

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 33, 2015

Issued by the Authority of the Minister for Immigration and Border Protection

Customs Act 1901

Customs Regulation 2015

Section 270 of the *Customs Act 1901* (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to Customs.

The purpose of the *Customs Regulation 2015* (the Regulation) is to remake the *Customs Regulations 1926* (1926 Regulation). The *Legislative Instruments Act 2003* (LIA) provides that all legislative instruments, other than exempt instruments, progressively ‘sunset’ according to the timetable set out in the LIA. Legislative instruments made before 1930 that were registered on the Federal Register of Legislative Instruments on 1 January 2005, such as the 1926 Regulation, sunset on 1 April 2015. When a legislative instrument sunsets, it is automatically repealed under section 50 of the LIA.

The Regulation remakes the 1926 Regulation and makes significant improvements to the existing provisions by repealing redundant provisions, simplifying language and restructuring provisions that have become difficult to navigate because of multiple amendments over the past 89 years. Consistent with the Government’s deregulation agenda, the key changes are:

- the circumstances where a refund, remission or rebate may be available have been simplified and included in a table in Schedule 6 to the Regulation to facilitate navigation and amendment;
- the provisions regarding duty-free shops have been restructured to make them easier to understand and navigate;
- redundant provisions and forms have been removed including in relation to securities and aircraft stores;
- provisions have been expressed in a way that is easier to understand to reduce compliance costs; and
- a number of provisions have been removed and placed into a separate *Customs (International Obligations) Regulation 2015* to ensure Australia’s international obligations are not subject to sunset requirements under the LIA.

Section 125 of the Regulation would prescribe the Smiths Detection B-SCAN 16HR-DV as the equipment to be used for carrying out an internal non-medical scan. Subsection 219SA(1) of the Act provides that an internal non-medical scan may only be conducted using prescribed equipment. Section 219ZAB sets out the conditions for prescribing the body scan technology. Specifically, for internal non-medical scans, the regulations may only prescribe equipment that can produce an image that indicates a person is or may be internally concealing a suspicious substance.

The Smiths Detection B-SCAN 16HR-DV is a non-invasive body scan device used to take a transmission radiograph of a fully-clothed individual to detect whether a suspicious substance has been concealed inside the individual's body.

Section 219ZAB(3) of the Act provides that before the Governor-General makes a regulation prescribing equipment for the purposes of subsection 219SA(1), the Minister must obtain from the Chief Executive Officer of Customs (CEO) a statement that:

- (a) the equipment can safely be used to detect suspicious substances; and
- (b) use of the equipment poses no risk, or minimal risk, to the health of a person whom the equipment is used to search; and
- (c) a person does not require professional qualifications to operate the equipment.

The Minister has obtained a statement in respect of the Smiths Detection B-SCAN 16HR-DV from the CEO.

Subsection 219ZAB(4) of the Act provides that before the CEO makes the statement to the Minister, he or she must consult with the relevant Commonwealth authorities, if any, that have expertise or responsibilities relevant to the matters addressed by the statement. In addition, subsection 219ZAB(5) requires that if the CEO does consult any relevant Commonwealth authorities, he or she must provide a copy of any advice received from those authorities before each House of Parliament within seven sitting days of that House after the day on which the statement is given to the Minister.

The CEO has consulted the Australian Radiation Protection and Nuclear Safety Agency and the Department of Health. Advice was received on 2 March 2015 and 13 March 2015 respectively. The advice from those authorities will be laid before each House of Parliament within 7 sitting days of that House after the day on which the statement was given to the Minister.

Details of the Regulation are set out in the [Attachment](#).

The Regulation commences on 1 April 2015.

