A documentary report must:
- (a) be in writing; and
 - (b) be in an approved form; and
 - (c) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport at which the ship or aircraft is expected to arrive; and
 - (d) contain such information as is required by the form; and
 - (e) be signed in a manner specified in the form.
- (7) An electronic report must communicate such information as is set out in an approved statement.
- (8) The CEO may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (6) and (7) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.
- (9) An operator of a ship or aircraft who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (10) An operator of a ship or aircraft who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (11) An offence against subsection (10) is an offence of strict liability.

64ACA Crew report

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

- (2) If the ship or aircraft is due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), the operator must give a report to Customs, in accordance with this section, with respect to the members of the crew who will be on board the ship or aircraft at the time of its arrival at the port or airport.
- (3) The report may be made by document or electronically.
- (4) A report must be made during the period within which a report under section 64 of the impending arrival of the ship or aircraft is required to be made.
- (5) However, a report in respect of an aircraft must not be made before the date of departure of the aircraft from the last airport outside Australia.
- (6) A documentary report must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport at which the ship or aircraft is expected to arrive; and
 - (d) contain such information as is required by the form; and
 - (e) be signed in a manner specified in the form.
- (7) An electronic report must communicate such information as is set out in an approved statement.
- (8) The CEO may approve different forms for documentary reports, and different statements for electronic reports, to be made under subsections (6) and (7) in different circumstances, by different kinds of operators of ships or aircraft or in respect of different kinds of ships or aircraft.
- (9) An operator of a ship or aircraft who intentionally contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (10) An operator of a ship or aircraft who contravenes this section commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.

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

64AD Communication of reports to Customs

- (1) For the purposes of this Act, a documentary report that is sent or given to Customs in accordance with section 64, 64AA, 64AAA, 64AB, 64AC or 64ACA may be sent or given to an officer referred to in that section in any prescribed manner and, when so sent or given, is taken to have been communicated to Customs when it is received by the officer.
- (2) For the purposes of this Act, a report that is sent electronically to Customs under section 64, 64AA, 64AAA, 64AAB, 64AAC, 64AB, 64ABAA, 64AC or 64ACA is taken to have been communicated to Customs when an acknowledgment of the report is sent to the person identified in the report as the person sending it.

123 Before section 64AE

Insert:

64ADA Disclosure of cargo reports to port authorities

- (1) The CEO or an officer may disclose a cargo report to a port authority for the purpose of enabling the authority to collect statistics or compute liability for wharfage charges.
- (2) A person to whom information is disclosed under subsection (1) must not:
- (a) use the information for any purpose other than the purpose for which the information was disclosed; or
 - (b) disclose the information to any person except to the extent necessary for that purpose.

Penalty: Imprisonment for 2 years.

- (3) A reference in this section to disclosure of information includes a reference to disclosure by way of the provision of electronic access to the information.

124 Subsection 64AE(1)

Omit “64AB or 64AC”, substitute “64AAA, 64AB, 64AC or 64ACA”.

125 Subsection 64AE(2)

Omit “64AB or 64AC”, substitute “64AAA, 64AB, 64AC or 64ACA”.

126 Section 67EA

Omit “, and of section 7 of the *Import Processing Charges Act 1997*”.

127 Paragraphs 67EB(1)(a) and (b)

Repeal the paragraphs, substitute:

- (b) the applicant does not satisfy Customs as mentioned in subsection (2) in relation to low value cargo of that kind; or

128 Subsection 67EB(2)

Repeal the subsection, substitute:

- (2) An applicant for registration as a special reporter in relation to low value cargo of a particular kind is taken to comply with this subsection if, and only if, the applicant satisfies Customs that:
 - (a) in a case of low value cargo consigned from a particular mail-order house to consignees in Australia—the applicant is likely to make cargo reports covering at least 1,000 such consignments per month from the mail-order house during the period of registration; or
 - (b) in a case of low value cargo of another prescribed kind consigned from a place outside Australia to a consignee in Australia—the applicant is likely to make cargo reports covering a number of consignments per month of that kind that is not less than the number specified in the regulations.

129 Paragraph 67EC(6)(b)

Repeal the paragraph.

130 Section 67EG

Omit “registered user” (wherever occurring), substitute “person”.

131 Paragraph 67EK(3)(a)

Omit “15,000”, substitute “3,000”.

132 Paragraph 67EK(3)(b)

Repeal the paragraph.

