



Export Charges (Collection) Act 2015

No. 92, 2015

An Act to provide for the collection of export charges, and for related purposes

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

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An Act to provide for the collection of export charges, and for related purposes

[Assented to 29 June 2015]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Export Charges (Collection) Act 2015*.

Section 2

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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	30 June 2015

Note: This table relates only to the provisions of this Act as originally enacted.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 Simplified outline of this Act

This Act is about the collection of export charges.

Part 2 deals with the payment of export charges. The regulations may prescribe the time when export charges are due and payable. The regulations may also prescribe rules relating to the liability of agents to pay export charges and the recovery of such charges.

Part 3 deals with unpaid export charges. A late payment fee may be payable if an export charge is not paid on time. If a person does not pay an export charge or late payment fee, the Secretary may do either or both of the following:

- (a) suspend or revoke one or more export control instruments of the person;
- (b) direct that certain things not be done in relation to the person until the charge or fee is paid.

Part 4 deals with a number of miscellaneous matters, including the remission or refund of export charges and late payment fees and the review of decisions to suspend or revoke an export control instrument of a person.

4 Act binds the Crown

This Act binds the Crown in each of its capacities.

5 Extension to certain external Territories

- (1) This Act extends to the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.
- (2) The regulations may extend this Act to any other external Territory that is prescribed by the regulations.

6 Definitions

In this Act:

export charge means a charge imposed under:

- (a) section 7 or 11 of the *Export Charges (Imposition—Customs) Act 2015*; or
- (b) section 7 or 11 of the *Export Charges (Imposition—Excise) Act 2015*; or
- (c) section 7 or 11 of the *Export Charges (Imposition—General) Act 2015*.

export control instrument of a person means:

- (a) a licence, permission, permit, consent or approval granted to the person under:
 - (i) regulations made under the *Export Control Act 1982*; or
 - (ii) orders made under such regulations; or
- (b) a certificate or notice issued or given to the person under:
 - (i) regulations made under the *Export Control Act 1982*; or
 - (ii) orders made under such regulations; or
- (c) a registration or accreditation held by the person under:

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- (i) regulations made under the *Export Control Act 1982*; or
- (ii) orders made under such regulations; or
- (d) a licence granted to the person under section 10 of the *Australian Meat and Live-stock Industry Act 1997*; or
- (e) an approval granted to the person under:
 - (i) Part 2 of the *Australian Meat and Live-stock Industry Act 1997*; or
 - (ii) regulations or orders made under that Act for the purposes of that Part; or
- (f) any other thing granted to, issued to or held by the person under such an Act, regulations or orders that:
 - (i) relates to the export of goods; and
 - (ii) is prescribed by the regulations.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

internal reviewer means the Secretary or a person referred to in paragraph 17(3)(b).

late payment fee: see subsection 11(1).

protected person means:

- (a) the Secretary; or
- (b) a person given a direction under subsection 12(5); or
- (c) a person who is given information or documents in accordance with a notice given under subsection 16(1); or
- (d) a delegate of the Secretary under section 21.

Part 2—Paying export charges

7 Simplified outline of this Part

This Part deals with the payment of export charges. The regulations may prescribe the time when export charges are due and payable. The regulations may also prescribe rules relating to the liability of agents to pay export charges and the recovery of such charges.

8 Paying export charges

The regulations may do either or both of the following:

- (a) prescribe the time when a specified export charge is due and payable;
- (b) prescribe rules relating to:
 - (i) the liability of a person's agent to pay export charges on behalf of the person; and
 - (ii) the recovery of such charges from the person by the agent.

9 Commonwealth liable to pay export charges and late payment fees

- (1) The Commonwealth is not liable to pay an export charge or late payment fee that is payable under this Act or the regulations. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a charge or fee.
- (2) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.
- (3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.

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(4) Directions under subsection (2) are not legislative instruments.

(5) In subsections (1) and (2):

Commonwealth includes a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that cannot be made liable to taxation by a Commonwealth law.

Part 3—Unpaid export charges

10 Simplified outline of this Part

This Part deals with unpaid export charges. A late payment fee may be payable if an export charge is not paid on time. If a person does not pay an export charge or late payment fee, the Secretary may do either or both of the following:

- (a) suspend or revoke one or more export control instruments of the person;
- (b) direct that certain things not be done in relation to the person until the charge or fee is paid.

11 Late payment fee

- (1) If the regulations prescribe the time when an export charge is due and payable, the regulations may also prescribe a fee (a *late payment fee*) that is due and payable if the export charge is not paid at or before that time.
- (2) Without limiting subsection (1), a late payment fee may relate to each day or part of a day that the export charge remains unpaid after becoming due and payable.
- (3) The regulations may prescribe one or more persons who are liable to pay a late payment fee in relation to a specified export charge.

12 Action by the Secretary if export charges or late payment fees are unpaid

- (1) This section applies in relation to a person (the *debtor*) who is liable to pay an export charge or late payment fee that is due and payable.

Suspension or revocation of export control instruments

- (2) The Secretary may, by written notice given to the debtor:

Section 12

- (a) suspend one or more export control instruments of the debtor until the export charge or late payment fee is paid; or
 - (b) revoke one or more export control instruments of the debtor.
- (3) The notice given under subsection (2) must set out the reasons for the decision and notice of the debtor's right to have the decision reviewed. However, a failure to comply with this subsection does not affect the validity of the decision.

