



Customs Administration Act 1985

No. 38, 1985 as amended

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About this compilation

The compiled Act

This is a compilation of the *Customs Administration Act 1985* as amended and in force on 1 July 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 22 July 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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An Act to provide for an Australian Customs and Border Protection Service, and for purposes connected therewith

1 Short title

This Act may be cited as the *Customs Administration Act 1985*.

2 Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

3 Interpretation

In this Act, unless the contrary intention appears:

alcohol blood test means a test of a person's blood to determine the amount of alcohol (if any) in the person's blood.

alcohol breath test means a test of a person's breath to determine the amount of alcohol (if any) in the person's blood.

alcohol screening test means a test of a person's breath to determine whether alcohol is present in the person's breath.

appoint includes re-appoint.

authorised officer, in relation to a particular provision of this Act, means an officer of Customs authorised under section 3B to exercise the powers or perform the functions of an authorised officer under that provision.

body sample means any of the following:

- (a) any human biological fluid;
- (b) any human biological tissue (whether alive or otherwise);
- (c) any human breath.

CEO means the Chief Executive Officer of Customs.

CEO's Orders means orders under section 4B.

Commissioner means the Commissioner of the Anti-Dumping Commission established under section 269SMB of the *Customs Act 1901*.

corrupt conduct: see *engages in corrupt conduct*.

Customs vessel means a vessel used, or for use, for the purposes of the Australian Customs and Border Protection Service.

Customs worker means:

- (a) an officer of Customs; or
- (b) a person who is:
 - (i) an employee of an Agency (within the meaning of the *Public Service Act 1999*); or
 - (ii) an officer or employee of a State or Territory; or
 - (iii) an officer or employee of an authority of the Commonwealth, a State or a Territory;
and whose services are made available to the Australian Customs and Border Protection Service; or
- (c) a person who is:
 - (i) engaged as a consultant or contractor to perform services for the Australian Customs and Border Protection Service; and
 - (ii) specified in a determination made by the CEO under section 3C; or
- (d) a person who is:
 - (i) engaged or employed by a person to whom paragraph (c) or this paragraph applies; and
 - (ii) specified in a determination made by the CEO under section 3C.

engages in corrupt conduct: a Customs worker *engages in corrupt conduct* if the Customs worker, while a Customs worker, engages in:

- (a) conduct that:
 - (i) involves; or

- (ii) is engaged in for the purpose (or for purposes including the purpose) of;
the Customs worker abusing his or her position as a Customs worker; or
- (b) conduct that:
 - (i) perverts; or
 - (ii) is engaged in for the purpose (or for purposes including the purpose) of perverting;
the course of justice; or
- (c) conduct that, having regard to the duties and powers of the Customs worker as a Customs worker:
 - (i) involves; or
 - (ii) is engaged in for the purpose (or for purposes including the purpose) of;
corruption of any other kind.

law of customs means:

- (a) this Act; or
- (b) any other Act of which the CEO has the general administration; or
- (c) if the CEO has the general administration of a particular provision or provisions only of an Act—that provision or those provisions; or
- (d) if the CEO has the general administration of an Act, or of a particular provision or provisions of an Act, only in so far as that Act, or that provision or those provisions, relates or relate to a particular matter or matters—that Act, or that provision or those provisions, in so far as that Act, or that provision or those provisions, relates or relate to that matter or those matters; or
- (e) any instrument (including rules, regulations, by-laws or determinations) under this Act, under an Act to which paragraph (b) applies, under a provision to which paragraph (c) applies or under an Act or provision referred to in paragraph (d) in so far as it relates to a matter so referred to.

officer of Customs has the same meaning as in the *Customs Act 1901*.

prohibited drug means:

- (a) a narcotic substance (within the meaning of the *Customs Act 1901*); or
- (b) any drug specified in a legislative instrument under section 16H.

prohibited drug test means a test of a body sample of a person to determine the presence (if any) of a prohibited drug in the sample.

serious misconduct, by a Customs worker, means:

- (a) corruption, a serious abuse of power, or a serious dereliction of duty, by the Customs worker; or
- (b) any other seriously reprehensible act or behaviour by the Customs worker, whether or not acting, or purporting to act, in the course of his or her duties as such a Customs worker.

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

3B Authorised officers

The CEO may, in writing, authorise an officer of Customs to perform or exercise the functions or powers of an authorised officer under a particular provision of this Act.

3C Determination of consultants, contractors and subcontractors as Customs workers

- (1) The CEO may, by writing, determine that:
 - (a) a specified consultant or contractor engaged to perform services for the Australian Customs and Border Protection Service; or

- (b) a specified person who is engaged or employed by a person to whom paragraph (c) or (d) of the definition of **Customs worker** applies;
is a Customs worker.
- (2) A determination under subsection (1) is not a legislative instrument.

