



# **Customs Legislation Amendment (Modernising) Act 2008**

**No. 75, 2008**

**An Act to amend the law relating to customs, and  
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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No. 75, 2008

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## An Act to amend the law relating to customs, and for related purposes

[Assented to 12 July 2008]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Customs Legislation Amendment  
(Modernising) Act 2008*.

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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, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| <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.   | 12 July 2008   |
| 2. Schedule 1   | The later of:<br>(a) the day after this Act receives the Royal Assent; and<br>(b) the day on which Articles 11 and 12 of Chapter 3 of the Singapore-Australia Free Trade Agreement, as re-tabled in the House of Representatives on 31 May 2005, come into force for Australia.<br><br>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.<br><br>The Minister must announce by notice in the <i>Gazette</i> the day on which the Articles come into force for Australia. | 27 March 2009<br><i>(see Gazette 2009, No. S57)</i><br>(paragraph (b) applies) |
| 3. Schedule 2   | The day after this Act receives the Royal Assent.  | 13 July 2008   |
| 4. Schedules 3 and 4  | The 28th day after the day on which this Act receives the Royal Assent.  | 9 August 2008  |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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 contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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### **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—Goods claimed to be produce or manufacture of Singapore

### *Customs Act 1901*

#### **1 Subsection 153VE(1)**

Repeal the subsection, substitute:

##### *Certificate of Origin*

- (1) Goods claimed to be the produce or manufacture of Singapore are not the produce or manufacture of Singapore, unless:
  - (a) at the time of entry of the goods, the importer of the goods holds a valid Certificate of Origin relevant to those goods; and
  - (b) if, at the time of entry of the goods, the importer of the goods has previously used that Certificate of Origin in respect of goods of the same kind—at the time of entry of the goods to which the claim relates, the importer of those goods also holds a declaration relevant to those goods; and
  - (c) if an officer requests production of a copy of any document that the importer of the goods is required under paragraph (a) or (b) to hold—a copy of that document is produced to the officer.

#### **2 Application**

The amendment made by this Schedule applies in relation to goods claimed, on or after the commencement of this item, to be the produce or manufacture of Singapore.



## **Schedule 2—Agents and customs brokers**

### *Customs Act 1901*

**1 Subsection 183CD(1)**

Omit “(1)” (first occurring).

**2 Subsection 183CD(1)**

Omit “Subject to this section, a”, substitute “A”.

**3 Paragraph 183CD(1)(f)**

Repeal the paragraph.

**4 Paragraph 183CD(1)(h)**

Omit “customs broker; and”, substitute “customs broker.”.

**5 Paragraph 183CD(1)(j)**

Repeal the paragraph.

**6 Subsections 183CD(2), (3) and (4)**

Repeal the subsections.

## **Schedule 3—Recovery of duty**

### **Part 1—Amendments**

#### *Customs Act 1901*

##### **1 Section 153**

Repeal the section.

##### **2 Subsection 161L(2)**

Omit all the words after paragraph (b), substitute:

section 165 applies in relation to any demand by the CEO for the payment of the amount of duty that is unpaid or the amount of refund that was overpaid.

##### **3 Division 3 of Part VIII (heading)**

Repeal the heading, substitute:

#### **Division 3—Payment and recovery of deposits, refunds, unpaid duty etc.**

##### **4 Section 165**

Repeal the section, substitute:

##### **165 Recovery of unpaid duty etc.**

- (1) An amount of duty that is due and payable in respect of goods:
  - (a) is a debt due to the Commonwealth; and
  - (b) is payable by the owner of the goods.
- (2) An amount of drawback, refund or rebate of duty that is overpaid to a person:
  - (a) is a debt due to the Commonwealth; and
  - (b) is payable by the person.

*Demand for payment*

- (3) The CEO may make, in writing, a demand for payment of an amount that is a debt due to the Commonwealth under subsection (1) or (2).
- (4) A demand, under subsection (3), for payment of an amount must specify the amount and include an explanation of how it has been calculated.
- (5) A demand, under subsection (3), for payment of an amount must be made within 4 years from:
  - (a) if the amount is a debt due to the Commonwealth under subsection (1)—the time the amount was to be paid by under this Act; or
  - (b) if the amount is a debt due to the Commonwealth under subsection (2)—the time the amount was paid;unless the CEO is satisfied that the debt arose as the result of fraud or evasion.

*Recovery in court*

- (6) An amount that is a debt due to the Commonwealth under subsection (1) or (2) may be sued for and recovered in a court of competent jurisdiction by proceedings in the name of the Collector if:
  - (a) the CEO has made a demand for payment of the amount in accordance with this section; or
  - (b) the CEO is satisfied that the debt arose as the result of fraud or evasion.

**165A Refunds etc. may be applied against unpaid duty**

- (1) If:
  - (a) an amount of duty is payable by a person in respect of goods that have been delivered into home consumption; and
  - (b) the person would be entitled to an amount of drawback, refund or rebate of duty in respect of the goods if the amount of duty payable were paid;then:
  - (c) the CEO may apply the amount of the drawback, refund or rebate against the amount of duty payable; and

- (d) the person is taken to have paid, in respect of the goods, an amount of duty equal to the amount of drawback, refund or rebate applied; and
  - (e) the amount of drawback, refund or rebate applied is taken to have been paid to the person.
- (2) If the CEO applies an amount of drawback, refund or rebate against an amount of duty payable, the CEO must give the person who would have been entitled to receive the amount of drawback, refund or rebate written notice of:
- (a) the amount of drawback, refund or rebate applied; and
  - (b) if the amount of drawback, refund or rebate applied is less than the amount of duty payable—the amount of duty that is still payable by the person.