133 Section 67EL

Omit “on the Sea Cargo Automation System or the Air Cargo Automation System”.

134 Paragraph 67EM(1)(a)

Repeal the paragraph.

135 Subsection 67EM(9)

Repeal the subsection.

136 Subdivision D of Division 3 of Part IV

Repeal the Subdivision.

137 Subsection 71E(1)

Omit “by computer”, substitute “electronically”.

138 Subsections 71E(2A) and (3)

Repeal the subsections, substitute:

- (2A) If the goods have not been entered for home consumption or warehousing, a movement application may be made only by the operator of the ship or aircraft that carried the goods, by a cargo reporter in relation to the goods, or by a stevedore or depot operator who has possession of the goods.
- (2B) A movement application under subsection (2A) must be made electronically.
- (3) If a movement application is duly communicated to Customs, subsections (3AA) and (3AB) apply.
- (3AA) An officer may direct the applicant to ensure that the goods are held in the place where they are currently located until the decision is made on the application.
- (3AB) If a direction is not given under subsection (3AA), or a reasonable period has elapsed since the giving of such a direction to enable the making of an informed decision on the application, an officer must:
 - (a) if the application is a document movement application—by notice in writing to the applicant; or

- (b) if the application is an electronic movement application—by sending a message electronically to the applicant;
- do either of the following:
- (c) give the applicant permission to move the goods to which the application relates in accordance with the application either unconditionally or subject to such conditions as are specified in the notice or message;
 - (d) refuse the application and set out in the notice or message the reasons for the refusal.

139 Subsection 71E(3A)

Omit “(3)”, substitute “(3AB)”.

140 After subsection 71E(3B)

Insert:

- (3C) If a cargo report states that goods specified in the report are proposed to be moved from a Customs place to another Customs place, then, despite section 71L, the statement is taken to be a movement application in respect of the goods duly made under this section.

- (3D) In subsection (3C):

Customs place has the meaning given by subsection 183UA(1).

141 Sections 74 and 74A

Repeal the sections, substitute:

74 Officer may give directions as to storage or movement of certain goods

- (1) If an officer has reasonable grounds to suspect that a report of the cargo made in respect of a ship or aircraft:
 - (a) has not included particular goods that are intended to be unloaded from the ship or aircraft at a port or airport in Australia; or
 - (b) has incorrectly described particular goods;the officer may give written directions to the cargo reporter as to how and where the goods are to be stored, and as to the extent (if any) to which the goods may be moved.

- (2) An officer who has given a written direction under subsection (1) may, by writing, cancel the direction if the officer is satisfied that a report of the cargo made in respect of the ship or aircraft has included, or correctly described, as the case may be, the goods.
- (3) If an officer has reasonable grounds to suspect that particular goods in the cargo that is to be, or has been, unloaded from a ship or aircraft are prohibited goods, the officer may give written directions to:
 - (a) the cargo reporter; or
 - (b) the stevedore or depot operator whose particulars have been communicated to Customs by the operator of the ship or aircraft under section 64AAC;as to how and where the goods are to be stored, and as to the extent (if any) to which the goods may be moved.
- (4) An officer who has given a written direction under subsection (3) may, by writing, cancel the direction if the officer is satisfied that the cargo does not contain prohibited goods.
- (5) A person who intentionally contravenes a direction given to the person under subsection (1) or (3) commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (6) A person who contravenes a direction given to the person under subsection (1) or (3) commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (7) An offence against subsection (6) is an offence of strict liability.

142 Section 76

Omit “and landed under a Collector’s permit”.

Note: The heading to section 76 is altered by omitting “on permit”.

143 At the end of Division 4 of Part IV

Add:

77AA Disclosure of information to cargo reporter or owner of goods

- (1) If a cargo reporter in relation to goods that are on a ship or aircraft on a voyage or flight to a place in Australia requests Customs to inform the cargo reporter:
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- (a) whether a report of the impending arrival of the ship or aircraft has been made and, if so, the estimated time of arrival specified in the report; or
- (b) whether a report of the arrival of the ship or aircraft has been made and, if so, the time of arrival;

Customs may comply with the request.