4 Australian Customs and Border Protection Service

- (1) The agency known immediately before the commencement of this subsection as the Australian Customs Service is continued in existence with the new name, the Australian Customs and Border Protection Service.
- (2) There shall be a Chief Executive Officer of Customs, who shall, under the Minister, control the Australian Customs and Border Protection Service.
- (3) The Australian Customs and Border Protection Service consists of the CEO, the Commissioner and the staff referred to in section 15.
- (4) Where a person employed in the Australian Customs and Border Protection Service, or a person not so employed who is authorized in writing by the CEO to perform a function or functions of a person employed in the Australian Customs and Border Protection Service, performs a function or exercises a power under a law of customs (other than Part XVB of the *Customs Act 1901*), the person is, in the performance of that function or the exercise of that power, subject to the directions of the CEO.

4AA Meaning of *Customs*

In any Act, unless the contrary intention appears:

Customs means the agency continued in existence under subsection 4(1).

4A Minister may give directions to CEO

- (1) The Minister may give written directions to the CEO with respect to the general policy to be pursued in relation to the administration of the Australian Customs and Border Protection Service.
- (2) If the Minister gives a direction under subsection (1), the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.
- (3) The CEO must comply with all written directions given by the Minister under subsection (1).

4B CEO's Orders

CEO may issue orders

- (1) In the exercise of his or her powers under subsection 4(2), the CEO may, by writing, issue orders with respect to the control of the Australian Customs and Border Protection Service.
- (2) Without limiting subsection (1), the CEO may issue CEO's Orders relating to the reporting, by Customs workers, of any of the following:
 - (a) serious misconduct by a Customs worker;
 - (b) corrupt conduct engaged in by a Customs worker;
 - (c) criminal activity involving a Customs worker;where the serious misconduct, corrupt conduct or criminal activity affects, or is likely to affect, the operations and responsibilities of the Australian Customs and Border Protection Service.
- (3) Subsection (1) does not limit subsection 4(4).

Compliance with CEO's Orders

- (4) A Customs worker must comply with CEO's Orders.

CEO's Orders are not legislative instruments

- (5) CEO's Orders are not legislative instruments.

4C Self-incrimination—CEO’s Orders relating to the reporting of serious misconduct etc.

- (1) If a Customs worker is required by a CEO’s Order of the kind referred to in subsection 4B(2) to give information, answer a question or produce a document, the Customs worker is not excused from giving the information, answering the question or producing the document on the ground that the information, the answer to the question or the production of the document might tend to incriminate the Customs worker or expose the Customs worker to a penalty.
- (2) However, the information given, the answer given or the document produced is not admissible in evidence against the Customs worker in any proceedings.
- (3) Subsection (2) has effect subject to section 16G.

5 Appointment of CEO

The CEO shall be appointed by the Governor-General.

6 Tenure of office

- (1) Subject to this Act, the CEO is to be appointed for a specified period of not more than 5 years but is eligible for re-appointment.
- (3) The CEO holds office on such terms and conditions not provided for by this Act or any other Act as the Governor-General determines.

7 Employment outside official duties

The CEO shall not, without the approval of the Minister, engage in paid employment outside the duties of the office of CEO.

8 Remuneration and allowances

- (1) The CEO shall be paid such remuneration as is determined by the Remuneration Tribunal.

- (2) The CEO shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

9 Leave of absence

- (1) The CEO has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

10 Resignation

The CEO may resign from office by writing signed by the CEO and delivered to the Governor-General.

11 Disclosure of financial interests

The CEO shall give written notice to the Minister of all direct and indirect pecuniary interests that the CEO has or acquires in any business in Australia or elsewhere or in any body corporate carrying on such a business.

12 Suspension and removal from office of CEO

- (1) The Governor-General may remove the CEO from office on an address praying for the removal of the CEO on the ground of proved misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) The Governor-General may suspend the CEO from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Governor-General suspends the CEO, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

- (4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement was laid before that House, an address under subsection (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.
- (5) The suspension of the CEO from office under this section does not affect any entitlement of the CEO to be paid remuneration and allowances.
- (6) If:
 - (a) the CEO becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (aa) the CEO fails, without reasonable excuse, to comply with a direction given under section 4A;
 - (b) the CEO fails, without reasonable excuse, to comply with section 11;
 - (c) the CEO engages, except with the approval of the Minister, in paid employment outside the duties of the office of CEO;
or
 - (d) the CEO is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months;the Governor-General shall remove the CEO from office.
- (7) The Governor-General may, with the consent of the CEO, retire the CEO from office on the ground of physical or mental incapacity.
- (8) The CEO shall not be suspended, removed or retired from office except as provided by this section.

