



Customs Amendment (Export Controls and Other Measures) Act 2011

No. 63, 2011

**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/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Control of export goods		3
Part 1—Goods no longer for export		3
<i>Customs Act 1901</i>		3
Part 2—Power to give directions		7
<i>Customs Act 1901</i>		7
Part 3—Suspension of an authority to deal with export goods		9
<i>Customs Act 1901</i>		9
Schedule 2—Strengthening of security measures at depots and warehouses		13
Part 1—Depot licences		13
<i>Customs Act 1901</i>		13
<i>Customs Depot Licensing Charges Act 1997</i>		21
Part 2—Warehouse licences		22
<i>Customs Act 1901</i>		22
Schedule 3—Other amendments		28
<i>Customs Act 1901</i>		28



Customs Amendment (Export Controls and Other Measures) Act 2011

No. 63, 2011

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

[Assented to 29 June 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment (Export Controls and Other Measures) Act 2011*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2011
2. Schedules 1 and 2	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	28 November 2011 (see F2011L02441)
3. Schedule 3	The 28th day after this Act receives the Royal Assent.	27 July 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Control of export goods

Part 1—Goods no longer for export

Customs Act 1901

1 At the end of subsection 30(1)

Add:

- ; (e) as to goods made or prepared in, or brought into, a prescribed place for export that are no longer for export—from the time the goods are made or prepared in, or brought into, the prescribed place until the goods are moved from the place in accordance with a permission given under section 119AC.

2 At the end of section 33

Add:

- Note 3: For permission to move, alter or interfere with goods that are no longer for export, see sections 119AB and 119AC.

3 Subparagraph 114D(1)(b)(ii)

After “119AA”, insert “or 119AC”.

4 Paragraph 117AA(3)(b)

After “119AA”, insert “or 119AC”.

5 Subsection 119AA(3)

Repeal the subsection, substitute:

- (3) An application under subsection (2) may be made by document or electronically.
- (3A) A documentary application must:
 - (a) be communicated to Customs by sending or giving it to an officer doing duty in relation to export entries; 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.

Schedule 1 Control of export goods

Part 1 Goods no longer for export

(3B) An electronic application must communicate such information as is set out in an approved statement.

6 Subsection 119AA(4)

Omit “different statements for electronic applications”, substitute “different forms for documentary applications, and different statements for electronic applications,”.

7 Subsection 119AA(6)

Omit “send a message electronically”, substitute “give a message by document, or send a message electronically,”.

8 After section 119AA

Insert:

119AB Application for permission to move, alter or interfere with goods that are no longer for export

- (1) If goods are subject to the control of Customs under paragraph 30(1)(e), a person may apply to Customs for permission to move, alter or interfere with the goods in a particular way.
- (2) An application under subsection (1) may be made by document or electronically.
- (3) A documentary application must:
 - (a) be communicated to Customs by sending or giving it to an officer doing duty in relation to export entries; 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.
- (4) An electronic application must communicate such information as is set out in an approved statement.
- (5) The CEO may approve different forms for documentary applications, and different statements for electronic applications, made under this section in different circumstances or by different classes of persons.

**119AC Dealing with an application for a permission to move etc.
goods that are no longer for export**

- (1) If an application is made under subsection 119AB(1), an officer may direct the applicant to ensure that the goods to which the application relates are held in the place where they are currently located until a decision is made on the application.
- (2) If a direction is not given under subsection (1) of this section, or a reasonable period has elapsed since the giving of such a direction to enable the making of an informed decision on the application, an officer must give a message by document, or send a message electronically, to the applicant:
 - (a) giving the applicant permission to move, alter or interfere with the goods in accordance with the application either unconditionally or subject to such conditions as are specified in the message; or
 - (b) refusing the application and setting out the reasons for the refusal.
- (3) If a person moves, alters or interferes with goods otherwise than in accordance with a permission under subsection (2) of this section, the movement of the goods is, for the purposes of paragraph 229(1)(g), taken not to have been authorised by this Act.