In February 2015, the Australian Customs and Border Protection Service (ACBPS) released an exposure draft of the Regulation and associated explanatory material for industry comment on the ACBPS website and via subscriber lists. Over 5500 ACBPS clients were invited to provide submissions. The ACBPS received 6 submissions from a diverse range of industry participants. Most feedback fell outside the scope of the sunseting exercise. However, noting the value of this stakeholder feedback, the ACBPS will take account of this feedback as part of its post-implementation strategy.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

OPC50061-F

Statement of Compatibility with Human Rights

(Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*)

Customs Regulation 2015

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The purpose of *Customs Regulation 2015* (the Regulation) is to replace the *Customs Regulations 1926* (the 1926 Regulation) which will sunset on 1 April 2015 in accordance with section 50 of the *Legislative Instruments Act 2003*.

Section 270 of the *Customs Act 1901* (the Act) provides that the Governor-General may make regulations prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed to give effect to the Act.

The Regulation is consistent with the Government's deregulation agenda and repeals redundant provisions that were in the 1926 Regulation. It also restructures provisions and simplifies language that has been the subject of multiple amendments since 1926.

The Regulation commences on 1 April 2015.

Human Rights implications

The Regulation engages a number of human rights which are identified below:

Right to Privacy and Reputation

Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy. It also prohibits unlawful attacks on a person's honour and reputation. It provides that persons have the right to protection of the law against such interference or attacks. An interference with privacy will not be arbitrary if it is authorised by law or consistent with the provisions, aims and objectives of the ICCPR and reasonable in the circumstances. Reasonableness in this context incorporates notions of proportionality, appropriateness and necessity.

Parts 6, 7, 14 and 15 of the Regulation engage the right to privacy contained in Article 17 of the ICCPR because they require the collection of personal information to satisfy various reporting and record keeping requirements in the Act.

Part 6 - Warehouses

Under section 96A of the Act, permission can be granted to a warehouse licence holder to operate the warehouse as a duty free shop. Under section 96A, duty free goods can be delivered to a person undertaking an international flight or voyage (a relevant traveller) for export by the person without being required to enter the goods for export. Under subsection 96A(2), the granting of the permission is granted subject to the regulations. Regulations for this section are set out in Part 6 of the Regulation.

Division 2 and Division 7 of Part 6 of the Regulation engage the right to privacy because it requires the collection of personal information from proprietors of duty free shops such as the proprietor's name, the name of shop and address where the shop is located. This information is used in considering applications for permission to operate an inwards or outwards duty free shop.

Division 3, 4, 5 and 7 of Part 6 of the Regulation also engage the right to privacy. Personal information is collected from relevant travellers for the purposes of proof of travel, issuing invoices relating to the sale of duty free goods, and the storage and delivery of such goods.

In each of these Divisions, the collection of this information is authorised by law and is used to administer customs laws, and in particular are aimed at the protection of the revenue. These conditions are a reasonable, necessary and proportionate response to the need to protect the revenue.

Part 7 – Cargo terminals

Part VAAA of the Act imposes obligations on cargo terminal operators and cargo handlers. These obligations are designed to strengthen the cargo supply chain against criminal infiltration and are similar to obligations that the Act imposes on holders of depot and warehouse licences.

Section 72 in Part 7 of the Regulation relates to cargo terminals operators and engages the right to privacy as it requires the collection and storage of personal information in relation to persons who enter cargo terminals. The collection of personal information includes the person's full name and the unique identifier on the identification used by the person (such as an electronic access card, a transport security identification card, or driver's licence or passport). This information is collected for the purposes of record keeping requirements for cargo terminals and is consistent with obligations imposed on other entities involved in the cargo supply chain, including customs depot and warehouse licence holders. It provides the Australian Customs and Border Protection Service (the ACBPS) with greater visibility of persons entering and operating in cargo terminals that could have access to and interfere with cargo which is subject to Customs control. These conditions are a reasonable, necessary and proportionate response to the need to strengthen the cargo supply chain against criminal infiltration.

Division 2 of Part 14 – Detention and search of suspects

Division 1B of Part XII of the Act sets out the circumstances in which a person may be detained and subject to a frisk search, an external search, an internal non-medical scan and an internal search. Under subsection 219ZAE(6) of the

Act, the regulations must provide for the secure storage of the records of an external search and internal non-medical scan.