13 Acting CEO

The Governor-General may appoint a person to act in the office of CEO:

- (a) during a vacancy in that office; or
- (b) during any period, or during all periods, when the person holding that office is absent from duty or from Australia or

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is, for any other reason, unable to perform the functions of that office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

14 Delegation

- (1) The CEO may, by signed instrument, delegate to an officer of Customs all or any of the functions and powers of the CEO under a law of customs or any other law of the Commonwealth (other than a function or power under section 15A).
- (2) A delegation under this section may be made subject to a power of review and alteration by the CEO, within a period specified in the instrument of delegation, of acts done under the delegation.
- (3) A function or power so delegated, when performed or exercised by the delegate, shall, for the purposes of the law of customs, or the other law of the Commonwealth, under which the function was established or the power conferred, be taken to have been performed or exercised by the CEO.
- (4) Paragraph 34AB(1)(c) of the *Acts Interpretation Act 1901* does not apply to a delegation under subsection (1).
- (4A) The CEO may, by signed instrument, delegate to the Commissioner any of the powers of the CEO under section 16, to the extent that those powers apply in connection with Part XVB of the *Customs Act 1901*.
- (5) In this section:
officer of Customs means a person who is an Officer of Customs for the purposes of the *Customs Act 1901*.

15 Staff

- (1) The staff required for the purposes of this Act shall be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:

- (a) the CEO and the APS employees assisting the CEO together constitute a Statutory Agency; and
- (b) the CEO is the Head of that Statutory Agency.

15A Termination of employment of member of staff for serious misconduct

CEO may make declaration

- (1) This section applies if the CEO terminates the employment of a member of the staff referred to in subsection 15(1) and the CEO believes, on reasonable grounds, that the staff member's conduct or behaviour, or any part of it:
 - (a) amounts to serious misconduct by the staff member; and
 - (b) is having, or is likely to have, a damaging effect on:
 - (i) the professional self-respect or morale of some or all of the members of the staff of the Australian Customs and Border Protection service; or
 - (ii) the reputation of the Australian Customs and Border Protection Service with the public, or any section of the public, or with an Australian or overseas government, or with a person or body (however described) to whom the CEO may authorise disclosure of information under section 16.

Note: See section 29 of the *Public Service Act 1999* for termination of the employment of a member of the staff referred to in subsection 15(1) of this Act.

- (2) The CEO may, in accordance with subsection (5), make a declaration that he or she has the belief referred to in subsection (1) in relation to the staff member.

Effect of declaration on Fair Work Act

- (3) If the CEO makes the declaration for the staff member, the *Fair Work Act 2009* (other than Part 3-1 and Division 9 of Part 3-3 of that Act) does not apply in relation to:
 - (a) the termination of the staff member's employment; or
 - (b) the making of the declaration.

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Note 1: This means, for example, that the provisions of the *Fair Work Act 2009* dealing with unfair dismissal, and notice of termination or payment in lieu, do not apply in relation to the staff member.

Note 2: Part 3-1 of the *Fair Work Act 2009* deals with general protections, and Division 9 of Part 3-3 of that Act deals with payments relating to periods of industrial action.

- (4) To avoid doubt, subsection (3) applies despite section 8 of the *Public Service Act 1999*.

Procedural requirements

- (5) The declaration must be:
- (a) in writing; and
 - (b) made within 24 hours of the CEO's decision to terminate the staff member's employment.
- (6) The CEO must give the staff member a copy of the declaration.

CEO to give report after making declaration

- (7) The CEO must give the Minister a written report containing the following, as soon as practicable after making the declaration:
- (a) the grounds for the CEO's belief referred to in subsection (1) in relation to the staff member;
 - (b) the nature and findings of any investigation of, or inquiry into, the staff member's conduct or behaviour;
 - (c) details of any other matter the CEO considers relevant.

Declaration not a legislative instrument

- (8) A declaration under subsection (2) is not a legislative instrument.

16 Prohibition of disclosure of certain information

Overview

- (1) This section:
- (a) prohibits the unauthorised recording and disclosure of certain information held by the Australian Customs and Border Protection 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
 - (aa) the Commissioner; and
 - (b) a person performing duties in the Australian Customs and Border Protection 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 and Border Protection 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.

Definitions

- (1A) In this section:

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;

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

duties, in relation to a person, means the duties of the person in the capacity because of which he or she is a person to whom this section applies and only includes such duties that are performed in or in connection with the Australian Customs and Border Protection Service.

Example: In the case of a person who is employed by a State agency, the person's duties, for the purposes of this section, include only those duties performed in or in connection with the Australian Customs and Border Protection Service as such an employee and does not include the person's other duties as an employee of that State agency.

international organisation means:

- (a) an international organisation within the meaning of the *Diplomatic Privileges and Immunities Act 1967*; and
- (b) any other international organisation prescribed by the regulations for the purposes of this paragraph.

personal information has the same meaning as in the *Privacy Act 1988*.

principal officer, in relation to a Commonwealth agency or a State agency, means:

- (a) if the agency is constituted by one person—that person; and
- (b) if the agency is constituted by more than one person—the person who is entitled to preside at any meeting of the agency at which he or she is present; and
- (c) in any other case—the person holding, or performing the duties of, the office of the head of that agency.

protected information means information that directly or indirectly comes to the knowledge of, or into the possession of, a person while he or she is performing his or her duties (whether the information is related to those duties or not).

