



# **Border Security Legislation Amendment Act 2002**

**No. 64, 2002**

**An Act to amend the law relating to border  
security, and for other purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# **Border Security Legislation Amendment Act 2002**

**No. 64, 2002**

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## **An Act to amend the law relating to border security, and for other purposes**

[Assented to 5 July 2002]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Border Security Legislation  
Amendment Act 2002*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	5 July 2002
2. Schedules 1 and 2	A single day to be fixed by Proclamation, subject to subsection (3)	5 January 2003
3. Schedule 3	The day on which this Act receives the Royal Assent	5 July 2002
4. Part 1 of Schedule 4	A single day to be fixed by Proclamation, subject to subsection (3)	5 January 2003
5. Part 2 of Schedule 4	Immediately after item 118 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences	19 July 2005
6. Schedule 5	A single day to be fixed by Proclamation, subject to subsection (3)	5 January 2003
7. Schedule 6, Part 1	A single day to be fixed by Proclamation, subject to subsection (3)	5 January 2003
8. Schedule 6, items 10 to 15	Immediately before item 122 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences	19 July 2005
9. Schedule 6, items 16 to 18	At the same time as the provisions covered by item 7 of this table	5 January 2003
10. Schedule 7	The 28th day after the day on which this Act receives the Royal Assent	2 August 2002
11. Schedule 8	A single day to be fixed by Proclamation, subject to subsection (3)	5 January 2003

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
12. Schedule 9	The day on which this Act receives the Royal Assent	5 July 2002
13. Schedule 10	The 28th day after the day on which this Act receives the Royal Assent	2 August 2002
14. Schedules 11, 12 and 13	The day on which this Act receives the Royal Assent	5 July 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2, 4, 6, 7 or 11 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then it commences on the first day after the end of that period.

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

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—Restricted areas

### *Customs Act 1901*

#### **1 Subsection 234AA(1)**

Omit all the words before “a Collector” (first occurring), substitute:

Where a place:

- (a) is to be used by officers:
  - (i) for questioning, for the purposes of this Act or of any other law of the Commonwealth, passengers disembarking from or embarking on a ship or aircraft; or
  - (ii) for examining, for such purposes, the personal baggage of such passengers; or
  - (iii) as a holding place for such passengers; or
- (b) is covered by a notice under subsection (3);

#### **2 Subsection 234AA(2)**

Omit all the words from and including “state that”, substitute:

indicate (whether in words or images) that the use of:

- (a) cameras or sound recorders; or
  - (b) mobile phones or other electronic forms of communication;
- at the place by unauthorized persons is prohibited by this Act.

#### **3 At the end of section 234AA**

Add:

- (3) The CEO may publish a notice in the *Gazette* specifying, as an area to which this section applies, an area of an airport appointed under section 15.
- (4) An area specified in such a notice must comprise one or more of the following areas:
  - (a) areas that are used by, or frequented by, passengers who have arrived in Australia until they have passed through the last point at which they or their baggage are normally subject to processing by officers;



- (b) areas that are used by, or frequented by, passengers who are about to depart Australia after they have passed through the first point at which they are normally subject to processing by officers;
- (c) areas that are in the vicinity of areas referred to in paragraph (a) or (b).

**4 Subsection 234A(1)**

Omit “, other than a passenger disembarking from, or embarking on, a ship or aircraft,”.

**5 Subsection 234A(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 50 penalty units.

**6 After paragraph 234A(1A)(a)**

Insert:

- (ab) is a holder of a security identification card (within the meaning of section 213A) who enters into or is in the place for the purposes of his or her employment; or

**7 At the end of subsection 234A(1A)**

Add:

- ; or (c) is a member of a crew disembarking from, or embarking on, a ship or aircraft; or
- (d) is a passenger disembarking from, or embarking on, a ship or aircraft; or
- (e) is included in a class of persons whom the CEO determines, in writing, to be exempt from this section.

**8 Paragraph 234AB(1)(a)**

Omit all the words before “at a place”, substitute:

not to use:

- (i) a camera or sound recorder; or
- (ii) a mobile phone or other electronic form of communication;

**9 Subsection 234AB(4)**

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Repeal the subsection, substitute:

- (4) In any proceedings for the prosecution of a person for an offence against subsection (3), evidence that a sign indicating that the use of:
  - (a) cameras or sound recorders; or
  - (b) mobile phones or other electronic forms of communication;at a place is prohibited by this Act was displayed at or near that place is prima facie evidence that the sign was so displayed in accordance with subsection 234AA(2).

## 10 After section 234AB

Insert:

### **234ABA Officers may direct unauthorised persons to leave restricted areas**

- (1) An officer may direct a person to leave a place in relation to which a sign is displayed under subsection 234AA(1) if the officer reasonably believes that the person is in that place in contravention of section 234A.
- (2) The officer may, either acting alone or with the assistance of one or more other officers or protective service officers, use reasonable force to remove the person from the area if the person refuses to leave when so directed.
- (3) However, in removing the person, the officer (and the persons assisting) must not use more force, or subject him or her to greater indignity, than is necessary or reasonable.
- (4) In this section:

*protective service officer* means a protective service officer within the meaning of the *Australian Protective Service Act 1987*.

## **Schedule 2—Information about people working in restricted areas or issued with security identification cards**

### *Customs Act 1901*

#### **1 After Subdivision H of Division 1 of Part XII**

Insert:

#### **Subdivision HA—Information about people working in restricted areas or issued with security identification cards**

##### **213A Providing Customs with information about people working in restricted areas**

- (1) A person who employs or engages a restricted area employee must, within 7 days after doing so, provide to an authorised officer the required identity information in respect of the employee.
- (2) If a person (the *employer*):
  - (a) employs or engages another person after the commencement of this section; and
  - (b) at a later time the other person becomes a restricted area employee of the employer;the employer must, within 7 days after that later time, provide to an authorised officer the required identity information in respect of the employee.
- (3) If:
  - (a) a person (the *employer*) employed or engaged another person before the commencement of this section; and
  - (b) the other person is a restricted area employee of the employer; and
  - (c) an authorised officer suspects on reasonable grounds that the other person has committed, or is likely to commit, an offence against a law of the Commonwealth;

the authorised officer may, in writing, request the employer to provide to the authorised officer, within 7 days after receiving the request, the required identity information in respect of the employee. The employer must comply with the request.