Section 127 in Division 2 of Part 14 in the Regulation prescribes matters for the purposes of subsection 219ZAE(6) and engages the right to privacy by both promoting and limiting it. This section promotes the right to privacy as it requires the secure storage of search records and also requires the person responsible for the custody of search records to keep a register of certain details relating to the record. These details include the name of persons moving or removing the records, the reason for the removal and the date of the removal. While this requires the collection of personal information in relation to such persons which may limit the right to privacy, this condition is a reasonable, necessary and proportionate response to the need to ensure the privacy of persons subject to an external search or an internal non-medical scan.

Division 2 of Part 14 in the Regulation also engages the right to health.

Right to Health

Article 12 of the *International Covenant on Economic Social and Cultural Rights* (ICESCR) recognises the right of everyone to enjoy the highest attainable standard of physical and mental health. To achieve the full realisation of this right Parties to the Covenant are required to take steps to:

- (a) make provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) improve all aspects of environmental and industrial hygiene;
- (c) prevent, treat and control epidemic, endemic, occupational and other diseases; and
- (d) create conditions which would assure medical service and medical attention to all in the event of sickness.

Subsections 219Z(3) and (5) in Division 1B of Part XII of the Act require that internal search and the recovery of anything during the internal search is to be carried out at a place specified in the Regulation.

Section 126 in Division 2 of Part 14 of the Regulation provides that an internal search or the recovery of an internally concealed substance or thing, may be carried out at a hospital or the surgery or practising rooms of a medical practitioner registered or licensed under a law of a State or Territory. This promotes the right to health as it provides that the internal search or recovery of any internally concealed substance or thing by a qualified medical practitioner may be carried out on medical premises.

Division 2 of Part 14 in the Regulation also engages the right to humane treatment in detention.

Right to Humane Treatment in Detention

Article 10(1) of the ICCPR provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Subsections 219ZB(1) and (2) in Division 1B of Part XII of the Act provide that the places that are detention places for the purposes of an external search and an

internal search can be carried out are to be prescribed in the regulations. Detention places are those places that detainees are taken after being detained for an external or internal search.

Section 128 in Division 2 of Part 14 of the Regulation prescribes such detention places and standards with respect to detention places. These places and standards promote the right to humane treatment in detention as, in relation to an external search, they ensure that a detention place is a separate room and that persons inside a detention place are concealed from the view of persons outside, the place is secured against unauthorised access and the place has reasonably comfortable ventilation and illumination. In relation to an internal search, they ensure that the detention place is either a separate room or is in a hospital or surgery or practising rooms of a medical practitioner registered or licensed under a law of a State or Territory.

These requirements also promote the detainee's right to privacy as they ensure that the detainee is concealed from the view of other persons.

Part 15 – Penal provisions

Rights of the Child

Article 34 of the Convention on the Rights of the Child (CROC) provides that State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. It further provides that State Parties shall take all appropriate measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Under subsection 233BABAE(1) of the Act a person commits a strict liability offence punishable by 1000 penalty units if they bring restricted goods into Australia. Restricted goods are goods that would be prohibited imports if imported into Australia and are prescribed in the regulations.

Section 131 of the Regulation prescribes child pornography and child abuse material as 'restricted goods' for the purposes of subsection 233BABAE(3)(b) of the Act.

By prescribing restricted goods to mean an item of child pornography or an item of child abuse material, section 131 seeks to promote human rights by protecting the rights of child consistent with Article 34 of the Convention on the Rights of the Child.

Subdivision B of Division 2 of Part 15 – Infringement notices

Section 243X of the Act provides that regulations may be made to enable a person who is alleged to have committed a strict liability or absolute liability offence against the Act to pay a penalty set out in an infringement notice as an alternative to prosecution.

Subdivision B of Division 2 of Part 15 applies to matters associated with administering the infringement notice scheme. The Subdivision engages the right to privacy because it requires the collection of personal information in order to issue an infringement notice. To the extent that an individual's right to privacy is affected by this subdivision, the impact is not arbitrary. It is reasonable, necessary and proportionate to support the legitimate objectives of the infringement notice scheme.