9 Subsection 119D(3)

Repeal the subsection, substitute:

- (3) For the purposes of this Act, a documentary application or an electronic application under section 119AA or 119AB is taken to have been communicated to Customs when an acknowledgment of the application is sent or given by Customs to the person who sent or gave the application.

Note: The heading to section 119D is altered by omitting “**and withdrawals**” and substituting “, **withdrawals and applications**”.

10 Subsection 122H(3)

After “paragraph 30(1)(d)”, insert “or (e)”.

11 Subsection 122H(3) (note)

Omit “Note”, substitute “Note 1”.

Schedule 1 Control of export goods

Part 1 Goods no longer for export

12 At the end of subsection 122H(3)

Add:

Note 2: Paragraph 30(1)(e) subjects to the control of Customs goods made or prepared in, or brought into, a prescribed place for export that are no longer for export.

Part 2—Power to give directions

Customs Act 1901

13 At the end of section 77Y

Add:

- (6) This section does not limit the directions that a Collector may give under section 112C.

14 After Division 1 of Part VI

Insert:

Division 1A—Directions in relation to goods for export etc. that are subject to Customs control

112C Collector may give directions in relation to goods for export etc. that are subject to Customs control

- (1) A Collector may give a written direction to move or not move, or about the storage of, goods that are subject to the control of Customs under paragraph 30(1)(b), (c), (d) or (e) if the direction is:
- (a) for the protection of the revenue; or
 - (b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations.
- (2) The direction may be given to:
- (a) the person who made an export declaration in relation to the goods; or
 - (b) the owner of the goods; or
 - (c) if the goods are in a place prescribed for the purposes of paragraph 30(1)(d) or (e)—the person apparently in charge of the place, or part of such a place; or
 - (d) a person who takes delivery of the goods at a wharf or airport; or
 - (e) a person engaged to load the goods on a ship or aircraft.

Schedule 1 Control of export goods

Part 2 Power to give directions

- (3) This section does not limit the directions that a Collector may give under section 77Y.

112D Compliance with a direction given under section 112C

- (1) A person commits an offence if:
- (a) the person is given a direction under section 112C; and
 - (b) the person intentionally refuses or fails to comply with the direction.

Penalty: 120 penalty units.

- (2) A person commits an offence if:
- (a) the person is given a direction under section 112C; and
 - (b) the person refuses or fails to comply with the direction.

Penalty: 50 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*.

15 Subsection 243X(1)

After “102A(4),”, insert “112D(2),”.

Part 3—Suspension of an authority to deal with export goods

Customs Act 1901

16 After section 114C

Insert:

114CA Suspension of an authority to deal with goods entered for export in order to verify particulars of the goods

- (1) An officer may, at any time before goods authorised to be dealt with in accordance with an export entry advice are so dealt with, suspend the authority to deal for a specified period in order to verify particulars of the goods shown in the export declaration made in respect of the goods:
 - (a) by reference to information contained in commercial documents relating to the goods that have been given to Customs by the owner of the goods on, or at any time after, the communication of the declaration to Customs; or
 - (b) by reference to information, in writing, in respect of the goods that has been so given to Customs.
- (2) If an officer suspends under subsection (1) an authority to deal that was given in respect of a documentary declaration:
 - (a) the officer must:
 - (i) sign a notice that states that the authority is so suspended and sets out the reasons for the suspension; and
 - (ii) serve a copy of the notice on the person who made the declaration or, if that person does not have possession of the goods, on the person who has possession of the goods; and
 - (b) the suspension has effect from the time when the notice is served.
- (3) If an officer suspends under subsection (1) an authority to deal that was given in respect of an electronic declaration or an ACEAN:

Schedule 1 Control of export goods

Part 3 Suspension of an authority to deal with export goods

- (a) the officer must send electronically, to the person who made the declaration or used the ACEAN, a message that states that the authority is so suspended and sets out the reasons for the suspension; and
- (b) the suspension has effect from the time when the message is sent.