- (4) A person does not comply with an obligation under subsection (1), (2) or (3) to provide information unless the person provides the information:
- (a) in writing; or
  - (b) in such other form as the CEO determines in writing.

- (5) A person commits an offence if the person fails to comply with subsection (1), (2) or (3).

Penalty: 30 penalty units.

- (6) Subsection (5) is an offence of strict liability.

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

- (7) In this section:

***required identity information***, in relation to a person, means any one or more of the following:

- (a) the name and address of the person;
- (b) the person's date and place of birth;
- (c) any other information prescribed by the regulations.

***restricted area employee*** means a person whose duties include working in an area covered by a notice under subsection 234AA(3), but does not include a person who is issued with a security identification card.

***security identification card*** means a card of a kind specified in the regulations.

### **213B Providing Customs with information about people issued with security identification cards**

- (1) A person who issues a security identification card to another person in respect of an airport appointed under section 15 must, within 7 days after doing so, provide to an authorised officer the required identity information in respect of the person.

- (2) If:
- (a) before the commencement of this section, a person issued a security identification card to another person in respect of an airport appointed under section 15; and
  - (b) an authorised officer suspects on reasonable grounds that the other person has committed, or is likely to commit, an offence against a law of the Commonwealth;
- the authorised officer may, in writing, request the person who issued the card to provide to the authorised officer, within 7 days after receiving the request, the required identity information in respect of the other person. The person so requested must comply with the request.
- (3) A person does not comply with an obligation under subsection (1) or (2) to provide information unless the person provides the information:
- (a) in writing; or
  - (b) in such other form as the CEO determines in writing.
- (4) In this section:
- required identity information*** has the meaning given by section 213A.
- security identification card*** has the meaning given by section 213A.

## **Schedule 3—Power to patrol airports**

### *Customs Act 1901*

#### **1 Section 193**

After “railway”, insert “or any airport”.

## **Schedule 4—Goods in transit through Australia**

### **Part 1—Amendments commencing first**

#### *Customs Act 1901*

##### **1 After paragraph 11(1)(aa)**

Insert:

- (ab) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that State of the functions of a judicial officer under Subdivision DA of Division 1 of Part XII, and under other provisions in so far as they relate to that Subdivision; and

##### **2 After paragraph 11(2)(aa)**

Insert:

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

##### **3 After subsection 64AB(3)**

Insert:

- (3AA) If a ship is due to arrive at its first port in Australia since it last called at any port outside Australia, the master or owner of the ship must communicate to Customs a report of any cargo on board the ship that is intended to be kept on board the ship for shipment on to a place outside Australia:
  - (a) if the journey from the last port is likely to take not less than 48 hours—not later than 48 hours before the ship’s arrival at the port; and
  - (b) if the journey from the last port is likely to take less than 48 hours—not later than 24 hours before its arrival.

- (3AB) If an aircraft is due to arrive at its first airport in Australia since it last departed from any airport outside Australia, the pilot or owner of the aircraft must communicate to Customs a report of any cargo on board the aircraft that is intended to be kept on board the aircraft for shipment on to a place outside Australia:
- (a) if that report is made by document—3 hours after the arrival of the aircraft at the airport; or
  - (b) if that report is made by computer—2 hours before the arrival of the aircraft at the airport.
- (3AC) A person who intentionally contravenes subsection (3AA) or (3AB) commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (3AD) A person who contravenes subsection (3AA) or (3AB) commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (3AE) An offence against subsection (3AD) is an offence of strict liability.

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

**4 Subsection 64AB(3A)**

Omit “subsection (2) or (3)”, substitute “subsection (2), (3), (3AA) or (3AB)”.

**5 Subsection 64AB(4)**

After “unshipped from”, insert “, or kept on board,”.

**6 Subsection 64AB(5)**

After “unshipped from”, insert “, or kept on board,”.

**7 At the end of subsection 64AB(6)**

Add “or different kinds of cargo”.

**8 Paragraph 64AB(7)(a)**

Omit “subsection (2) or (3)”, substitute “subsection (2), (3), (3AA) or (3AB)”.

**9 Subsection 64ABA(1)**



Repeal the subsection, substitute:

- (1) At any time after a cargo report is communicated to Customs but before:
- (a) if the report was under subsection 64AB(2) or (3)—the delivery of the goods into home consumption or warehousing covered by the report; or
  - (b) if the report was under subsection 64AB(3AA)—the ship leaves its last port in Australia before calling on a port outside Australia; or
  - (c) if the report was under subsection 64AB(3AB)—the aircraft leaves its last airport in Australia before arriving at an airport outside Australia;
- the person who communicated the report to Customs may, by document or by computer, communicate a variation of the report to Customs.

**10 Subsection 183UA(1) (at the end of the definition of *authorized person*)**

Add:

- ; and (e) in relation to an application for, or the execution of, a seizure warrant under section 203DA—an officer of Customs.

**11 Subsection 183UA(1) (definition of *judicial officer*)**

Repeal the definition, substitute:

*judicial officer* means:

- (a) in relation to a search warrant, or to a seizure warrant under section 203:
  - (i) a magistrate; or
  - (ii) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants; or
- (b) in relation to a seizure warrant under section 203DA:
  - (i) a Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory in relation to whom a consent under subsection 183UD(1), and a nomination under subsection 183UD(2), are in force; or

- (ii) a Judge of the Supreme Court of a State in respect of whom an appropriate arrangement in force under section 11 is applicable; or
- (iii) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in subparagraph (i) and in respect of whom an appropriate arrangement in force under section 11 is applicable.

**12 Subsection 183UA(1) (definition of *seizure notice*)**

Repeal the definition, substitute:

*seizure notice* means:

- (a) in relation to Subdivision G—a notice of the kind mentioned in section 205A; and
- (b) in relation to Subdivision GA—a notice of the kind mentioned in section 209E.

**13 Subsection 183UA(1) (at the end of the definition of *seizure warrant*)**

Add “or 203DA”.

**14 Subsection 183UA(1)**

Insert:

*terrorist act* means an action or threat of action where:

- (a) the action falls within subsection (4) and does not fall within subsection (4A); and
- (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
- (c) the action is done or the threat is made with the intention of:
  - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
  - (ii) intimidating the public or a section of the public.