Part 17 – Other matters

Division 4 of Part 17 in the Regulation also engages the right of presumption of innocence.

Article 14(2) of the ICCPR provides that persons charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. It imposes on the prosecution the burden of proving a criminal charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.

Section 150 of the Regulation creates two offences which engage the right of presumption of innocence. Under the first offence, a person commits the offence if the person makes an alteration to a customs document. Under the second offence, a person commits an offence if the person uses or has in their possession a customs document that has been altered. It is a defence to these offences if the person proves that the alteration was made with the authority of the Collector. These defences place an evidentiary burden on a person who is charged of an offence of altering a customs document in accordance with subsection 13.3(3) of the *Criminal Code*. This means that the person would need to prove on the balance of probabilities that they had the authority of the Collector to alter a customs document. Although this section places an evidential burden on the accused it is not inconsistent with the presumption of innocence set out in article 14.2 of the ICCPR because a person will still be presumed innocent of having committed these offences until found guilty of the offence by a court.

Conclusion

This Regulation is compatible with human rights because it is consistent with Australia's human rights obligations and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Immigration and Border Protection

ATTACHMENT

Details of the *Customs Regulation 2015*

Part 1 – Preliminary

Division 1 – Preliminary

Section 1 – Name

This section provides that the title of the Regulation is the *Customs Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on 1 April 2015.

Section 3 – Authority

This section provides that the Regulation is made under the *Customs Act 1901*.

Division 2 – Definitions

Section 4 – Definitions

This section defines terms used in the Regulation. A number of terms used in the Regulation (but not defined in section 4) are defined in the Act.

Section 5 – References to tariff heading or tariff sub-heading

This section provides that a reference to a *tariff heading* and a *tariff subheading* in this Regulation is a reference to such a heading or subheading in the *Customs Tariff Act 1995*.

Division 3 – Provisions relating to definitions in the Act

Section 6 – Airport shop goods

This section provides a definition of *Airport shop goods* for the purposes of the Act.

Section 7 – Ensign and insignia for Commonwealth aircraft

This section provides a definition of *ensign for an aircraft* and *insignia for an aircraft* for the purposes of the Act.

Section 8 – Ensign for Commonwealth ship

This section provides a definition of *ensign for Commonwealth ship* for the purposes of the Act.

Section 9 – Excise-equivalent goods

This section provides that clause 1 of Schedule 1 in the Regulation prescribes *excise-equivalent goods* for the purposes of the definition of *excise-equivalent goods* in subsection 4(1) of the Act.

Section 10 – Like customable goods

This section provides that clause 2 of Schedule 1 in the Regulation prescribes *like customable goods* for the purposes of the definition of *like customable goods* in subsection 4(1) of the Act.

Part 2 – Administration

Section 11 – Customs flag

This section prescribes the *Customs flag* for the purposes of the Act.

Section 12 – Days and hours for performing functions

This section prescribes the hours and days that officers are to be available to perform Customs functions in each State and Territory for the purposes of the Act.

Section 13 – Rates of fees and travel expenses

This section prescribes the rates of fees and travel expenses for the purposes of the Act.

Part 3 – Customs control examination and securities generally

Section 14 – Prescribed places for making, preparing or receiving goods for export

This section prescribes places for making, preparing or receiving goods for export for the purposes of the Act.

Part 4 – The importation of goods

Division 1 – General reporting requirements

Subdivision A – Impending arrival reports

Section 15 – Prescribed period

This section provides that for the purposes of the Act the prescribed period for impending arrival reports is 96 hours.

Section 16 – Specified period for kind of journey

This section provides the specified period for impending arrival reports for each kind of journey.

Section 17 – Pleasure craft—prescribed number of days

This section provides that for the purposes of the Act the prescribed number of days in relation to making an impending arrival report of a pleasure craft is 90 days.

Subdivision B – Cargo reports

Section 18 – Prescribed period

This section provides that for the purposes of the Act the prescribed period for cargo reports is 48 hours.

Section 19 – Specified period for kind of journey

This section provides the specified period for cargo reports for each kind of journey.