- (2) If goods have been entered for home consumption or warehousing, Customs may, at the request of the owner of the goods, inform the owner of the stage reached by Customs in deciding whether or not to give an authority to deal with the goods.
- (3) If a movement application has been made in respect of goods, Customs may, at the request of the owner of the goods, inform the owner of the stage reached by Customs in its consideration of the application.
- (4) If goods have been entered for export by the making of an export declaration, Customs may, at the request of the owner of the goods, inform the owner of the stage reached by Customs in deciding whether or not to give an authority to deal with the goods.
- (5) If a submanifest in respect of goods has been sent to Customs under section 117A, Customs may, at the request of the owner of the goods, inform the owner of the stage reached by Customs in preparing to give a submanifest number in respect of the submanifest.

144 Subsection 77F(1)

Insert:

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

145 Subsection 77K(5)

Omit all the words and paragraphs after “CEO”, substitute “must not grant the licence unless the applicant has, at the proposed depot, facilities that would enable the applicant to communicate with Customs electronically”.

146 After section 77L

Insert:

77LA Variation of places covered by depot licence

- (1) The CEO may, on application by the holder of a depot licence, vary the licence by:
 - (a) omitting the description of the place that is currently described in the licence and substituting a description of another place; or
 - (b) altering the description of the place that is currently described in the licence.
- (2) The application must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be signed in the manner indicated in the form; and
 - (e) be accompanied by payment of the depot licence variation charge.
- (3) The CEO may, by written notice given to an applicant for the variation of a depot licence, require the applicant to supply further information in relation to the application within the period that is specified in the notice or within such further period as the CEO allows.
- (4) The CEO must not grant an application for the substitution of the description of a place not currently described in the licence, or for the alteration to the description of a place currently described in the licence, if, in the CEO's opinion:
 - (a) the physical security of the place whose description is to be substituted, or of the place that would have the altered description, as the case may be, would not be adequate having regard to:
 - (i) the nature of the place; or
 - (ii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the place if the variation were made; or
 - (b) the records that would be kept in relation to the place would not be suitable to enable Customs adequately to audit those records.

- (5) The CEO must not grant an application for the substitution of the description of a place not currently described in the licence if, in the CEO's opinion, the place would be too remote from the nearest place where officers who regularly perform their functions for Customs would be able conveniently to check whether the Customs Acts are being complied with at the place.
- (6) The CEO must decide whether or not to grant the application within 60 days after:
 - (a) if paragraph (b) does not apply—the receipt of the application; or
 - (b) if the CEO requires further information relating to the application to be supplied by the applicant under subsection (3) and the applicant supplied the information in accordance with that subsection—the receipt of the information.
- (7) If the CEO has not made the decision whether or not to grant the application within the period applicable under subsection (6), the CEO is taken to have refused the application.

147 Paragraph 77N(2)(d)

Omit “administration;”, substitute “administration.”.

148 Paragraphs 77N(2)(e) and (f)

Repeal the paragraphs.

149 After subsection 77N(2)

Insert:

- (2A) The holder of a licence must not cause or permit a substantial change to be made in:
 - (a) a matter affecting the physical security of the depot; or
 - (b) the keeping of records in relation to the depot;unless the holder has given to the CEO 30 days' notice of the proposed change.

150 After paragraph 273GA(1)(aaa)

Insert:

- (aaaaa) a decision by the CEO under subsection 64AB(14) refusing to grant a further moratorium period;

151 After paragraph 273GA(1)(aar)

Insert:

- (aara) a decision by the CEO under subsection 77LA(1) not to vary a depot licence;
- (aarb) a decision by the CEO under subsection 77LA(3) not to allow a further period;

Customs Administration Act 1985

152 Subsection 16(1)

Repeal the subsection, substitute:

Overview

- (1) This section:
 - (a) prohibits the unauthorised recording and disclosure of certain information held by the Australian Customs Service; and
 - (b) provides for exceptions in relation to the prohibition; and
 - (c) makes particular provision in relation to the authorised disclosure of personal information.

Persons to whom section applies

- (1AA) This section applies to:
 - (a) the CEO; and
 - (b) a person performing duties in the Australian Customs Service as a person employed or engaged by the Commonwealth, a Commonwealth agency, a State or a State agency; and
 - (c) any of the following persons:
 - (i) a person engaged to provide goods or services to the Commonwealth through the Australian Customs Service (whether or not under an agreement to which the Commonwealth is a party);
 - (ii) if the person mentioned in subparagraph (i) is a body corporate—a director, an employee or an agent of the body corporate;
 - (iii) if the person mentioned in subparagraph (i) is an individual—an employee or agent of the individual; and

- (d) a person to whom the CEO has delegated a power or function of the CEO under a law of customs or any other law of the Commonwealth; and
- (e) a person authorised by the CEO to exercise a power or function under a law of customs or any other law of the Commonwealth.