It is immaterial whether the action or threat, or any part of the action or threat or anyone or anything affected by the action or threat is within or outside Australia.

**15 At the end of section 183UA**

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Add:

- (4) For the purposes of the definition of *terrorist act* in subsection (1), action falls within this subsection if it:
- (a) causes serious harm that is physical harm to a person; or
  - (b) causes serious damage to property; or
  - (ba) causes a person's death; or
  - (c) endangers a person's life, other than the life of the person taking the action; or
  - (d) creates a serious risk to the health or safety of the public or a section of the public; or
  - (e) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
    - (i) an information system; or
    - (ii) a telecommunications system; or
    - (iii) a financial system; or
    - (iv) a system used for the delivery of essential government services; or
    - (v) a system used for, or by, an essential public utility; or
    - (vi) a system used for, or by, a transport system.
- (4A) For the purposes of the definition of *terrorist act* in subsection (1), action falls within this subsection if it:
- (a) is advocacy, protest, dissent or industrial action; and
  - (b) is not intended:
    - (i) to cause serious harm that is physical harm to a person; or
    - or
    - (ii) to cause a person's death; or
    - (iii) to endanger the life of a person, other than the person taking the action; or
    - (iv) to create a serious risk to the health or safety of the public or a section of the public.
- (5) In subsections (4) and (4A):
- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and
  - (b) a reference to the public includes a reference to the public of a country other than Australia.

**16 At the end of Subdivision A of Division 1 of Part XII**

Add:

**183UD Judges who may issue seizure warrants for goods in transit**

- (1) A Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory may, by writing, consent to be nominated by the Minister under subsection (2).
- (2) The Minister may, by writing, nominate a Judge of a court referred to in subsection (1) in relation to whom a consent is in force under that subsection to be a judicial officer for the purposes of paragraph (b) of the definition of *judicial officer* in subsection 183UA(1).

**17 Subsection 185B(8)**

Omit “Subdivisions D and G (other than section 205G)”, substitute “Subdivisions D, G and GA (other than sections 205G and 209I)”.

**18 At the end of section 186**

Add:

- (4) Goods that are subject to the control of Customs under section 31 do not cease to be subject to the control of Customs merely because they are removed from a ship or aircraft in the course of an examination under this section.

Note: The heading to section 203 is altered by inserting “**for forfeited goods**” after “warrants”.

**19 Subsection 203A(1)**

After “that is in force”, insert “under section 203”.

Note: The heading to section 203A is altered by adding at the end “**for forfeited goods**”.

**20 After Subdivision D of Division 1 of Part XII**

Insert:

## **Subdivision DA—Seizure of certain goods in transit**

### **203DA When seizure warrants for goods in transit can be issued**

- (1) A judicial officer may issue a warrant to seize goods on or in particular premises if the judicial officer is satisfied by information on oath that the Minister has reasonable grounds for suspecting that:
  - (a) the goods are, or within the next 72 hours will be, on or in the premises; and
  - (b) the goods have been or will be brought into Australia on a ship or aircraft and are intended to be kept on board the ship or aircraft for shipment on to a place outside Australia, without being imported into Australia or exported from Australia; and
  - (c) the goods satisfy either or both of the following subparagraphs:
    - (i) the goods are connected, whether directly or indirectly, with the carrying out of a terrorist act, whether the terrorist act has occurred, is occurring or is likely to occur;
    - (ii) the existence or the shipment of the goods prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.
- (2) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:
  - (a) a description of the goods to which the warrant relates; and
  - (b) a description of the premises on or in which the goods are believed to be located; and
  - (c) the name of the authorised person who, unless that authorised person inserts the name of another authorised person in the warrant, is to be responsible for executing the warrant; and
  - (d) the time at which the warrant expires (see subsection (3)); and
  - (e) whether the warrant may be executed at any time or only during particular hours.
- (3) The time stated in the warrant under paragraph (2)(d) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

- (4) The judicial officer is also to state in the warrant that it authorises the seizure of goods found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods.
- (5) Paragraph (2)(d) and subsection (3) do not prevent the issue of successive warrants in relation to the same premises.
- (6) If the application for the warrant is made under section 203M, this section (other than subsection (3)) applies as if:
  - (a) subsection (1) referred to 48 hours rather than 72 hours; and
  - (b) paragraph (2)(d) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.
- (7) A judicial officer of a particular State or Territory may issue a warrant in respect of the seizure of goods on or in premises in another State or Territory.

**203DB The things that are authorised by seizure warrants for goods in transit**

- (1) A seizure warrant that is in force under section 203DA in relation to premises authorises the executing officer or a person assisting:
  - (a) to enter the warrant premises; and
  - (b) to search for the goods described in the warrant; and
  - (c) to seize the goods described in the warrant; and
  - (d) to seize other goods:
    - (i) that are found on or in the premises in the course of searching for the goods the subject of the warrant; and
    - (ii) that the executing officer or a person assisting believes on reasonable grounds to be special forfeited goods.
- (2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.

- (3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:
  - (a) permits entry of the conveyance, wherever it is; and
  - (b) extends to every container on the conveyance.
- (4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.
- (5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

**21 Subsection 203G(5) (paragraph (a) of the definition of a copy of the warrant)**

Omit “198 or 203”, substitute “198, 203 or 203DA”.

**22 Subsection 203K(5)**

Omit “198(1) or 203(1)”, substitute “198(1), 203(1) or 203DA(1)”.

**23 Subsection 203M(4)**

Omit “198 or 203”, substitute “198, 203 or 203DA”.

**24 Before section 203T**

Insert (in Subdivision G):

**203SA Subdivision does not apply to seized transit goods**

This Subdivision does not apply to goods that have been seized under a seizure warrant under section 203DA, except for goods seized under paragraph 203DB(1)(d) (which covers goods suspected of being special forfeited goods).

Note: For seized transit goods, see Subdivision GA.

**25 After Subdivision G of Division 1 of Part XII**

Insert:

## **Subdivision GA—Dealing with goods in transit seized under a section 203DA warrant**

### **209B Subdivision applies to seized transit goods**

This Subdivision applies to goods that have been seized under a seizure warrant under section 203DA, except for goods seized under paragraph 203DB(1)(d) (which covers goods suspected of being special forfeited goods).