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

State agency means any instrumentality or agency of the Crown in right of a State, and includes a department of the public service of the State and any body corporate in which the State holds a controlling interest, but does not include a Minister of the Crown in right of the State, a municipal corporation or any other local government body.

Prohibition against disclosure etc. of protected information

- (2) A person who is or has been a person to whom this section applies must not directly or indirectly:
- (a) make a record of any protected information; or
 - (b) disclose to any person any protected information;
- except:
- (c) as authorised by this section; or
 - (ca) for the purposes of the *Law Enforcement Integrity Commissioner Act 2006* or regulations under that Act; or
 - (d) as required or authorised by any other law; or
 - (e) in the course of performing the person's duties.

Penalty: Imprisonment for 2 years.

Authorised disclosure under this section

- (3) Subject to subsections (7), (8) and (10), a person is authorised by this section to carry out an act referred to in paragraph (2)(a) or (b) if it is carried out:
- (a) in accordance with an authorisation by the CEO that is referred to in subsection (3A), (3B), (3C) or (3D); or
 - (b) as provided in subsection (3F), (3G) or (3H).

CEO's authorisation—Commonwealth agency

- (3A) Subject to subsections (3E), (7), (8) and (10), if the CEO is satisfied that:
- (a) information or a class of information held by the Australian Customs and Border Protection Service will be used by a Commonwealth agency for the purposes of that agency's functions; and

- (b) the Commonwealth agency has undertaken not to use or further disclose such information or class of information except for the purpose referred to in paragraph (d) or otherwise as required or authorised by law;

the CEO may in writing:

- (c) authorise the disclosure by a person of the information or the class of information to the principal officer of, or a person authorised to act on behalf of, that agency; and
- (d) specify the purpose for which the disclosure is authorised to be made and the manner in which, or the conditions under which, the disclosure is to be made (including the form in which the information is to be presented and the mode of transmitting that information).

CEO's authorisation—State agency for Commonwealth purposes

- (3B) Subject to subsections (3E), (7), (8) and (10), if the CEO is satisfied that:

- (a) information or a class of information held by the Australian Customs and Border Protection Service will be used by a State agency for purposes relating to the carrying out of a Commonwealth function by that agency; and
- (b) the State agency has undertaken not to use or further disclose such information or class of information except for the purpose referred to in paragraph (d) or otherwise as required or authorised by law;

the CEO may in writing:

- (c) authorise the disclosure by a person of the information or the class of information to the principal officer of, or a person authorised to act on behalf of, that agency; and
- (d) specify the purpose for which the disclosure is authorised to be made and the manner in which, or the conditions under which, the disclosure is to be made (including the form in which the information is to be presented and the mode of transmitting that information).

CEO's authorisation—State agency for State purposes

- (3C) Subject to subsections (3E), (7), (8) and (10), if the CEO is satisfied that:
- (a) information or a class of information held by the Australian Customs and Border Protection Service will be used by a State agency for the purposes of the performance of the functions of the State agency; and
 - (b) the State agency has undertaken not to use or further disclose such information or class of information except for the purpose referred to in paragraph (d) or otherwise as required or authorised by law;

the CEO may in writing:

- (c) authorise the disclosure by a person of the information or the class of information to the principal officer of, or a person authorised to act on behalf of, that agency; and
- (d) specify the purpose for which the disclosure is authorised to be made and the manner in which, or the conditions under which, the disclosure is to be made (including the form in which the information is to be presented and the mode of transmitting that information).

CEO's authorisation—certain agreements

- (3D) Subject to subsections (3E), (7), (8) and (10), if the CEO is satisfied that:
- (a) information or a class of information held by the Australian Customs and Border Protection Service will be used in accordance with an agreement that has been entered into by the Commonwealth or a Commonwealth agency and one or more of any of the following:
 - (i) a foreign country;
 - (ii) an instrumentality or agency of a foreign country;
 - (iii) an international organisation; and
 - (b) the country, instrumentality, agency or organisation has undertaken not to use or further disclose that information except for the purpose referred to in paragraph (d) or otherwise as required or authorised by law;

the CEO may in writing:

- (c) authorise the disclosure by a person of the information or the class of the information to a person authorised to act on behalf of that country, instrumentality, agency or organisation; and
- (d) specify the purpose for which the disclosure is authorised to be made and the manner in which, or the conditions under which, the disclosure is to be made (including the form in which the information is to be presented and the mode of transmitting that information).

Specified purpose in an authorisation by the CEO

- (3E) The CEO may only specify a purpose for the disclosure of information or a class of information in an authorisation under subsection (3A), (3B), (3C) or (3D) that:
- (a) in the case of subsection (3A)—is related to the performance of the functions of the Commonwealth agency concerned; and
 - (b) in the case of subsection (3B)—is related to the performance of the Commonwealth function concerned; and
 - (c) in the case of subsection (3C)—is related to the performance of the functions of the State agency concerned; and
 - (d) in the case of subsection (3D)—is related to the purpose of the agreement concerned.