114CB Revocation of the suspension of an authority to deal

- (1) If an authority to deal has been suspended under subsection 114CA(1), an officer must revoke the suspension if, during the period of suspension, the officer verifies the particulars of the goods shown in the export declaration made in respect of the goods.
- (2) If the revocation relates to an authority to deal that was given in respect of a documentary declaration:
 - (a) the officer must:
 - (i) sign a notice that states that the suspension is revoked; and
 - (ii) serve a copy of the notice on the person to whom the notice of the suspension was given; and
 - (b) the revocation has effect from the time when the notice is served.
- (3) If the revocation relates to an authority to deal that was given in respect of an electronic declaration or an ACEAN:
 - (a) the officer must send electronically, to the person to whom the message notifying the suspension was sent, a message that states that the suspension is revoked; and
 - (b) the revocation has effect from the time when the message is sent.

114CC An officer may seek additional information if an authority to deal has been suspended

Scope

- (1) This section applies if an authority to deal with goods is suspended under subsection 114CA(1) in order to verify particulars of the

goods shown in the export declaration made in respect of the goods.

Owner may be required to deliver commercial documents or information

- (2) If an officer believes, on reasonable grounds, that the owner of the goods has custody or control of commercial documents relating to the goods, or has or can obtain information relating to the goods, that will assist the officer to verify those particulars, the officer may require the owner:
 - (a) to deliver to the officer the commercial documents relating to the goods that are in the owner's custody or control (including any such documents that had previously been delivered to an officer and had been returned to the owner); or
 - (b) to deliver to the officer such specified information, in writing, relating to the goods as is within the knowledge of the owner or as the owner is reasonably able to obtain.
- (3) A documentary requirement for the delivery of documents or information relating to the goods must:
 - (a) be communicated to the person by whom, or on whose behalf, the export declaration was communicated; and
 - (b) be in an approved form and contain such particulars as the form requires.
- (4) An electronic requirement for the delivery of documents or information relating to the goods must:
 - (a) be sent electronically to the person who made the export declaration; and
 - (b) communicate such particulars as are set out in an approved statement.

Officer may ask any questions relating to the goods

- (5) An officer may ask:
 - (a) the owner of the goods; and
 - (b) if another person made the export declaration on behalf of the owner—the other person;any questions relating to the goods.

Schedule 1 Control of export goods

Part 3 Suspension of an authority to deal with export goods

Owner may be required to verify the particulars

- (6) An officer may require the owner of the goods to verify the particulars shown in the export declaration by making a declaration or producing documents.

Commercial documents must be returned

- (7) Subject to section 215, if a person delivers a commercial document to an officer under this section, the officer must deal with the document and then return it to that person.

Schedule 2—Strengthening of security measures at depots and warehouses

Part 1—Depot licences

Customs Act 1901

**1 Subsection 20(8) (subparagraph (a)(ii) of the definition of
waterfront area)**

Omit “15; or”, substitute “15; and”.

**2 Subsection 20(8) (subparagraph (a)(iii) of the definition of
waterfront area)**

Repeal the subparagraph.

3 Subsection 77F(1) (definition of *depot licence charge*)

Omit “77M or”.

4 Subsection 77L(1)

Omit “Subject to subsection (3), the”, substitute “The”.

5 Subsection 77L(3)

Repeal the subsection.

6 Section 77M

Repeal the section.

7 Subsection 77Q(1)

Repeal the subsection, substitute:

Imposition of additional conditions

- (1) The CEO may, at any time, impose additional conditions to which a depot licence is subject if the CEO considers the conditions to be necessary or desirable:
- (a) for the protection of the revenue; or

- (b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or
 - (c) for any other purpose.
- (1A) If the CEO imposes conditions under subsection (1) when granting the depot licence, the CEO must specify the conditions in the licence.
- (1B) If the CEO imposes conditions under subsection (1) after the depot licence has been granted:
- (a) the CEO must, by written notice to the holder of the licence, notify the holder of the conditions; and
 - (b) the conditions cannot take effect before:
 - (i) the end of 30 days after the giving of the notice; or
 - (ii) if the CEO considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

Variation of imposed conditions

Note: The heading to section 77Q is replaced by the heading “**The CEO may impose additional conditions to which a depot licence is subject**”.