Note: For other kinds of seized goods, see Subdivision G.

### **209C Seized goods to be secured**

An officer of Customs who seizes any goods to which this Subdivision applies must, as soon as practicable, take the goods to a place approved by a Collector as a place for the storage of goods of that kind.

### **209D Requirement to serve seizure notices**

- (1) The officer must serve, within 7 days after the seizure, a seizure notice on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized.
- (2) Subsection (1) applies whether or not an application for the return of the goods seized has been made under section 209F.
- (3) The notice must be in writing and must be served:
  - (a) personally or by post; or
  - (b) if no person of the kind referred to in subsection (1) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.
- (4) A seizure notice may be served on a person who is outside Australia.

### **209E Matters to be dealt with in seizure notices**

A seizure notice must set out the following:

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- (a) a statement identifying the goods;
- (b) the day on which they were seized;
- (c) the ground, or each of the grounds, on which they were seized;
- (d) a statement that, if an application for the return of the goods has not already been made, and is not made within 30 days after the day the notice is served, the goods will be taken to be condemned as forfeited to the Crown.

**209F Application for return of seized goods**

- (1) The owner of the goods may, whether or not a seizure notice has yet been served on the owner, apply to a court of competent jurisdiction for the return of the goods.
- (2) An application must be made no later than 30 days after a seizure notice is issued in respect of the goods.
- (3) If the court finds that:
  - (a) the goods are not goods of the kind mentioned in subsection 203DA(1); and
  - (b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and
  - (c) the person is the rightful owner of the goods;the court must order that the goods be returned to the owner.
- (4) Goods required to be so returned are required to be returned in a condition as near as practicable to the condition in which they were seized.
- (5) If the court finds otherwise than as mentioned in subsection (3), the goods are condemned as forfeited to the Crown.

**209G Status of goods seized if no application for return is made**

- If:
- (a) a seizure notice has been served; and
  - (b) at the end of 30 days after the day on which the notice was served, no application has been made for return of the goods;
- the goods are condemned as forfeited to the Crown.

**209H Right of compensation for certain goods disposed of or destroyed**

- (1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because no application for their return was made, a person may apply to a court of competent jurisdiction under this section for compensation.
- (2) A right to compensation exists if:
  - (a) the goods are not goods of the kind mentioned in subsection 203DA(1); and
  - (b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and
  - (c) the person establishes, to the satisfaction of the court:
    - (i) that he or she is the rightful owner of the goods; and
    - (ii) that there were circumstances providing a reasonable excuse for the failure to apply for the return of the goods not later than 30 days after the day the seizure notice was served.
- (3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to:
  - (a) if the goods have been sold—the proceeds of the sale; and
  - (b) if the goods have been destroyed or otherwise disposed of—the goods' market value at the time of their destruction or disposal.

**209I Effect of forfeiture**

When goods are condemned as forfeited to the Crown under this Subdivision, the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

**209J Immediate disposal of unsafe goods**

- (1) If the CEO or a Regional Director for a State or Territory is satisfied that the retention of goods seized would constitute a danger to public health or safety, the CEO or Regional Director

may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

- (2) As soon as practicable, but not later than 7 days after the goods have been dealt with, the CEO or Regional Director concerned must give or publish a notice in accordance with subsection (4).
- (3) The notice must be in writing and must be served:
  - (a) personally or by post on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized; or
  - (b) if no person of the kind referred to in paragraph (a) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.
- (4) The notice must:
  - (a) identify the goods; and
  - (b) state that the goods have been seized under a seizure warrant under section 203DA and give the reason for the seizure; and
  - (c) state that the goods have been dealt with under subsection (1) and specify the manner in which they have been so dealt with and the reason for doing so; and
  - (d) set out the terms of subsection (5).
- (5) If goods are dealt with in accordance with subsection (1), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.
- (6) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) exists if:
  - (a) the goods were not goods of the kind mentioned in subsection 203DA(1); and
  - (b) the goods were not used or otherwise involved in the commission of an offence against any law of the Commonwealth, a State or a Territory; and
  - (c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.

- (7) If a person establishes a right to recover the market value of the goods at the time they were dealt with, the Court must order the payment by the Commonwealth of an amount equal to that value at that time.

**209K Disposal of forfeited goods**

- (1) All goods that are condemned as forfeited to the Crown under this Subdivision must be dealt with and disposed of in accordance with the directions of the CEO.
- (2) In particular, the CEO may direct that the goods be given to a relevant authority of a foreign country in order that the goods be used in an investigation or prosecution under the laws of that country.
- (3) Subsection (2) does not limit the generality of subsection (1).

**209L Service by post**

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a seizure notice under section 209D or a notice under subsection 209J(3) on a person, such a notice posted as a letter addressed to that person at the last address of that person known to the sender is taken to be properly addressed.

**26 Paragraph 229(1)(bb)**

After “section 206”, insert “or 209J”.

**27 Paragraph 229(1)(bb)**

After “section 208D”, insert “or 209K”.

## **Part 2—Amendments commencing second**

### *Customs Act 1901*

#### **28 Subsection 4(1) (definition of *cargo report*)**

Omit all the words after “the cargo”, substitute “to be unloaded from, or kept on board, a ship at a port or an aircraft at an airport.”.

#### **29 After subsection 64AB(2)**

Insert:

- (2A) If the ship or aircraft is due to arrive at its first port, or airport, in Australia since it last called at a port, or departed from an airport, outside Australia, each cargo reporter must report to Customs, in accordance with this section, particulars of all goods that the cargo reporter has arranged to be carried on the ship or aircraft and that are intended to be kept on board the ship or aircraft for shipment on to a place outside Australia, other than:
- (a) goods that are accompanied personal or household effects of a passenger or member of the crew; or
  - (b) ship’s stores or aircraft’s stores.

#### **30 Paragraph 64AB(5)(a)**

Before “the reference”, insert “in the case of a report under subsection (2)—”.

#### **31 After paragraph 64AB(5)(a)**

Insert:

- (aa) in the case of a report under subsection (2A)—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 a place outside Australia; or
  - (ii) complies with a request from a person in a place outside Australia to send goods to the person; and

#### **32 Paragraph 64AB(5)(b)**

**Schedule 4** Goods in transit through Australia  
**Part 2** Amendments commencing second

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Before “the reference”, insert “in any case—”.