Note: The obligations under subsection (3E) is affected by paragraph (8)(b) if the information concerned contains personal information.

Authorised disclosure because of threat to health or life

- (3F) A person may carry out an act referred to in paragraph (2)(a) or (b) if there are reasonable grounds for that person to believe that:
- (a) a serious and imminent threat to the health or life of a person or persons exists or might exist; and
 - (b) it is necessary to carry out that act in order to avert or reduce that threat.

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.

Permissible purposes

- (9) A purpose specified in any of the following paragraphs is a permissible purpose for the purpose of subsection (8):
- (a) the administration or enforcement of a law of the Commonwealth, of a Territory or of another country that relates to:
 - (i) criminal law; or
 - (ii) a law imposing a pecuniary penalty or providing for the forfeiture of property;
 - (b) in relation to a law referred to in paragraph (a), the prevention of crime, or the detection or analysis of criminal conduct, in respect of that law;
 - (c) the administration or enforcement of a law of a State that relates to:
 - (i) criminal law; or
 - (ii) a law imposing a pecuniary penalty or providing for the forfeiture of property;
 - (d) in relation to a law referred to in paragraph (c), the prevention of crime, or the detection or analysis of criminal conduct, in respect of that law;
 - (e) a purpose relating to the protection of public health, or the prevention or elimination of risks to the life or safety of an individual or a group of individuals;

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- (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*;
 - (f) the protection of the public revenue of the Commonwealth, a Territory or another country;
 - (g) the protection of the public revenue of a State;
 - (h) a purpose relating to a law of customs;
 - (i) a purpose relating to immigration, quarantine or border control between Australia and another country;
 - (ia) a purpose relating to the performance of functions under section 17 of the *Australian Security Intelligence Organisation Act 1979*;
 - (ib) a purpose relating to the performance of functions under section 6 of the *Intelligence Services Act 2001*;
 - (j) the administration or enforcement of laws with respect to commerce:
 - (i) between a State and another State; or
 - (ii) between a State and a Territory; or
 - (iii) between a Territory and another Territory; or
 - (iv) between Australia and another country;
 - (k) the administration or enforcement of laws with respect to commerce within a State.

Additional requirements concerning classes of information

- (10) This subsection is complied with in relation to a disclosure of a class of information pursuant to an authorisation under subsection (3A), (3B), (3C) or (3D) as referred to in subsection (7) if:
 - (a) the disclosure is made to a Commonwealth agency, State agency, a foreign country, an instrumentality or agency of a foreign country or an international organisation, that is specified in the regulations; and
 - (b) the class of information specified by the CEO in the authorisation is specified in the regulations as a class of information that may be disclosed to the agency, country, instrumentality or organisation concerned.

16AA Conduct by directors, employees and agents

- (1) This section applies for the purposes of a prosecution for:
- (a) an offence created by a provision in this Act or the regulations; or
 - (b) an offence created by section 6 of the *Crimes Act 1914*, or section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence referred to in paragraph (a).
- (2) If it is necessary to prove the state of mind of a body corporate in relation to particular conduct, it is enough to show that:
- (a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) the director, employee or agent had the state of mind.
- (3) If:
- (a) conduct is engaged in on behalf of a body corporate by a director, employee or agent of the body corporate; and
 - (b) the conduct is within the scope of his or her actual or apparent authority;
- the conduct is taken, for the purposes of the prosecution of an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (4) In this section:
- director**, in relation to a body that:
- (a) is incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory; and
 - (b) is constituted by one or more members;
- means the member, or any of the members, constituting the body.
- engage in conduct** includes fail or refuse to engage in conduct.
- state of mind**, in relation to a person, includes:
- (a) the person's knowledge, intention, opinion, belief or purpose; and

- (b) the person's reasons for the intention, opinion, belief or purpose.

16B Authorised officers may require Customs workers to undergo alcohol screening tests etc.

- (1) An authorised officer may require a Customs worker to undergo an alcohol screening test if:
 - (a) the Customs worker is in the course of performing his or her duties as a Customs worker; and
 - (b) the authorised officer reasonably suspects that the Customs worker is under the influence of alcohol.

Compliance with direction

- (2) The Customs worker must comply with the requirement given to him or her under subsection (1).

Test results

- (3) If the result of the alcohol screening test shows that alcohol is not present in the Customs worker's breath, the Customs worker may return to his or her duties immediately.
- (4) This section does not limit the operation of section 16C.

16C Authorised officers may require Customs workers to undergo alcohol screening tests, alcohol breath tests or prohibited drug tests etc.

- (1) An authorised officer may give a Customs worker who is in the course of performing his or her duties as a Customs worker a written direction requiring the Customs worker to do one or more of the following:
 - (a) undergo an alcohol screening test;
 - (b) undergo an alcohol breath test;
 - (c) provide a body sample, of a kind specified in the direction, for a prohibited drug test;in accordance with the regulations.

