



# Customs Administration Act 1985

No. 38 of 1985

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# Customs Administration Act 1985

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## **An Act to establish an Australian Customs Service, and for purposes connected therewith**

*[Assented to 29 May 1985]*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### **Short title**

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

### **Commencement**

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

### **Interpretation**

3. In this Act, unless the contrary intention appears—  
“appoint” includes re-appoint;  
“Comptroller-General” means Comptroller-General of Customs;  
“law of customs or excise” means—  
(a) this Act;

- (b) any other Act of which the Comptroller-General has the general administration;
- (c) if the Comptroller-General has the general administration of a particular provision or provisions only of an Act—that provision or those provisions;
- (d) if the Comptroller-General 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.

#### **Australian Customs Service**

4. (1) There is hereby established an Australian Customs Service.

(2) There shall be a Comptroller-General of Customs, who shall, under the Minister, control the Australian Customs Service.

(3) The Australian Customs Service consists of the Comptroller-General and the staff referred to in section 15.

(4) Where a person employed in the Australian Customs Service, or a person not so employed who is authorized in writing by the Comptroller-General to perform a function or functions of a person employed in the Australian Customs Service, performs a function or exercises a power under a law of customs or excise, the person is, in the performance of that function or the exercise of that power, subject to the directions of the Comptroller-General.

#### **Appointment of Comptroller-General**

5. The Comptroller-General shall be appointed by the Governor-General.

#### **Tenure of office**

6. (1) Subject to this Act, the Comptroller-General shall be appointed for a period of 7 years but is eligible for re-appointment.

(2) If the person who is appointed Comptroller-General is, at the time of the appointment, over 58 years of age, the term of the appointment shall be the period that will expire upon his or her attaining the age of 65 years.

(3) The Comptroller-General holds office on such terms and conditions not provided for by this Act or any other Act as the Governor-General determines.

**Employment outside official duties**

7. The Comptroller-General shall not, without the approval of the Minister, engage in paid employment outside the duties of the office of Comptroller-General.

**Remuneration and allowances**

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

(2) The Comptroller-General shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

**Leave of absence**

9. The Minister may grant leave of absence to the Comptroller-General upon such terms and conditions as to remuneration or otherwise as the Minister determines.

**Resignation**

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

**Disclosure of financial interests**

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

**Suspension and removal from office of Comptroller-General**

12. (1) The Governor-General may remove the Comptroller-General from office on an address praying for the removal of the Comptroller-General 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 Comptroller-General from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Governor-General suspends the Comptroller-General, 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 sub-section (1) has not been presented to the Governor-General by each House of the Parliament, the suspension terminates.

(5) The suspension of the Comptroller-General from office under this section does not affect any entitlement of the Comptroller-General to be paid remuneration and allowances.

(6) If—

- (a) the Comptroller-General 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;
- (b) the Comptroller-General fails, without reasonable excuse, to comply with section 11;
- (c) the Comptroller-General engages, except with the approval of the Minister, in paid employment outside the duties of the office of Comptroller-General; or
- (d) the Comptroller-General is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or 28 days in any 12 months,

the Governor-General shall remove the Comptroller-General from office.

(7) The Governor-General may, with the consent of the Comptroller-General, retire the Comptroller-General from office on the ground of physical or mental incapacity.

(8) The Comptroller-General shall not be suspended, removed or retired from office except as provided by this section.

### **Acting Comptroller-General**

13. (1) The Governor-General may appoint a person to act in the office of Comptroller-General—

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

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) A person appointed under sub-section (1) to act during a vacancy shall not continue so to act for more than 12 months.

(4) Where a person is acting in the office of Comptroller-General in accordance with paragraph (1) (b) and the office becomes vacant while the person is so acting, then, subject to sub-section (2), the person may continue so to act until the Governor-General otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurs expires, whichever first happens.

(5) While a person is acting in the office of Comptroller-General, the person has and may exercise all the powers, and shall perform all the functions, of the Comptroller-General under this Act or any other law.