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## Schedule 5—Reporting of mail

### *Customs Act 1901*

#### **1 Section 63A**

Insert:

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

#### **2 Section 63A**

Insert:

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

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

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

#### **3 After subsection 64AB(3A)**

Insert:

(3AAA) Despite subsection (3A), to the extent that a cargo report relates to mail that is intended to be unshipped in Australia, the report must be made to Customs by computer.

#### **4 After subsection 64ABA(1)**

Insert:

(1A) Despite subsection (1), to the extent that a variation of a cargo report relates to mail that is intended to be unshipped in Australia, the variation must be communicated to Customs by computer, as if subsection 64AB(5) applied to the variation.

## Schedule 6—Reporting of passengers and crew

### Part 1—Main amendments

#### *Customs Act 1901*

##### **1 Subsection 4(1)**

Insert:

*approved statement* means a statement approved under section 4A.

##### **2 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.

##### **3 Subsection 4(1) (definition of *electronic*)**

Repeal the definition, substitute:

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

##### **4 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.

##### **5 Sections 64AC and 64AD**

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Repeal the sections, substitute:

## **64ACA Passenger reports**

### *Obligation to report on passengers*

- (1) The operator of a ship or aircraft that is due to arrive, from a place outside Australia, at a port or airport in Australia (whether it is the first or any subsequent port or airport of the voyage or flight) must report to Customs on the passengers who will be on board the ship or aircraft at the time of its arrival at the port or airport.

Note 1: This obligation (and the obligation in subsection (11)) must be complied with even if the information concerned is personal information (as defined in the *Privacy Act 1988*).

Note 2: See also section 64ACC, which deals with what happens if information has already been reported to the Migration Department.

Note 3: Section 64ACD contains an offence for failure to comply with this subsection.

### *How report is to be given—certain operators to use an approved electronic system*

- (2) If one of the following paragraphs applies, the operator must give the report by the electronic system approved for the operator for the purposes of this subsection:
- (a) the ship is on a voyage for transporting persons:
    - (i) that is provided for a fee payable by those using it; and
    - (ii) the operator of which is prescribed by the regulations; and the CEO has, in writing, approved an electronic system for the operator for the purposes of this subsection;
  - (b) the aircraft is on a flight that is provided as part of an airline service:
    - (i) that is provided for a fee payable by those using it; and
    - (ii) that is provided in accordance with fixed schedules to or from fixed terminals over specific routes; and
    - (iii) that is available to the general public on a regular basis; and the CEO has, in writing, approved an electronic system for the operator for the purposes of this subsection.

Note 1: An instrument approving an electronic system can be varied or revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

**Schedule 6** Reporting of passengers and crew  
**Part 1** Main amendments

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Note 2: An instrument approving an electronic system, or a variation or revocation of such an instrument, is a disallowable instrument—see subsection (10).

- (3) However, if the approved electronic system is not working, then the operator must give the report as if subsection (4) applied.

*How report to is be given—other operators*

- (4) The operator of any other ship or aircraft may give the report by document or electronically.

*Deadline for giving report—ships*

- (5) If the report relates to a ship, it must be given not later than:
- (a) if the journey from the last port outside Australia is likely to take not less than 48 hours—48 hours; or
  - (b) if the journey from the last port outside Australia 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.

*Deadline for giving report—aircraft*

- (6) If the report relates to an aircraft, it must be given not later than:
- (a) if the flight from the last airport outside Australia is likely to take not less than 3 hours—3 hours; or
  - (b) if the flight from the last airport outside Australia is likely to take less than 3 hours—one hour;
- before the time stated in the report made under section 64 to be the estimated time of arrival of the aircraft.

*Other requirements for documentary reports*

- (7) If the report is given by document, it must:
- (a) be in writing; and
  - (b) be in an approved form; and
  - (c) contain such information as is required by the form; and
  - (d) be signed in a manner specified in the form; and
  - (e) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or

aircraft at the port or airport at which the ship or aircraft is expected to arrive.

*Other requirements for electronic reports*

- (8) If the report is given electronically (whether or not by an electronic system approved for the purposes of subsection (2)), it must communicate such information as is set out in an approved statement.

*Different forms and statements for different circumstances etc.*

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

*Approvals of electronic systems for the purposes of subsection (2) are disallowable instruments*

- (10) An instrument of approval of an electronic system for the purposes of subsection (2), or a variation or revocation of such an instrument, is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*Obligation to pass information on to Migration Department*

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

*Purpose for which information obtained*

- (12) Information obtained by Customs:
- (a) under this section; or
  - (b) under subsection 245L(6) of the *Migration Act 1958*;
- is taken to be obtained by Customs for the purposes of the administration of this Act, the *Migration Act 1958*, and any other law of the Commonwealth prescribed by regulations for the purposes of this subsection.

## **64ACB Crew reports**

### *Obligation to report on crew*

- (1) The operator of a ship or aircraft that is due to arrive, from a place outside Australia, at a port or airport in Australia (whether it is the first or any subsequent port or airport of the voyage or flight) must, in accordance with this section, report to Customs on the crew who will be on board the ship or aircraft at the time of its arrival at the port or airport.

Note 1: This obligation (and the obligation in subsection (8)) must be complied with even if the information concerned is personal information (as defined in the *Privacy Act 1988*).

Note 2: See also section 64ACC, which deals with what happens if information has already been reported to the Migration Department.

Note 3: Section 64ACD contains an offence for failure to comply with this subsection.

### *How report is to be given*

- (2) The operator may give the report by document or electronically.

### *Deadline for giving report*

- (3) The report must be made during the period within which a report under section 64 of the impending arrival of the ship or aircraft is required to be made.
- (4) However, a report in respect of an aircraft must not be made before the date of departure of the aircraft from the last airport outside Australia.

### *Other requirements for documentary reports*

- (5) If the report is given by document, it must:
- (a) be in writing; and
  - (b) be in an approved form; and
  - (c) contain such information as is required by the form; and
  - (d) be signed in a manner specified in the form; and
  - (e) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport at which the ship or aircraft is expected to arrive.

*Other requirements for electronic reports*

- (6) If the report is given electronically, it must communicate such information as is set out in an approved statement.