Subdivision C – Passenger reports

Section 20 – Prescribed period

This section provides that for the purposes of the Act the prescribed period for passenger reports is 96 hours.

Section 21 – Specified period for kind of journey

This section provides the specified period for passenger reports for each kind of journey.

Subdivision D – Other matters relating to reporting

Section 22 – Manner of sending or giving documentary reports

This section specifies the manner for sending or giving various types of documentary reports included in the Act.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Section 23 – Access to passenger information - prescribed laws

This section specifies that clause 1 of Schedule 2 in the Regulation prescribes laws of the Commonwealth for the purposes of accessing passenger information.

Division 2 – Registration of special reporters

Section 24 – Further conditions attaching to registration as special reporter

This section specifies the additional conditions required for those registered as a special reporter.

Division 3 – Entry, unshipment, landing, and examination of goods

Subdivision A – Exempt goods and value of goods

Section 25 – Goods exempt from import entry

This section specifies those goods which are exempt from import entry for the purposes of paragraph 68(1)(i) of the Act.

Section 26 – Value of goods consigned other than by post

This section prescribes the value of \$1000 for the purposes of subparagraph 68(1)(f)(iii) of the Act.

Subdivision B – Subdivision AA goods

Section 27 – Providing information about Subdivision AA goods

This section specifies the manner and form in which particular information about Subdivision AA goods must be provided if required by a Collector.

Section 28 – Method of communication of authority to deal with Subdivision AA goods

This section specifies other methods that can be used to communicate an authority to deal with Subdivision AA goods.

Subdivision C – Specified low value goods

Section 29 – Goods excluded from being specified low value goods

This section sets out those goods excluded from being specified low value goods for the purposes of the Act.

Section 30 – Information to be included in authority to deal with specified low value goods

This section provides that an authority to deal with specified low value goods must set out the identifying number given by Customs to the self-assessed clearance declaration relating to the goods.

Subdivision D – Other matters relating to entry and authority to deal

Section 31 – Information to be included in authority to deal with goods

This section provides that an authority to deal with goods must set out the identifying number given by Customs to the import declaration or warehouse declaration relating to the goods.

Section 32 – Failure to make entries - prescribed periods

This section specifies the prescribed periods after which a Collector may sell, or otherwise dispose of the goods, where the importer has failed to make entries.

Part 5 – Depot licences

Section 33 – Travelling expenses and circumstances for paying travelling expenses

This section prescribes the travelling expenses and circumstances for paying travelling expenses where a Collector is travelling to and from a depot.

Section 34 – Transfer of depot licence

This section prescribes the circumstances under which a depot licence may be transferred.

Part 6 – Warehouses

Division 1 – Warehouse licences

Section 35 – Warehouse licence fees - general

This section sets out the fees for warehouse licences.

Section 36 – Warehouse licence fees - dual-licensed place

This section sets out the warehouse licence fees for a dual-licensed place.

Section 37 – Payment of warehouse licence fees

This section sets out when warehouse licence fees must be paid.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Section 38 – Refund of warehouse licence fees

This section sets out how a refund is calculated if a warehouse licence is cancelled.

Division 2 – Permission for outwards duty free shops

Section 39 – Circumstances in which permission may be given-application

This section provides that a Collector may give permission in relation to an outwards duty free shop if an application for permission is made in accordance with this section.

An outwards duty free shop is defined in section 96A of the Act as a warehouse in respect of which the relevant warehouse licence authorises the sale in the warehouse of goods to relevant travellers. ‘Relevant traveller’ for the purposes of an outwards duty free shop is also defined in section 96A of the Act.

An outwards duty free shop may be an ‘off-airport duty free shop’ or an ‘on-airport duty free shop’. These terms are defined in section 4 of the Regulation.

Section 40 – Matters to be taken into account - off-airport duty free shop

This section provides that when deciding whether to give permission in relation to an off-airport duty free shop, the Collector must take into account whether the proprietor of the shop to which the permission relates is likely to be able to comply with the conditions set out in sections 49 and 50 of the Regulation. Sections 49 and 50 of the Regulation relate to giving information to a Collector and the examination of packages.