8 Subsection 77Q(2)

Omit “specified”, substitute “imposed”.

9 Subsection 77Q(3)

Repeal the subsection, substitute:

- (3) A variation under subsection (2) cannot take effect before:
 - (a) the end of 30 days after the giving of the notice under that subsection; or
 - (b) if the CEO considers that it is necessary for the variation to take effect earlier—the end of a shorter period specified in the notice given under that subsection.

10 Subsection 77R(1)

Omit “or conditions specified in the licence under section 77Q”, substitute “, or a condition imposed under section 77Q (including a condition varied under that section)”.

11 At the end of subsection 77R(2)

Add:

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

12 At the end of section 77R

Add:

(3) Subsection (1) does not apply if a breach of a condition of the depot licence occurs only as a result of the holder's compliance, or attempted compliance, with:

- (a) a direction given under section 21 of the *Aviation Transport Security Act 2004* that applies to the holder; or
- (b) a special security direction (within the meaning of section 9 of that Act) that applies to the holder.

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

13 Section 77S (note)

Repeal the note, substitute:

Note: Section 77T provides that a licence may continue to be in force for a further period of 90 days after the 30 June referred to in this section under certain circumstances. Another provision that might affect the operation of this section is section 77VC (cancellation of depot licences).

14 Subsection 77U(1)

Omit "Subject to section 77M, a depot", substitute "A depot".

15 Subsection 77V(1)

Omit "notice of intention to revoke a depot licence to the holder of the", substitute "a notice under this subsection to the holder of a depot".

Note: The heading to section 77V is altered by omitting "**Revocation**" and substituting "**Notice of intended cancellation etc.**".

16 Paragraph 77V(1)(b)

Omit "the revocation is necessary", substitute "it is necessary to cancel the licence".

17 At the end of paragraph 77V(1)(b)

Add “, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations”.

18 Subsections 77V(4) to (11)

Repeal the subsections, substitute:

- (4) The notice under subsection (1) must be in writing and must be:
- (a) served, either personally or by post, on the holder of the depot licence; or
 - (b) served personally on a person who, at the time of service, apparently participates in the management or control of the depot.
- (5) The notice under subsection (1):
- (a) must state that, if the holder of the depot licence wishes to prevent the cancellation of the licence, he or she may, within 7 days after the day on which the notice is served, give to the CEO at an address specified in the notice a written statement showing cause why the licence should not be cancelled; and
 - (b) may, if it appears to the CEO to be necessary to do so:
 - (i) for the protection of the revenue; or
 - (ii) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations;state that the licence is suspended.
- (6) If the notice under subsection (1) states that the depot licence is suspended, the licence is suspended on and from the service of the notice.
- Note: For revocation of the suspension, see section 77VB.
- (7) Despite the giving of a notice under subsection (1) in relation to a depot licence, nothing in this Part prevents:
- (a) the CEO giving a notice under subsection 77T(1) in relation to the renewal of the licence; or
 - (b) the holder of the licence obtaining a renewal of the licence by paying a depot licence charge in accordance with section 77T.

Note: A depot licence charge paid in the circumstances described in this subsection may be refunded under section 77W.

19 After section 77V

Insert:

77VA Depot must not be used if depot licence is suspended etc.

Offence

- (1) If a depot licence is suspended under section 77V, a person must not use the depot for a purpose referred to in subsection 77G(1).

Penalty: 50 penalty units.