*Different forms and statements for different circumstances etc.*

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

*Obligation to pass information on to Migration Department*

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

*Purpose for which information obtained*

- (9) Information obtained by Customs:
- (a) under this section; or
  - (b) under subsection 245L(6) of the *Migration Act 1958*;
- is taken to be obtained by Customs for the purposes of the administration of this Act, the *Migration Act 1958*, and any other law of the Commonwealth prescribed by regulations for the purposes of this subsection.

**64ACC Information does not have to be reported if it has already been reported to the Migration Department**

- (1) If:
- (a) both:
    - (i) section 64ACA or 64ACB of this Act; and
    - (ii) section 245L of the *Migration Act 1958*;
- require the same piece of information in relation to particular passengers or crew on a particular voyage or flight to be reported; and

- (b) the operator has reported that piece of information in relation to those passengers or crew in accordance with that section of the *Migration Act 1958*;

the operator is then taken not to be required by section 64ACA or 64ACB of this Act (as the case requires) to report the same piece of information in relation to those passengers or crew.

Note: This may mean that no report at all is required under this Act.

- (2) However, subsection (1) only applies if the report under the *Migration Act 1958* relates to the arrival of the ship or aircraft at the same port or airport for which this Act requires a report.

Note: So, for example, if a report under the *Migration Act 1958* is given for a ship's or aircraft's arrival in an external Territory that is not part of Australia for the purposes of this Act, subsection (1) does not apply and a complete report under this Act is required (even if some of the same passengers or crew are still on board).

### **64ACD Offence for failure to comply**

- (1) An operator of a ship or aircraft who intentionally contravenes section 64ACA or 64ACB commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (2) An operator of a ship or aircraft who contravenes section 64ACA or 64ACB commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.

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

### **64ACE Communication of reports**

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

## **6 Saving—regulations**

Regulations that were in effect for the purposes of section 64AD of the *Customs Act 1901* immediately before the commencement of this item continue to have effect after that time as if they had been made for the purposes of section 64ACE of that Act, as in force after that time.

## **7 Subsection 64AE(1)**

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

## **8 Subsection 64AE(2)**

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

## ***Migration Act 1958***

## **9 After Division 12A of Part 2**

Insert:

## **Division 12B—Reporting on passengers and crew of aircraft and ships**

### **245I Definitions**

(1) In this Division:

*approved fall-back reporting system* means a system approved under section 245K.

*approved primary reporting system* means a system approved under section 245J.

*approved primary reporting system for crew*, for an aircraft or ship of a kind to which this Division applies, means the system approved under section 245J for reporting on crew on an aircraft or ship of that kind.

*approved primary reporting system for passengers*, for an aircraft or ship of a kind to which this Division applies, means the system approved under section 245J for reporting on passengers on an aircraft or ship of that kind.

*arrival* means:

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

***kind of aircraft or ship to which this Division applies*** means a kind of aircraft or ship specified in the regulations as a kind of aircraft or ship to which this Division applies.

Note: ***Kind*** has a meaning affected by subsection (2).

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

- (a) the airline or shipping line responsible for the operation of the aircraft or ship for the flight or voyage; or
  - (b) if there is no such airline or shipping line, or no such airline or shipping line that is represented by a person in Australia—the pilot of the aircraft or the master of the ship.
- (2) For the purposes of this Division (and of regulations and approvals made for the purposes of provisions of this Division), a ***kind*** of aircraft or ship may be identified by reference to matters including all or any of the following:
- (a) the type, size or capacity of the aircraft or ship;
  - (b) the kind of operation or service the aircraft or ship is engaged in on the flight or voyage to Australia;
  - (c) other circumstances related to the aircraft or ship or its use, or related to the operator of the aircraft or ship.

## **245J Approval of primary reporting systems**

- (1) The Secretary must, for each kind of aircraft or ship to which this Division applies, approve in writing a system for the purposes of reporting under this Division. The system may be an electronic system or a system requiring reports to be provided in documentary form.

Note 1: An approval under this subsection can be varied or revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: It is anticipated that, ultimately, documentary systems will be phased out and all approved systems will be electronic systems.

- (2) Under subsection (1), the Secretary may, for a kind of aircraft or ship, approve a single system for reporting on both passengers and



crew or may approve one system for reporting on passengers, and another system for reporting on crew.

- (3) The instrument of approval of a system for reporting on passengers or crew must also specify the information about passengers or crew that is to be reported by that system.
- (4) An instrument of approval under this section, or a variation or revocation of such an instrument, is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **245K Approval of fall-back reporting systems**

- (1) The Secretary must, in writing, approve one or more systems as fall-back reporting systems. A system may be an electronic system or a system requiring reports to be provided in documentary form.

Note: An approval under this subsection can be varied or revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The instrument of approval of a system must also specify the information about passengers or crew that is to be reported by that system.
- (3) An instrument of approval under this section, or a variation or revocation of such an instrument, is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **245L Obligation to report on passengers and crew**

*Aircraft and ships to which section applies*

- (1) This section applies to an aircraft or ship of a kind to which this Division applies that is due to arrive at an airport or port in Australia from a place outside Australia.

*Obligation to report on passengers and crew*

- (2) The operator of the aircraft or ship must, in accordance with this section:
  - (a) report to the Department, using the approved primary reporting system for passengers, on the passengers who will be on board the aircraft or ship at the time of its arrival at the airport or port; and

- (b) report to the Department, using the approved primary reporting system for crew, on the crew who will be on board the aircraft or ship at the time of its arrival at the airport or port.

Note 1: This obligation (and the obligation in subsection (6)) must be complied with even if the information concerned is personal information (as defined in the *Privacy Act 1988*).

Note 2: Section 245N contains an offence for failure to comply with this subsection.

*Information to be reported*

- (3) A report on passengers or crew under subsection (2) must include the information relating to those passengers or crew that is specified, as mentioned in subsection 245J(3), in relation to the relevant approved primary reporting system.

*Deadline for reporting—aircraft*

- (4) A report on passengers or crew on an aircraft must be given not later than:
- (a) if the flight from the last airport outside Australia is likely to take not less than 3 hours—3 hours before the aircraft's likely time of arrival at the airport in Australia; or
  - (b) if the flight from the last airport outside Australia is likely to take less than 3 hours—one hour before the aircraft's likely time of arrival at the airport in Australia.