Note: For review of the decision, see sections 17 and 19.

- (4) Subsection (2) does not limit any other power to suspend or revoke an export control instrument of the debtor.

Directions by the Secretary

- (5) The Secretary may, orally or in writing, direct a person not to do one or more of the following until the export charge or late payment fee is paid:
- (a) grant the debtor a licence, permission, permit, consent or approval under:
 - (i) regulations made under the *Export Control Act 1982*; or
 - (ii) orders made under such regulations;
 - (b) issue or give the debtor a certificate or notice under:
 - (i) regulations made under the *Export Control Act 1982*; or
 - (ii) orders made under such regulations;
 - (c) give the debtor a registration or accreditation under:
 - (i) regulations made under the *Export Control Act 1982*; or
 - (ii) orders made under such regulations;
 - (d) grant the debtor a licence under section 10 of the *Australian Meat and Live-stock Industry Act 1997*;
 - (e) grant the debtor an approval under:
 - (i) Part 2 of the *Australian Meat and Live-stock Industry Act 1997*; or
 - (ii) regulations or orders made under that Act for the purposes of that Part;
 - (f) carry out specified activities, or specified kinds of activities, in relation to the debtor under such an Act, regulations or orders.

- (6) If a direction under subsection (5) is given in writing, the direction is not a legislative instrument.

13 Recovery of export charges and late payment fees

An export charge or a late payment fee that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

Part 4—Miscellaneous

14 Simplified outline of this Part

This Part deals with a number of miscellaneous matters, including the remission or refund of export charges and late payment fees and the review of decisions to suspend or revoke an export control instrument of a person.

15 Remitting or refunding export charges and late payment fees

- (1) The Secretary may, if the Secretary considers it appropriate to do so, remit or refund the whole or part of an export charge or a late payment fee that is payable or paid to the Commonwealth.
- (2) The Secretary may do so on his or her own initiative or on written application by a person.

16 Power to require information or documents

- (1) If the Secretary believes on reasonable grounds that a person has information or documents relevant to:
 - (a) the operation of this Act; or
 - (b) an export charge;the Secretary may, by written notice, require the person to give a person specified in the notice the information or documents specified in the notice within the period specified in the notice.
- (2) The period specified in the notice must be at least 14 days after the notice is given under subsection (1).
- (3) A person commits an offence if:
 - (a) the person is given a notice under subsection (1); and
 - (b) the person fails to comply with the notice.

Penalty: 30 penalty units.

17 Internal review of delegate's decision to suspend or revoke export control instruments*Application for review*

- (1) If a delegate of the Secretary suspends or revokes an export control instrument of a person under subsection 12(2), the person may apply to the Secretary for review of the decision (the ***original decision***).

Note: For review of a decision made personally by the Secretary, see section 19.

- (2) The application must:
- (a) be in writing; and
 - (b) set out the reasons for the application; and
 - (c) be made within:
 - (i) 30 days after the person was notified of the original decision; or
 - (ii) if the Secretary allows a longer period (whether before or after the end of that 30 day period)—that longer period.

Review of decision

- (3) On receiving the application, the Secretary must either:
- (a) review the original decision personally; or
 - (b) cause the original decision to be reviewed by a person:
 - (i) who was not involved in making the decision; and
 - (ii) who occupies a position senior to the person who actually made the decision.
- (4) The internal reviewer may:
- (a) affirm, vary or set aside the original decision; and
 - (b) if the internal reviewer sets aside the original decision—make such other decision as he or she thinks appropriate.
- (5) The decision (the ***decision on review***) of the internal review takes effect:
- (a) on the day specified in the decision on review; or
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- (b) if a day is not specified—on the day the decision on review was made.

Notice of decision on review

- (6) After a decision on review is made, the internal reviewer must give the applicant a written notice containing:
 - (a) the terms of the decision; and
 - (b) the reasons for the decision; and
 - (c) notice of the applicant's right to have the decision reviewed by the Administrative Appeals Tribunal.

However, a failure to comply with this subsection does not affect the validity of the decision on review.

Failure to give notice

- (7) For the purposes of section 19, the Secretary is taken to have affirmed the original decision if the applicant does not receive notice of the decision on review (if any) within 90 days after the application for review of the original decision was made.

18 Secretary may require further information from review applicants

- (1) The Secretary may, by written notice, require a person who has made an application under section 17 to give the Secretary further information about the application.
- (2) The Secretary may refuse to consider the application until the person gives the Secretary the information.

19 Review by the Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal for review of:
 - (a) a decision to suspend or revoke an export control instrument of a person under subsection 12(2) that was made by the Secretary personally; or

- (b) a decision of the internal reviewer made under section 17 that relates to a decision to suspend or revoke an export control instrument of a person under subsection 12(2).
- (2) An application under subsection (1) may be made only by, or on behalf of, the person referred to in paragraph (1)(a) or (b).
- (3) Subsection (2) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

20 Protection from civil proceedings

No civil proceeding lies against the Commonwealth or a protected person in relation to anything done, or omitted to be done, in good faith:

- (a) by a protected person in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act; or
- (b) by a person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by a protected person in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this Act.

21 Delegations by Secretary

- (1) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department all or any of the Secretary's powers or functions under this Act.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions delegated under subsection (1), the delegate must comply with any directions of the Secretary.

22 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
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- (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—
House of Representatives on 3 June 2015
Senate on 17 June 2015]*

(94/15)