Section 16D

Providing blood sample if alcohol breath test indicates the presence of alcohol

- (2) If:
- (a) a Customs worker undergoes an alcohol breath test in accordance with a direction under subsection (1); and
 - (b) the alcohol breath test indicates the presence of alcohol;
- he or she may provide a sample of his or her blood for the purpose of an alcohol blood test, in accordance with the regulations.

Compliance with direction

- (3) A Customs worker must comply with a direction given to him or her under this section.

16D Alcohol screening tests, alcohol breath tests and prohibited drug tests after certain incidents

Person killed or seriously injured in an incident involving a motor vehicle or vessel or while detained

- (1) An authorised officer may give a Customs worker a direction under subsection (3) if:
- (a) either:
 - (i) a person is killed or seriously injured as a result of an incident involving a motor vehicle or vessel; or
 - (ii) an incident occurs in which a person is killed or seriously injured while the person is held in custody in relation to an arrest under the *Customs Act 1901* or otherwise detained under that Act; and
 - (b) the Customs worker is directly involved in the incident in the course of performing his or her duties as a Customs worker.

Person killed or seriously injured by a firearm discharging or physical force

- (2) An authorised officer may give a Customs worker a direction under subsection (3) if:
- (a) all of the following apply:

- (i) the Customs worker is an officer authorised to carry arms within the meaning of section 189A of the *Customs Act 1901*;
 - (ii) an incident occurs in which a person is killed or seriously injured as a result of the discharge of a firearm by the Customs worker;
 - (iii) the incident occurs in the course of the Customs worker performing his or her duties as a Customs worker; or
- (b) all of the following apply:
- (i) the Customs worker is an officer of Customs;
 - (ii) an incident occurs in which a person is killed or seriously injured as a result of the application of physical force by the Customs worker;
 - (iii) the incident occurs in the course of the Customs worker performing his or her duties as a Customs worker.

Direction

- (3) The authorised officer may give the Customs worker a written direction requiring the Customs worker:
- (a) to undergo an alcohol screening test; or
 - (b) to undergo an alcohol breath test; or
 - (c) to provide a body sample of a kind specified in the direction for a prohibited drug test;
- in accordance with the regulations.

Note: Such a direction may be given whether or not the Customs worker is still performing his or her duties as a Customs worker: see subsection (4).

Direction to be given as soon as practicable after the incident

- (4) A direction under subsection (3) must be given by an authorised officer as soon as practicable after the incident concerned and may be given whether or not the Customs worker is still performing his or her duties as a Customs worker.

Provision of blood or body sample while in hospital

- (5) If a Customs worker involved in an incident referred to in subsection (1) or (2) attends or is admitted to a hospital for examination or treatment because of the incident, an authorised officer may give the Customs worker a written direction requiring him or her:
- (a) to provide a sample of his or her blood for an alcohol blood test; or
 - (b) to provide a body sample of a kind specified in the direction for a prohibited drug test;
- in accordance with the regulations.

Compliance with direction

- (6) A Customs worker must comply with a direction given to him or her under this section.

16E Alcohol screening tests etc.—performing duties on board a Customs vessel

If:

- (a) a Customs worker is on board a Customs vessel throughout a period (the *on board period*); and
- (b) at any time during the on board period, the Customs worker performs duties as a Customs worker;

the Customs worker is taken, for the purposes of sections 16B, 16C and 16D, to be in the course of performing his or her duties as a Customs worker throughout the on board period.

16F Regulations

For the purposes of sections 16B, 16C and 16D, the regulations may make provision for and in relation to the following:

- (a) the authorisation of persons:
 - (i) to conduct alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests for the purpose of those sections; and
 - (ii) to operate equipment for that purpose;

- (b) the provision of samples of blood for the purpose of alcohol blood tests under those sections;
- (c) the provision of body samples for the purpose of prohibited drug tests under those sections;
- (d) the conduct of alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests under those sections;
- (e) the devices used in conducting alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests under those sections, including the calibration, inspection and testing of those devices;
- (f) in the case of alcohol blood tests and prohibited drug tests—the accreditation of persons to conduct analyses in connection with such tests;
- (g) the procedure for the handling and analysis of:
 - (i) samples of blood taken in connection with alcohol blood tests under those sections; or
 - (ii) body samples taken in connection with prohibited drug tests under those sections;
- (h) the giving of the test results in certificates or other documents and the evidentiary effect of such certificates or other documents;
- (i) the confidentiality of the test results.

16G Admissibility of test results etc. in legal proceedings

The following:

- (a) a certificate or other document recording the results of a test conducted under section 16B, 16C or 16D in relation to a Customs worker;
- (b) any other information, answer to a question or document relevant to conducting such a test;

is not admissible in evidence against the Customs worker in any proceedings other than the following:

- (c) proceedings in relation to a decision of the CEO to terminate the employment or engagement of the Customs worker;
- (d) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*;

- (e) proceedings in tort against the Commonwealth that are instituted by the Customs worker.