(6) The Governor-General may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of Comptroller-General; and

(b) terminate such an appointment at any time.

(7) A person appointed under sub-section (1) may resign the appointment by writing signed by the person and delivered to the Governor-General.

(8) The validity of anything done by or in relation to a person purporting to act in the office of Comptroller-General shall not be called in question on the ground that the occasion for the appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

### **Delegation**

14. (1) The Comptroller-General may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Comptroller-General, delegate to any person all or any of the Comptroller-General's powers or functions under a law of customs or excise, or any other law of the Commonwealth, other than this power of delegation.

(2) Subject to sub-section (4), a power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of the law of customs or excise or the other law of the Commonwealth, as the case may be, be deemed to have been exercised or performed by the Comptroller-General.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Comptroller-General.

(4) A delegation under this section may be made subject to a power of review and alteration by the Comptroller-General, within a period specified in the instrument of delegation, of acts done under the delegation.

(5) A delegation under this section continues in force notwithstanding a change in the occupancy of, or a vacancy in, the office of Comptroller-General, but, for the purposes of the application of sub-section 33 (3) of the *Acts Interpretation Act 1901* to a delegation under this section, nothing in any law shall be taken to preclude the revocation or variation of the delegation by the same or a subsequent holder of that office.

### **Staff**

15. (1) The staff required for the purposes of this Act shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Comptroller-General has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1).

**Breaches of confidence**

**16. (1)** In this section—

- (a) a reference to a person to whom this section applies shall be construed as a reference to a person who is, or has at any time been—
  - (i) the Comptroller-General;
  - (ii) a person employed in the Australian Customs Service;
  - (iii) a person to whom the Comptroller-General has, pursuant to this Act, delegated a power or function under a law of customs or excise or any other law of the Commonwealth; or
  - (iv) a person authorized by the Comptroller-General to exercise a power or function under a law of customs or excise or any other law of the Commonwealth;
- (b) a reference to the duties of a person to whom this section applies shall be construed as a reference to the duties of the person in the capacity by virtue of which he or she is a person to whom this section applies;
- (c) a reference to a State includes a reference to the Northern Territory and a reference to a Territory does not include a reference to the Northern Territory; and
- (d) the expressions “agency” and “principal officer” have the same meanings as in the *Freedom of Information Act 1982*.

(2) Subject to sub-section (3), a person to whom this section applies shall not, except when required or permitted by law or for the purposes of the performance of the person’s duties, disclose any information or produce a document to another person if the disclosure of the information or the production of the document would constitute a breach of confidence.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(3) Nothing in sub-section (2) shall be taken to prohibit the disclosure of information or the production of a document to—

- (a) the principal officer of an agency if the Comptroller-General is satisfied that—
  - (i) the information or document will be used by the agency for the purpose of—
    - (A) investigating whether an offence has been committed against the law of the Commonwealth or the law of a Territory; or
    - (B) determining whether a person has a right under a law of the Commonwealth or a law of a Territory; or
  - (ii) the information or document will be used by the agency for the purpose of the performance of its functions and will not be

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disclosed or produced by the agency to another person except when required or permitted by law;

- (b) a person receiving the information or document on behalf of the government, or on behalf of an authority, of a State if the Comptroller-General is satisfied that the information or document will be used by that person for the purpose of investigating whether an offence has been committed against the law of that State; or
- (c) a person receiving the information or document on behalf of the government, or on behalf of an authority, of a foreign country if the Comptroller-General is satisfied that the information or document will be used by that person for the purpose of—
  - (i) investigating whether an offence has been committed against the law of that foreign country; or
  - (ii) investigating whether circumstances exist by reason of which the Minister or the Comptroller-General may exercise a power under a law of the Commonwealth.

**Annual report**

17. (1) The Comptroller-General 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 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 sub-section (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.

**Regulations**

18. 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.

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[*Minister's second reading speech made in—  
Senate on 23 April 1985  
House of Representatives on 21 May 1985, a.m.*]