*Deadline for reporting—ships*

- (5) A report on passengers or crew on a ship must be given not later than:
- (a) if the journey from the last port outside Australia is likely to take not less than 48 hours—48 hours before the ship's likely time of arrival at the port in Australia; or
  - (b) if the journey from the last port outside Australia is likely to take less than 48 hours—24 hours before the ship's likely time of arrival at the port in Australia.

*Obligation to pass information on to Australian Customs Service*

- (6) As soon as practicable after information is reported under this section, the Department must provide the information to the Australian Customs Service.

*Purpose for which information obtained*

- (7) Information obtained by the Department:
- (a) under this section; or
  - (b) under subsection 64ACA(11) or 64ACB(8) of the *Customs Act 1901*;

is taken to be obtained by the Department for the purposes of the administration of this Act, the *Customs Act 1901*, and any other law of the Commonwealth prescribed by regulations for the purposes of this subsection.

**245M Approved fall-back reporting systems may be used in certain circumstances**

- (1) This section applies if:
- (a) the approved primary reporting system for reporting on passengers or crew on an aircraft or ship is an electronic system; and
  - (b) either:
    - (i) the operator of the aircraft or ship cannot report on some or all of the passengers or crew (the **relevant passengers or crew**) using the approved primary reporting system because the system is not working; or
    - (ii) the Secretary permits the operator of the aircraft or ship to report on some or all of the passengers or crew (the **relevant passengers or crew**) using an approved fall-back reporting system.
- (2) Section 245L applies in relation to the relevant passengers or crew as if:
- (a) the reference in paragraph 245L(2)(a) or (b) to the approved primary reporting system for passengers, or the approved primary reporting system for crew, were instead a reference to an approved fall-back reporting system; and

- (b) the reference in subsection 245L(3) to the information that is specified, as mentioned in subsection 245J(3), in relation to the relevant approved primary reporting system were instead a reference to the information that is specified, as mentioned in subsection 245K(2), in relation to the approved fall-back reporting system that the operator uses in relation to the relevant passengers or crew.

**245N Offence for failure to comply with reporting obligations**

- (1) An operator of an aircraft or ship who intentionally contravenes subsection 245L(2) commits an offence punishable, on conviction, by a penalty not exceeding 120 penalty units.
- (2) An operator of an aircraft or ship who contravenes subsection 245L(2) commits an offence punishable, on conviction, by a penalty not exceeding 60 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.

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

## **Part 2—Related amendments**

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

**10 Item 92 of Schedule 3**

Repeal the item.

**11 Item 95 of Schedule 3**

Repeal the item.

**12 Item 102 of Schedule 3**

Repeal the item.

**13 Item 107 of Schedule 3**

Repeal the item.

**14 Item 122 of Schedule 3**

Repeal the item, substitute:

**122 Subsection 64ACE(1)**

After “64AA,”, insert “64AAA,”.

**122A Subsection 64ACE(2)**

Omit “to Customs under section 64, 64AA, 64AB,”, substitute “to Customs under section 64, 64AA, 64AAA, 64AAB, 64AAC, 64AB, 64ABAA,”.

**15 Items 124 and 125 of Schedule 3**

Repeal the items, substitute:

**124 Subsection 64AE(1)**

After “64AA,”, insert “64AAA,”.

**125 Subsection 64AE(2)**

After “64AA,”, insert “64AAA,”.

***Evidence Act 1995***

**16 Part 1 of the Dictionary at the end of the Act  
(subparagraph (b)(i) of the definition of *Commonwealth document*)**

Omit “crew and passengers”, substitute “passengers or crew”.

**17 Part 1 of the Dictionary at the end of the Act  
(subparagraph (b)(i) of the definition of *Commonwealth document*)**

Omit “section 64AC”, substitute “section 64ACA or 64ACB”.

**18 Part 1 of the Dictionary at the end of the Act (after  
subparagraph (b)(i) of the definition of *Commonwealth document*)**

Insert:

- (ia) a report relating to the passengers or crew on an aircraft or ship that has been communicated to the Department administered by the Minister who administers the *Migration Act 1958* under Division 12B of Part 2 of that Act;

## **Schedule 7—Access to airline passenger information**

### ***Customs Act 1901***

#### **1 After section 64AE**

Insert:

#### **64AF Obligation to provide access to passenger information**

- (1) An operator of an international passenger air service commits an offence if:
- (a) the operator receives a request from the CEO to allow authorised officers ongoing access to the operator's passenger information in a particular manner and form; and
  - (b) the operator fails to provide that access in that manner and form.

Note 1: For *operator, international passenger air service* and *passenger information*, see subsection (6).

Note 2: The obligation to provide access must be complied with even if the information concerned is personal information (as defined in the *Privacy Act 1988*).

Penalty: 50 penalty units.

- (2) An operator of an international passenger air service does not commit an offence against subsection (1) at a particular time if, at that time, the operator cannot itself access the operator's passenger information.

Note 1: For example, the operator cannot access the operator's passenger information if the operator's computer system is not working.

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

- (3) An operator of an international passenger air service commits an offence if the operator fails to provide an authorised officer to whom the operator is required to allow access in accordance with subsection (1) with all reasonable facilities, and assistance, necessary to obtain information by means of that access and to understand information obtained.

Penalty: 50 penalty units.

- (4) An operator of an international passenger air service does not commit an offence against subsection (3) if the operator had a reasonable excuse for failing to provide the facilities and assistance in accordance with that subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) An authorised officer must only access an operator's passenger information for the purposes of performing his or her functions in accordance with:
- (a) this Act; or
  - (b) a law of the Commonwealth prescribed by regulations for the purposes of this paragraph.
- (6) In this section:

***Australian international flight*** means a flight:

- (a) from a place within Australia to a place outside Australia; or
- (b) from a place outside Australia to a place within Australia.

***international passenger air service*** means a service of providing air transportation of people:

- (a) by means of Australian international flights (whether or not the operator also operates domestic flights or other international flights); and
- (b) for a fee payable by people using the service; and
- (c) in accordance with fixed schedules to or from fixed terminals over specific routes; and
- (d) that is available to the general public on a regular basis.

***operator***, in relation to an international passenger air service, means a person who conducts, or offers to conduct, the service.