Note: The heading to section 16 is omitted and replaced by the heading “**Prohibition of disclosure of certain information**”.

153 Subsection 16(1A) (definition of AQIS)

Repeal the definition.

154 Subsection 16(1A) (definition of *authorised officer of AQIS*)

Repeal the definition.

155 Subsection 16(1A) (definition of *authorised person*)

Repeal the definition.

156 Subsection 16(1A) (definition of *duties*)

Omit “an authorised person” (first occurring), substitute “a person”.

157 Subsection 16(1A) (definition of *duties*)

Omit “an authorised person” (second occurring), substitute “a person to whom this section applies”.

158 Subsection 16(1A) (definition of *duties, note*)

Omit “an authorised person”, substitute “a person”.

159 Subsection 16(1A) (definition of *food*)

Repeal the definition.

160 Subsection 16(1A) (definition of *protected information*)

Omit “an authorised person while the authorised person”, substitute “a person while he or she”.

161 Subsection 16(1A) (definition of *State*)

Repeal the definition, substitute:

State includes the Australian Capital Territory, the Northern Territory and Norfolk Island.

162 Subsection 16(2)

Omit “an authorised person”, substitute “a person to whom this section applies”.

163 Paragraph 16(3)(b)

Omit “or (4)”, substitute “, (3G) or (3H)”.

164 Paragraph 16(3A)(c)

Omit “an authorised person”, substitute “a person”.

165 Paragraph 16(3B)(c)

Omit “an authorised person”, substitute “a person”.

166 Paragraph 16(3C)(c)

Omit “an authorised person”, substitute “a person”.

167 Paragraph 16(3D)(c)

Omit “an authorised person”, substitute “a person”.

168 Subsections 16(4), (5), (6), (7) and (8)

Repeal the subsections, substitute:

Body corporate may consent to disclosure

- (3G) If the CEO is satisfied that the principal officer of, or a person authorised to act on behalf of, a body corporate has consented to the disclosure to a person of information or a class of information (not including personal information) about the body, the CEO may authorise, in writing, the disclosure of the information to the person.

Government agencies, foreign countries or international organisations may consent to disclosure

- (3H) If the CEO is satisfied that a Commonwealth agency, State agency, a foreign country, an instrumentality or agency of a foreign country or an international organisation has consented to the disclosure to a person of information or a class of information (not including
-

personal information) about the agency, country, instrumentality or organisation, the CEO may authorise, in writing, the disclosure of the information to the person.

Disclosure of personal information

(7) If:

- (a) apart from this subsection, a person is authorised by this section to carry out an act referred to in paragraph (2)(b) because of the operation of subsection (3A), (3B), (3C) or (3D); and
- (b) the act involves the disclosure by the person to someone else of information (including a class of information) that contains personal information;

then, despite the above provisions of this section, the person is not to be taken to be authorised by this section to carry out the act unless:

- (c) the person to whom the information relates has consented to the disclosure; or
- (d) the following apply:
 - (i) in the case of any disclosure of information—the disclosure complies with subsection (8);
 - (ii) in the case of a disclosure of a class of information—the disclosure also complies with subsection (10).

Requirements applicable to disclosure of personal information

- (8) This subsection is complied with in relation to the disclosure of information as referred to in subparagraph (7)(d)(i) if:
 - (a) the CEO is satisfied that the disclosure is necessary for a permissible purpose referred to in a paragraph of subsection (9); and
 - (b) the purpose is specified as a purpose for which the disclosure is authorised to be made in an authorisation under subsection (3A), (3B), (3C) or (3D) that applies to the disclosure; and
 - (c) the disclosure is made for that purpose.

169 After paragraph 16(9)(e)

Insert:

(ea) the collection and verification of statistics for the purposes of the *Census and Statistics Act 1905* and the performance of the functions of the Australian Bureau of Statistics as set out in section 6 of the *Australian Bureau of Statistics Act 1975*;

170 Paragraphs 16(9)(f) and (g)

Omit “collection”, substitute “protection”.

171 Paragraph 16(9)(i)

Omit “or another country”, substitute “and another country”.

Schedule 4—Repeal of the Import Processing Charges Act 1997

Import Processing Charges Act 1997

1 The whole of the Act

Repeal the Act.

*[Minister's second reading speech made in—
House of Representatives on 6 December 2000
Senate on 26 March 2001]*

(206/00)