Section 41 – Period of effect of permission

This section provides that if permission for an outwards duty free shop is given, the permission has effect starting on the day when the permission is given and for the period specified in the permission.

Section 42 – Revocation of permission

This section provides the grounds on which a permission in relation to an outwards duty free shop may be revoked under subsection 96A(13) of the Act.

The grounds are:

- that a condition to which the permission is subject and that must be complied with by the proprietor of the shop, or an employee or agent of the proprietor has not been complied with; or
- that a revocation of the permission is necessary for the protection of the revenue; or
- that a revocation of the permission is necessary for ensuring compliance with the Customs Acts.

Division 3 – Conditions for outwards duty free shops

Section 43 – Preliminary

This section provides that Division 3 sets out conditions to which a permission in relation to goods sold in an outwards duty free is subject.

In Division 3, ‘the shop’ refers to the outwards duty free shop to which the permission relates, and ‘goods’ refer to goods to which the permission relates.

Section 44 – Arrangements and proof of travel and export

This section sets out conditions for the proprietor for outwards duty free shops relating to arrangements for the sale of goods and proof of travel and export.

The proprietor of the shop must not sell goods to a person *who is in* the shop unless:

- the person is a relevant traveller; and
- the person has shown the proprietor a ticket, or other document approved by a Collector showing that the person is entitled to make the relevant flight or relevant voyage.

The proprietor of the shop must not enter into an agreement to sell goods to a person *who is not in* the shop unless:

- the person is a relevant traveller; and
- the person has given the proprietor, orally or in writing, particulars of the intended exportation of the goods by the person required by paragraph 48(1)(b) (relating to off-airport duty free shops) or paragraph 57(1)(b) (relating to on-airport duty free shops); and
- the agreement is subject to the condition that the sale takes place in the shop.

Where an agreement is made to sell goods to a person *who is not in* the shop, the proprietor must not deliver goods to the relevant traveller unless they have shown the proprietor a ticket or other document approved by a Collector showing they are entitled to make the international flight or voyage, that confirms the particulars of the intended exportation of the goods as given to the proprietor as set out above.

The proprietor of the shop, or an employee or agent of the proprietor, must also not enter into an arrangement with a relevant traveller under which goods delivered to the relevant traveller are to:

- be transferred to the proprietor, or an employee or agent of the proprietor, upon return of the relevant traveller to Australia; or
- remain with the proprietor or an employee or agent of the proprietor.

Section 45 – Recognition of obligations

This section provides that a relevant traveller to whom goods are sold in the shop must, at or before the time of delivery of the goods, sign a document in recognition (in an approved form) of the traveller's obligations concerning the export of the goods.

Division 4 – Additional Conditions for off-airport duty free shops

Subdivision A – Preliminary

Section 46 – Preliminary

This section provides that Division 4 sets out conditions to which a permission in relation to goods sold in an off-airport duty free shop is subject.

Subdivision B – Conditions for proprietor of shop

Section 47 – Delivery of goods

This section provides that the proprietor of the shop must ensure that goods are not delivered from the shop to a relevant traveller earlier than 60 days before the traveller's relevant flight or relevant voyage is to depart.

The proprietor of the shop must ensure that the goods are delivered from the shop to the relevant traveller in a package:

- that is sealed so that goods cannot be removed without the seal being broken; and
- if the package is to be carried in the cabin of the aircraft or ship, it is transparent enough for the goods to be easily identified without the seal being broken.

Section 48 – Invoice for goods to be delivered

This section provides that at the time of sale of the goods, the proprietor of the shop must prepare a triplicate (sequentially numbered) invoice that cannot be tampered with, specifying:

- the name and usual residential address of the relevant traveller;
- the following particulars about the relevant flight or relevant voyage on which the goods are intended to be exported:
 - the date of departure;
 - the airport or wharf of departure;
 - for a relevant flight, the flight number or other designation of the flight;
 - for a relevant voyage, the name of the ship and the number or other designation of the voyage;
 - the number or other identification of the traveller’s ticket or other document approved by the Collector for paragraph 96A(7)(b) of the Act;
- a precise description of the goods including:
 - the quantity, in figures, of each item of the goods;
 - the total number in words of the items mentioned in the invoice;
 - the sale amount, in figures, of each item or quantity of items;
 - the total sale amount of those items and quantities of items.