***passenger information***, in relation to an operator of an international passenger air service, means any information the operator of the service keeps electronically relating to:

- (a) flights scheduled by the operator (including information about schedules, departure and arrival terminals, and routes); and



- (b) payments by people of fees relating to flights scheduled by the operator; and
- (c) people taking, or proposing to take, flights scheduled by the operator; and
- (d) passenger check-in, and seating, relating to flights scheduled by the operator; and
- (e) numbers of passengers taking, or proposing to take, flights scheduled by the operator; and
- (f) baggage, cargo or anything else carried, or proposed to be carried, on flights scheduled by the operator and the tracking and handling of those things; and
- (g) itineraries (including any information about things other than flights scheduled by the operator) for people taking, or proposing to take, flights scheduled by the operator.

Note: The flights referred to are any flights scheduled by the operator (not just Australian international flights).

## Schedule 8—Vessel monitoring systems

### *Fisheries Management Act 1991*

#### **1 After section 167A**

Insert:

#### **167B AFMA may give information about boats to Customs**

- (1) This section applies if AFMA has any information relating to boats that AFMA got by means of a vessel monitoring system (see subsection (4)).
- (2) AFMA may give information of that kind to the Australian Customs Service (*Customs*) if AFMA, having had regard to any advice received from Customs, considers that giving Customs the information would help Customs to perform a function or activity of Customs that relates to civil surveillance.
- (3) This section does not, by implication, affect any other power of AFMA to give information.
- (4) In this section:

*vessel monitoring system* means a system in which boats are fitted with an electronic device that can give information about the boats' course or position, or other such information.

## **Schedule 9—Officers of Customs**

### *Customs Act 1901*

#### **1 Subsection 4(1) (after paragraph (b) of the definition of Officer of Customs)**

Insert:

- or (ba) who from time to time holds, occupies, or performs the duties of an office or position (whether or not in or for the Commonwealth) specified in writing by the CEO under this Act for the purposes of this paragraph, even if the office or position does not come into existence until after the CEO has specified it;

#### **2 Subsection 4(1) (paragraphs (c) and (d) of the definition of Officer of Customs)**

Repeal the paragraphs, substitute:

- (c) in relation to a provision of a Customs Act (other than a diesel fuel rebate provision)—a person:
  - (i) authorised in writing by the CEO under this Act to perform the functions of an officer of Customs under that provision; or
  - (ii) who from time to time holds, occupies, or performs the duties of an office or position (whether or not in or for the Commonwealth) specified in writing by the CEO under this Act in relation to that provision, even if the office or position does not come into existence until after the CEO has specified it; or
- (d) in relation to a power conferred by a provision of a Customs Act (other than a diesel fuel rebate provision)—a person:
  - (i) authorised in writing by the CEO under this Act to perform the functions of an officer of Customs in relation to the exercise of that power; or
  - (ii) who from time to time holds, occupies, or performs the duties of an office or position (whether or not in or for the Commonwealth) specified in writing by the CEO under this Act in relation to the exercise of that power,

even if the office or position does not come into existence until after the CEO has specified it.

### **3 Saving—existing authorisations remain in effect**

An authorisation that was in effect for the purposes of paragraph (c) or (d) of the definition of *Officer of Customs* in subsection 4(1) of the *Customs Act 1901* immediately before the commencement of this Schedule continues in effect after that time as though it had been made for the purposes of subparagraph (c)(i) or (d)(i) (respectively) of that definition as amended by this Schedule.

## **Schedule 10—The issue and use of firearms and personal defence equipment**

### ***Customs Act 1901***

#### **1 Subsection 189A(1)**

Repeal the subsection, substitute:

- (1) Subject to any directions from the CEO, an authorised arms issuing officer:
  - (a) may issue approved firearms and other approved items of personal defence equipment to officers authorised to carry arms, for the purpose of:
    - (i) enabling the use, by such officers, of a firearm in the circumstances set out in subsection 184B(6) or 184C(3);  
or
    - (ii) enabling the safe exercise, by such officers, of powers conferred on them under this Act or any other Act; and
  - (b) must take all reasonable steps to ensure that approved firearms, and other approved items of personal defence equipment, that are available for issue under paragraph (a), are kept in secure storage at all times when not required for use.

#### **2 Subsection 189A(5)**

Insert:

*authorised arms issuing officer* means an officer of Customs authorised, in writing, by the CEO to exercise the powers or perform the functions of an authorised arms issuing officer under this section.

#### **3 Subsection 189A(5) (definition of *Customs vessel*)**

Repeal the definition.

#### **4 Subsection 189A(5)**

Insert:

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*officer authorised to carry arms* means an officer of Customs who is authorised, in writing, by the CEO to use approved firearms and approved items of personal defence equipment issued by an authorised arms issuing officer for either or both of the purposes specified in subparagraphs (1)(a)(i) and (ii) of this section.

## **Schedule 11—Powers of arrest**

### ***Customs Act 1901***

#### **1 Subsection 210(1A)**

Omit “the offence of assaulting an officer in the execution of his duties”, substitute “an offence against section 147.1, 147.2 or 149.1 of the *Criminal Code* in relation to a Customs Officer”.

## Schedule 12—Commonwealth agencies

### *Customs Administration Act 1985*

#### **1 Subsection 16(1A) (definition of *Commonwealth agency*)**

Repeal the definition, substitute:

***Commonwealth agency*** means any instrumentality or agency of the Crown in right of the Commonwealth and includes:

- (a) a department of the public service of the Commonwealth;  
and
- (b) any body corporate in which the Commonwealth holds a controlling interest; and
- (c) the Australian Bureau of Criminal Intelligence;

but does not include a Minister of the Crown in right of the Commonwealth.



## **Schedule 13—Undeclared dutiable goods in unaccompanied baggage**

### *Customs Act 1901*

#### **1 Subsection 209(1)**

Omit “(o), (p) or (q)”, substitute “(o), (p), (q) or (qa)”.

#### **2 After paragraph 229(1)(q)**

Insert:

- (qa) If unaccompanied personal or household effects of a person are imported into Australia—all dutiable goods that are found among those effects, where the person has denied that there are any dutiable goods among the effects, or after having been questioned by an officer has not fully disclosed that there are such goods among the effects.

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*[Minister’s second reading speech made in—  
House of Representatives on 12 March 2002  
Senate on 14 March 2002]*

(73/02)