Collector may permit use of depot etc. during suspension

- (2) If a depot licence is suspended under section 77V, a Collector may, while the licence is so suspended and despite subsection (1) of this section:
- (a) permit imported goods, or goods for export, that are subject to the control of Customs to be held in the depot; and
 - (b) permit the unpacking or packing of such goods; and
 - (c) permit the removal of such goods from the depot, including the removal of such goods to another depot; and
 - (d) by notice in a prescribed manner to the owner of such goods, require the owner to remove the goods to another depot, or to a warehouse, approved by the Collector; and
 - (e) take such control of the depot, or all or any goods in the depot, as may be necessary:
 - (i) for the protection of the revenue; or
 - (ii) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; and
 - (f) by notice in writing to the holder of the licence, require the holder to pay to Customs, in respect of the services of officers required as the result of the suspension, such fee as the CEO determines having regard to the cost of the services.

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

- (3) Without limiting paragraph (2)(f), the services referred to in that paragraph include services relating to:
 - (a) the enforcement of the suspension; and
 - (b) the supervision of activities in relation to the depot that are permitted by a Collector.
- (4) If an amount that the holder of a depot licence is required to pay in accordance with a notice under paragraph (2)(f) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

77VB Revocation of suspension of depot licences

If a depot licence is suspended under section 77V, the CEO:

- (a) may at any time revoke the suspension; and
- (b) if the licence has not been cancelled within 28 days after the day on which the licence was suspended—must revoke the suspension.

Note: For the cancellation of depot licences, see section 77VC.

77VC Cancellation of depot licences

- (1) The CEO may, by notice in writing, cancel a depot licence if the CEO is satisfied of any matter mentioned in subparagraphs 77V(1)(a)(i) to (viii), or of the matter mentioned in paragraph 77V(1)(b), in relation to the licence.
- (2) The CEO must, by notice in writing, cancel a depot licence if the CEO receives a written request from the holder of the licence that the licence be cancelled on and after a specified day.
- (3) A notice under subsection (1) or (2) must be:
 - (a) served, either personally or by post, on the holder of the depot licence; or
 - (b) served personally on a person who, at the time of service, apparently participates in the management or control of the depot.
- (4) If a depot licence is cancelled under this section, the CEO must, by notice published in a newspaper circulating in the locality in which the depot is situated, inform the owners of goods in the depot of the cancellation and the date of the cancellation.

- (5) If a depot licence is cancelled under this section, the person or partnership who held the licence before the cancellation must return the licence to Customs within 30 days after the cancellation.

20 Subsection 77W(1)

Repeal the subsection, substitute:

- (1) If:
- (a) a depot licence is cancelled before the end of a financial year; and
 - (b) the person or partnership (the *former holder*) who held the licence before its cancellation has paid the depot licence charge for that financial year;
- the former holder is entitled to a refund of an amount worked out using the formula in subsection (1A).

- (1A) For the purposes of subsection (1), the formula is:

$$\text{Annual rate} \times \frac{\text{Post-cancellation days}}{\text{Days in the year}}$$

where:

annual rate means the amount of \$4,000, or, if another amount is prescribed under subsection 6(2) of the *Customs Depot Licensing Charges Act 1997*, that other amount.

days in the year means:

- (a) if the financial year in which the licence is in force is not constituted by 365 days—the number of days in that financial year; or
- (b) otherwise—365.

post-cancellation days means the number of days in the financial year during which the depot licence is not in force following the cancellation of the licence.

Note: The heading to section 77W is altered by omitting “**revocation**” and substituting “**cancellation**”.

21 Subsection 77X(1)

Repeal the subsection.

22 Subsection 77X(2)

Omit “If this section applies to a place”, substitute “If a place ceases to be covered by a depot licence”.

23 Paragraph 77X(2)(g)

After “Customs Acts”, insert “, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations”.

24 Subsection 77Y(1)

After “Customs Acts”, insert “, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations”.

25 Paragraph 77Y(2)(d)

Omit “imported goods that are”.

26 Paragraph 77Y(2)(e)

Omit “goods for export that are”.

27 After subsection 77Y(3)

Insert:

(3A) A person who has been given a direction under subsection (1) or (3) must not intentionally refuse or fail to comply with the direction.

Penalty: 120 penalty units.

28 Subsection 243X(1)

After “74(6),”, insert “77R(1), 77Y(4),”.