The proprietor must place one copy of the invoice inside the package with the goods, one copy in a waterproof envelope and attach the envelope securely to the outside of the package so that it may be read without opening, and retain one copy for the proprietor’s records.

Section 49 – Giving information to a Collector

This section provides that where a Collector requires, the proprietor of the shop must give to the Collector the following information about a sale of goods from the shop to a relevant traveller:

- the name of the shop;
- the name of the relevant traveller;
- the date and time of departure of the traveller’s relevant flight or relevant voyage;
- for a relevant flight - the number or other designation of the flight;
- for a relevant voyage - the name of the ship and the number or other designation of the voyage;
- a full description of any item of the goods where the item has a sale amount of at least \$500;
- the total number of items of the goods included in the sale;
- the number of packages in which the goods included in the sale are packed;
- the number of packages in which the goods included in the sale are packed that are and are not cabin luggage;
- the invoice numbers for all invoices relating to the sale.

The proprietor must give the information to a Collector before the date of departure and in the manner approved by a Collector.

Section 50 – Packages to be examined

This section provides that where goods are purchased in an off-airport duty free shop, if the package is:

- surrendered by the relevant traveller for carriage otherwise than in the cabin of the aircraft or ship, or
- taken by the relevant traveller into a departure area,

the proprietor must, at the point of surrender or within the departure area, cause the package to be examined to check whether it remains sealed and whether it has been tampered with.

If the package remains sealed and has not been tampered with, the proprietor must remove the copy of the invoice attached to the outside of the package.

If the package is:

- no longer sealed or has been otherwise tampered with; or
- the copy of the invoice enclosed in the package does not correspond with the copy of the invoice that was attached to the package; or
- the copy of the invoice that was required to be enclosed in the package is not enclosed; or
- the copy of the invoice that was required to be attached to the package is not attached; or
- the goods enclosed in the package are not as specified in the copy of the invoice enclosed in, or attached to, the package,

then the proprietor must give a Collector a notice specifying:

- the name of the relevant traveller; and
- the date and time of departure of the flight or voyage; and
- for a relevant flight - the number or other designation of the flight;
- for a relevant voyage - the name of the ship and the number or other designation of the voyage; and
- the nature of the discrepancy identified.

Section 51 – Giving a return and paying duty

This section provides that the proprietor of the shop must lodge a return with a Collector, within 21 working days after the end of a month, specifying:

- the name of the shop;
- the invoice number of each invoice as specified in paragraphs 51(2)(b) and (c) of the Regulation;
- the particulars required to be set out in each of the invoices above; and
- the amount of duty payable for the goods to which the invoices above relate.

The proprietor must pay a Collector an amount equal to the sum of the amounts of duty specified in the return.

Subdivision C – Conditions for relevant traveller

Section 52 – Preliminary

Subdivision C applies to a relevant traveller to whom goods were sold and the proprietor of the shop in which the goods were sold.

In Subdivision C, ‘relevant traveller’ refers to the relevant traveller to whom goods were sold, ‘the shop’ refers to the off-airport duty free shop where the goods were sold to the relevant traveller, and ‘proprietor of the shop’ refers to the proprietor of the shop who sold the goods to the relevant traveller.

Section 53 – Package not to be interfered with

This section provides that if an invoice is attached to the outside of a package which contains the goods the relevant traveller must not:

- remove, alter or otherwise interfere with the invoice; or
- allow an invoice to be removed, altered or otherwise interfered with (except as required or authorised by or under the Act)

The relevant traveller must not, before exporting the goods:

- break the seals on or otherwise tamper with the integrity of a package which contains the goods; or
- allow (except as required or authorised by or under the Act) the seals to be broken or otherwise tamper with the integrity of a package which contains the goods.