16H CEO may specify prohibited drugs

The CEO may, by legislative instrument, specify drugs for the purposes of the definition of *prohibited drug* in section 3.

17 Annual report

- (1) The CEO shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of the operations of the Australian Customs and Border Protection Service during the year that ended on that 30 June.
- (2) The Minister shall cause a copy of a report furnished to the Minister under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

18 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnote 1—Legislation history

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Customs Administration Act 1985*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Customs Administration Act 1985	38, 1985	29 May 1985	10 June 1985 (<i>see Gazette</i> 1985, No. S194)	
Customs and Excise Legislation Amendment Act (No. 3) 1989	78, 1989	21 June 1989	s. 5(1)(c)–(g): 3 Mar 1989 ss. 6, 8, 16 and 18: 19 July 1989 Remainder: Royal Assent	s. 12(2)
Taxation Laws Amendment Act (No. 3) 1989	107, 1989	30 June 1989	Part 6 (ss. 29, 30): 24 Nov 1988 (<i>see s. 2(2)</i>) Remainder: Royal Assent	—
Customs and Excise Legislation Amendment Act (No. 4) 1989	5, 1990	17 Jan 1990	ss. 1–3 and 25: Royal Assent ss. 4(1)(b), 16, 26(1)(b), (c) and 33 (in part): 1 July 1989 s. 15: 1 Aug 1989 Remainder: 1 Jan 1990	ss. 2(2) and 34
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	ss. 4(1), 10(b) and 15–20: 1 Dec 1988 ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (<i>see Gazette</i> 1991, No. S332) Remainder: Royal Assent	s. 31(2)

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Customs Legislation Amendment Act 1992	209, 1992	22 Dec 1992	ss. 4(a), 11, 12, 19, 20 and 22: 1 Sept 1992 ss. 4(b), (c), 6–10, 13(2), 14, 15(d), 16, 17, 24, 25 and 27: 1 June 1993 (<i>see Gazette</i> 1993, No. GN17) ss. 5 and 23: 19 Jan 1993 s. 21: 18 Aug 1992 Remainder: Royal Assent	—
Imported Food Control Act 1992	221, 1992	24 Dec 1992	15 June 1993 (<i>see Gazette</i> 1993, No. GN22)	—
Customs, Excise and Bounty Legislation Amendment Act 1995	85, 1995	1 July 1995	ss. 7, 17 and 18: Royal Assent (<i>a</i>)	ss. 17 and 18
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 2 (item 47): (<i>b</i>)	—
Customs Legislation Amendment Act (No. 1) 1999	137, 1999	3 Nov 1999	Schedule 2: 23 Mar 2000 (<i>see Gazette</i> 2000, No. S142) (<i>c</i>)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 356–358): 5 Dec 1999 (<i>see Gazette</i> 1999, No. S584) (<i>d</i>)	—
Customs Legislation Amendment (Criminal Sanctions and Other Measures) Act 2000	23, 2000	3 Apr 2000	Schedules 1–3: 26 May 2000 (<i>see Gazette</i> 2000, No. S269) Remainder: Royal Assent	—

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s. 4(1), (2) and Schedule 22: <i>(e)</i>	s. 4(1) and (2)
Taxation Laws Amendment (Excise Arrangements) Act 2001	25, 2001	6 Apr 2001	Schedule 7 (items 1–8): 4 May 2001 <i>(f)</i>	—
Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001	95, 2001	20 July 2001	Schedule 3 (items 152– 171): Royal Assent <i>(g)</i>	—
as amended by				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Schedule 2 (item 8): <i>(ga)</i>	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)
Border Security Legislation Amendment Act 2002	64, 2002	5 July 2002	Schedule 12: Royal Assent	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (items 39, 40, 226): 1 Jan 2003	Sch. 2 (item 226)
Anti-Terrorism Act (No. 2) 2005	144, 2005	14 Dec 2005	Schedule 10 (item 30): Royal Assent	—
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Schedule 1: 23 May 2009	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 10 (item 17): 20 Feb 2010	—

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Schedule 2 (item 9): 17 Dec 2010	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 479–482) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Crimes Legislation Amendment Act (No. 2) 2011	174, 2011	5 Dec 2011	Schedule 1 (items 1, 6): 6 Dec 2011	Sch. 1 (item 6)
Law Enforcement Integrity Legislation Amendment Act 2012	194, 2012	12 Dec 2012	Schedule 2: 15 Feb 2013 (see F2013L00188)	Sch. 2 (items 17, 20)
Customs Amendment (Anti-Dumping Commission) Act 2013	32, 2013	30 Mar 2013	Schedule 1 (items 15–19): 1 July 2013	—

- (a) The *Customs Administration Act 1985* was amended by the *Customs, Excise and Bounty Legislation Amendment Act 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2), (3), (4), (5) and (6), this Act commences on the day on which it receives the Royal Assent.
- (b) The *Customs Administration Act 1985* was amended by Schedule 2 (item 47) only of the *Statute Law Revision Act 1996*, subsection 2(2) of which provides as follows:
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item. Item 47 is taken to have commenced immediately after the commencement of item 19 of Schedule 5 of the *Customs, Excise and Bounty Legislation Amendment Act 1995*. Item 19 of Schedule 5 of the *Customs, Excise and Bounty Legislation Amendment Act 1995* commenced on 1 July 1995.