29 Subsection 273GA(1)

After “for review of”, insert “the following”.

30 Paragraph 273GA(1)(aat)

After “section 77Q”, insert “to impose conditions on a depot licence or”.

31 Paragraph 273GA(1)(aau)

Omit “revoke”, substitute “suspend”.

32 After paragraph 273GA(1)(aau)

Insert:

(aav) a decision by the CEO under section 77VC to cancel a depot licence;

Customs Depot Licensing Charges Act 1997

33 Section 3 (definition of *depot licence charge*)

Omit “77M or”.

34 Subsections 4(2) and 5(1)

Repeal the subsections.

35 Subsection 5(2)

Omit “(2)”.

36 Subsection 5(2)

Omit “to whom paragraphs (1)(a) and (b) do not apply”, substitute “for a depot licence”.

37 Subsection 6(1)

Omit “or (6)”.

38 Subsections 6(6) to (8)

Repeal the subsections.

Part 2—Warehouse licences

Customs Act 1901

39 After section 81

Insert:

81A Grant of a warehouse licence

- (1) If an application for a warehouse licence is made, the CEO must decide whether or not to grant the licence within 60 days after receiving the application.
- (2) If the CEO has not made a decision whether or not to grant the warehouse licence before the end of the period referred to in subsection (1), the CEO is taken to have refused the application at the end of that period.

81B Variation of the place covered by a warehouse licence

- (1) The CEO may, on application by the holder of a warehouse licence, vary the licence by:
 - (a) omitting the description of the place that is described in the licence and substituting a description of another place; or
 - (b) altering the description of the place that is described in the licence.
- (2) The application must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be signed in the manner indicated in the form.
- (3) The CEO may, by written notice given to an applicant for the variation of a warehouse licence, require the applicant to give further information in relation to the application:
 - (a) within the period that is specified in the notice; or
 - (b) within such further period as the CEO allows.

- (4) If an application for the variation of a warehouse licence is made under subsection (1), the CEO must not grant the application if, in the CEO's opinion:
- (a) the physical security of the place whose description is to be substituted, or of the place that would have the altered description, would not be adequate having regard to:
 - (i) the nature of the place; or
 - (ii) the kinds and quantity of goods that would be kept in the place if the variation were made; or
 - (iii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the place if the variation were made; or
 - (b) the plant and equipment that would be used in relation to goods in the place, if the variation were made, would not be suitable having regard to the nature of those goods and that place; or
 - (c) the books of account or records that would be kept in relation to the place, if the variation were made, would not be suitable to enable Customs adequately to audit those books or records.
- (5) The CEO must not grant an application under subsection (1) for the substitution of the description of a place in a warehouse licence if, in the CEO's opinion, the place would be too remote from the nearest place where officers, who regularly perform their functions for Customs, would be able conveniently to check whether the Customs Acts are being complied with at the place.
- (6) If an application is made under subsection (1), the CEO must decide whether or not to grant the application:
- (a) if paragraph (b) of this subsection does not apply—within 60 days after receiving the application; or
 - (b) if:
 - (i) the CEO requires the applicant to give further information under subsection (3); and
 - (ii) the applicant supplies the information in accordance with that subsection;within 60 days after receiving the information.
- (7) If the CEO has not made a decision whether or not to grant an application made under subsection (1) before the end of the period

that applies under subsection (6), the CEO is taken to have refused the application at the end of that period.

40 Subsection 82(2)

Repeal the subsection.

41 Subsection 82(3)

Repeal the subsection, substitute:

- (3) A warehouse licence is subject to such other conditions (if any) as are specified in the licence that the CEO considers to be necessary or desirable:
- (a) for the protection of the revenue; or
 - (b) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or
 - (c) for any other purpose.

42 At the end of section 82

Add:

- (6) Subsection (5) does not limit section 82B.