## **5 Subsections 167(3) and (3A)**

Repeal the subsections, substitute:

- (3) Subject to subsection (3B), for the purposes of this section, a payment is taken to be made under protest if, and only if:
- (a) the owner of the goods or the agent of the owner gives Customs notice in accordance with subsection (3A), by document or electronically, that the payment is made under protest; and
  - (b) Customs receives the notice no later than 7 days after the day the payment is made.
- (3A) A notice given by an owner or agent under subsection (3) must:
- (a) contain the words ***paid under protest***; and
  - (b) identify the import declaration that covers the goods to which the protest relates; and
  - (c) if the protest does not relate to all the goods covered by the import declaration—describe the goods to which the protest relates; and
  - (d) include a statement of the grounds on which the protest is made; and
  - (e) be signed by the owner or the agent of the owner.
- (3B) If, under section 71DGA, an accredited client pays an amount of accredited client monthly duty estimate in respect of goods, then for the purposes of this section, the amount of duty that would be

payable in respect of the goods if the amount of accredited client monthly duty estimate were not paid is taken to be paid under protest by the accredited client if, and only if:

- (a) the accredited client or the agent of the accredited client gives Customs notice in accordance with subsection (3C), by document or electronically, that the payment is made under protest; and
  - (b) Customs receives the notice no later than 7 days after the accredited client payment day on which the amount of duty would be payable on the goods under subsection 71DGB(1) if the amount of accredited client monthly duty estimate were not paid.
- (3C) A notice given by an accredited client or agent under subsection (3B) must:
- (a) contain the words *paid under protest*; and
  - (b) identify the periodic declaration that covers the goods to which the protest relates; and
  - (c) if the protest does not relate to all the goods covered by the periodic declaration—describe the goods to which the protest relates; and
  - (d) include a statement of the grounds on which the protest is made; and
  - (e) be signed by the accredited client or the agent of the accredited client.

## **6 After subsection 167(4)**

Insert:

- (4A) No action lies for the recovery of any sum paid to Customs under section 71DGA as an amount of accredited client monthly duty estimate in respect of goods, unless:
- (a) the amount of duty that would be payable in respect of the goods if the amount of accredited client monthly duty estimate were not paid has been taken under subsection (3B) to have been paid under protest; and
  - (b) the action is commenced within the following times:
    - (i) if the sum is paid as an estimate of duty payable under any Customs Tariff—within 6 months after the accredited client payment day on which the amount of duty would be payable on the goods under subsection

71DGB(1) if the amount of accredited client monthly duty estimate were not paid;

- (ii) if the sum is paid as an estimate of duty payable under a Customs Tariff or Customs Tariff alteration proposed in the Parliament—within 6 months after the Act, by which the Customs Tariff or Customs Tariff alteration proposed in the Parliament is made law, is assented to.

## **7 At the end of section 167**

Add:

- (6) In this section:

*import declaration* includes an import entry, within the meaning of the unamended Customs Act, that was made under that Act.

*unamended Customs Act* has the meaning given by section 4 of the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004*.

## **8 Paragraph 273GA(1)(ja)**

Repeal the paragraph, substitute:

- (ja) a decision of the CEO under subsection 165(3) to make a demand for payment of an amount of drawback, refund or rebate of duty that was overpaid;

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

## **9 Item 45 of Schedule 3**

Repeal the item.

## **Part 2—Application and transitional provisions**

### **10 Transitional—item 1**

The repeal of section 153 of the *Customs Act 1901* made by item 1 of this Schedule does not affect any proceedings brought under that section before the commencement of this item.

### **11 Transitional—item 4**

- (1) This item applies to a demand made under section 165 of the old law.
- (2) Section 165 of the new law has effect, on and after the commencement time, as if the demand were a demand made under, and in accordance with, that section.
- (3) In this item:  
*commencement time* means the time at which item 4 of this Schedule commences.  
*new law* means the *Customs Act 1901* as amended by item 4 of this Schedule.  
*old law* means the *Customs Act 1901* as in force before the commencement time.

### **12 Application—items 5 to 7**

The amendments made by items 5 to 7 of this Schedule apply in relation to payments made on or after the commencement of those items.

## Schedule 4—Treatment of certain information given to Customs

### *Customs Act 1901*

#### **1 After subsection 234(2BB)**

Insert:

(2BC) For the purposes of paragraph (1)(d), information provided to Customs under section 71 in the circumstances mentioned in section 71AAAB is taken to be a statement made to the CEO.

#### **2 Subsection 234(2C)**

Omit “or (2BB)”, substitute “, (2BB) or (2BC)”.

#### **3 Application**

The amendments made by this Schedule apply in relation to information provided to Customs on or after the commencement of this Schedule.

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*[Minister’s second reading speech made in—  
House of Representatives on 20 March 2008  
Senate on 16 June 2008]*

(52/08)

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