Endnote 1—Legislation history

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- (c) The *Customs Administration Act 1985* was amended by Schedule 2 only of the *Customs Legislation Amendment Act (No. 1) 1999*, subsection 2(2) of which provides as follows:
- (2) The items of Schedules 1 and 2 commence on a day or days to be fixed by Proclamation.
- (d) The *Customs Administration Act 1985* was amended by Schedule 1 (items 356–358) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (e) The *Customs Administration Act 1985* was amended by Schedule 22 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (f) The *Customs Administration Act 1985* was amended by Schedule 7 (items 1–8) only of the *Taxation Laws Amendment (Excise Arrangements) Act 2001*, subsection 2(1)(b) of which provides as follows:
- (1) Subject to this section, this Act commences on the earlier of:
- (b) 28 days after the day on which this Act receives the Royal Assent.
- (g) The *Customs Administration Act 1985* was amended by Schedule 3 (items 152–171) only of the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, subsection 2(1) of which provides as follows:
- (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.
- (ga) The *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* was amended by Schedule 2 (item 8) only of the *Statute Law Revision Act 2002*, subsection 2(1) (item 37) of which provides as follows:
- (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.
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Endnotes

Endnote 1—Legislation history

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
37. Schedule 2, item 8	Immediately after the time specified in the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> for the commencement of item 158 of Schedule 3 to that Act	20 July 2001

Endnote 2—Amendment history

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Customs Administration Act 1985*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Title	am. No. 33, 2009
s. 3	am. No. 85, 1995; No. 25, 2001; No. 194, 2012; No. 32, 2013
s. 3A	ad. No. 24, 2001
s. 3B	ad. No. 194, 2012
s. 3C	ad. No. 194, 2012
Heading to s. 4	am. No. 33, 2009
s. 4	am. No. 85, 1995; No. 25, 2001; No. 33, 2009; No. 32, 2013
s. 4AA	ad. No. 33, 2009
s. 4A	ad. No. 85, 1995 am. No. 33, 2009
s. 4B	ad. No. 194, 2012
s. 4C	ad. No. 194, 2012
Heading to s. 5	am. No. 85, 1995
s. 5	am. No. 85, 1995
s. 6	am. No. 85, 1995; No. 23, 2000; No. 159, 2001
ss. 7, 8	am. No. 85, 1995
s. 9	rs. No. 122, 1991 am. No. 85, 1995; No. 146, 1999
ss. 10, 11	am. No. 85, 1995
Heading to s. 12	am. No. 85, 1995
s. 12	am. No. 122, 1991; No. 85, 1995
Heading to s. 13	am. No. 85, 1995
s. 13	am. No. 85, 1995; No. 43, 1996; No. 46, 2011
Note to s. 13	ad. No. 46, 2011
s. 14	rs. No. 78, 1989

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 5, 1990; No. 85, 1995; No. 25, 2001; No. 46, 2011; No. 194, 2012; No. 32, 2013
s. 15	am. No. 85, 1995; No. 146, 1999
s. 15A	ad. No. 194, 2012
Heading to s. 16	rs. No. 95, 2001
Subheads. to s. 16(4)–(6)	ad. No. 137, 1999
s. 16	am. Nos. 209 and 221, 1992; No. 85, 1995; No. 137, 1999; Nos. 25 and 95, 2001; Nos. 64 and 125, 2002; No. 144, 2005; No. 33, 2009; No. 174, 2011; No. 32, 2013
s. 16AA	ad. No. 137, 1999
	am. No. 24, 2001; No. 4, 2010
Heading to s. 16A	am. No. 85, 1995
	rep. No. 145, 2010
s. 16A	ad. No. 107, 1989
	am. No. 85, 1995; No. 25, 2001
	rep. No. 145, 2010
s. 16B	ad. No. 194, 2012
s. 16C	ad. No. 194, 2012
s. 16D	ad. No. 194, 2012
s. 16E	ad. No. 194, 2012
s. 16F	ad. No. 194, 2012
s. 16G	ad. No. 194, 2012
s. 16H	ad. No. 194, 2012
s. 17	am. No. 85, 1995; No. 33, 2009

Endnote 3—Uncommenced amendments [none]

Endnote 3—Uncommenced amendments [none]

There are no uncommenced amendments.

Endnotes

Endnote 4—Misdescribed amendments [none]

Endnote 4—Misdescribed amendments [none]

There are no misdescribed amendments.