43 After section 82

Insert:

82A The CEO may impose additional conditions to which a warehouse licence is subject

- (1) The CEO may, at any time after a warehouse licence is granted, impose additional conditions to which the licence is subject if the CEO considers the conditions to be necessary or desirable:
- (a) for the protection of the revenue; or
 - (b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or
 - (c) for any other purpose.
- (2) If the CEO imposes conditions under subsection (1):

- (a) the CEO must, by written notice to the holder of the warehouse licence, notify the holder of the conditions; and
- (b) the conditions cannot take effect before:
 - (i) the end of 30 days after the giving of the notice; or
 - (ii) if the CEO considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

82B The CEO may vary the conditions to which a warehouse licence is subject

- (1) The CEO may, by written notice to the holder of a warehouse licence, vary:
 - (a) the conditions specified in the warehouse licence under section 82; or
 - (b) the conditions imposed under section 82A to which the licence is subject.
- (2) A variation under subsection (1) cannot take effect before:
 - (a) the end of 30 days after the giving of the notice under that subsection; or
 - (b) if the CEO considers that it is necessary for the variation to take effect earlier—the end of a shorter period specified in the notice given under that subsection.
- (3) This section does not limit subsection 82(5).

82C Breach of conditions of a warehouse licence

- (1) The holder of a warehouse licence must not breach a condition to which the licence is subject under section 82 or 82A (including a condition varied under subsection 82(5) or section 82B).

Penalty: 50 penalty units.

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

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

44 Paragraph 83(2)(d)

After “Customs Acts”, insert “, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations”.

45 At the end of section 85

Add:

- (4) The regulations may make provision for, and in relation to, the refund of any fees referred to in subsection (1).
- (5) Without limiting subsection (4), the regulations may set out the means of determining the amount of the refund.

46 Subsection 86(1)

Omit “revenue or for”, substitute “revenue, or for”.

47 Subsection 86(1)

After “Customs Acts”, insert “, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations,”.

48 Paragraph 86(3)(b)

Repeal the paragraph, substitute:

- (b) may, if it appears to the CEO to be necessary to do so:
 - (i) for the protection of the revenue; or
 - (ii) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations;
- state that the licence is suspended;

49 Paragraph 86(7)(e)

After “Customs Acts”, insert “, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations”.

50 At the end of paragraph 87(1)(b)

Add “, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations”.

51 After subsection 87(1)

Insert:

- (1A) The CEO must cancel a warehouse licence if the CEO receives a written request from the holder of the licence that the licence be cancelled on and after a specified day.

52 Subsection 87(2)

Omit “shall cancel a warehouse licence under subsection (1)”, substitute “must cancel a warehouse licence under this section”.

53 Subsection 87(4)

Omit “where the CEO cancels a warehouse licence, he or she shall”, substitute “if the CEO cancels a warehouse licence under this section, he or she must”.

54 Subsections 87(5) and (7)

Omit “shall”, substitute “must”.

55 Subsections 96A(6) and 96B(6)

Omit all the words after “the Collector,”, substitute:

are necessary:

- (a) for the protection of the revenue; or
- (b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations;

and may, at any time, revoke, suspend or vary, or cancel a suspension of, a condition so imposed.

56 Subsection 243X(1)

Before “99(3),” insert “82C(1),”.

Schedule 3—Other amendments

Customs Act 1901

1 After subsection 65(1)

Insert:

(1A) Subsection (1) does not apply to the extent that it requires the master or owner of the ship to make a report of the cargo if the master or owner has:

- (a) made a cargo report in respect of the cargo; or
- (b) communicated an outward manifest under section 119 in respect of the cargo.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

2 After subsection 65(2)

Insert:

(2A) Subsection (2) does not apply to the extent that it requires the pilot or owner of the aircraft to make a report of the cargo if the pilot or owner has:

- (a) made a cargo report in respect of the cargo; or
- (b) communicated an outward manifest under section 119 in respect of the cargo.

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

*[Minister's second reading speech made in—
House of Representatives on 23 March 2011
Senate on 12 May 2011]*

(60/11)

Customs Amendment (Export Controls and Other Measures) Act 2011 *No. 63, 2011* 29