Section 54 – Package to be examined

This section provides that where the relevant traveller:

- surrenders a package containing the goods for carriage otherwise than in the cabin of an aircraft or ship; or
- takes a package containing the goods into a departure area,

the relevant traveller must:

- present the package sealed and with the copy of the invoice attached to the proprietor or an employee or agent of the proprietor; and
- permit the proprietor or an employee or agent of the proprietor to examine the package and remove the copy of the invoice.

Section 55 – If goods are not exported as intended

This section provides that if the relevant traveller does not export the goods on the relevant flight or relevant voyage, they must notify the proprietor of the shop by noon on the next working day after the original departure date.

If the relevant traveller intends to export the goods within 48 hours after the original departure date of the flight or ship, the relevant traveller must:

- notify the proprietor of their intention to export the goods on a subsequent flight or ship; and
- provide the proprietor with the following:
 - for a relevant flight - the number or other designation of the flight;
 - for a relevant voyage - the name of the ship and the number or other designation of the voyage;
 - particulars of the intended date and time of departure of that flight or voyage.

If the relevant traveller does not intend to export the goods within 48 hours after the original departure date, the relevant traveller must notify the proprietor and return the goods to the shop on the second working day after the original departure date.

If the relevant traveller:

- notifies the proprietor of their intention to export the goods within 48 hours after the original departure date of the flight or ship; and
- the goods are not exported, then

the relevant traveller must:

- no later than noon on the next working day of the shop after the date of departure specified in the notice of intention notify the proprietor that the goods have not been exported; and
- no later than the close of business of the shop on the second working day after the specified date of departure, return the goods to the shop.

Division 5 – Additional conditions for on-airport duty free shops

Section 56 – Preliminary

This section provides that Division 5 sets out conditions to which a permission in relation to goods sold in an on-airport duty free shop is subject.

In Division 5, ‘the shop’ refers to the on-airport duty free shop to which the permission relates and ‘goods’ refer to the goods sold at the shop.

Section 57– Invoice for goods

This section provides that at the time of sale of goods to a relevant traveller, the proprietor of the shop must prepare a duplicate (sequentially numbered) invoice that cannot be tampered with, specifying the following:

- if the relevant traveller is a pilot or member of the crew of an aircraft - the name and usual residential address of the relevant traveller;
- the date of departure of the flight;
- if the relevant traveller is a pilot or member of the crew - the airport of departure;
- the flight number or other designation of the flight;
- a precise description of the goods including:
 - the quantity of each item of the goods;
 - the sale amount of each item or quantity of items; and
 - the total sale amount of those items and quantities of items.

The proprietor must place one copy of the invoice with the goods that are to be delivered to the relevant traveller and retain one copy for their records.

Division 6 – Other matters relating to outwards duty free shops

Section 58 – Proof of export of goods - off-airport duty free shops

This section prescribes, for the purposes of paragraph 96A(10)(b) of the Act, the way in which a proprietor will provide a Collector with proof of the export of goods delivered to a relevant traveller.

The proprietor is to provide an electronic record to a Collector with the invoice number of each invoice for which a copy was removed from a sealed and untampered package, within 10 working days after the date of departure of the relevant traveller.

Section 59 – Sealed bag arrangements for LAG products - off-airport duty free shops

This section provides for ‘sealed bag arrangements’ for liquids, aerosols, gels, creams or pastes (LAG products) at an off-airport duty free shop. It ensures that where these types of products are purchased at an off-airport duty free shop and dealt with according to the requirements for packaging under the sealed bag arrangements and Subdivision 4.1.1A of the *Aviation Transport Security Regulations 2005*, the delivery and export of the LAG product is taken to comply with the proof of travel, export, delivery and packaging requirements under subsections 44(1) to (3) and Subdivisions B and C of Division 4.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Division 7 – Inwards duty free shops

Subdivision A – Permission for inwards duty free shops

Section 60 – Circumstances in which permission may be given - application

This section provides that a Collector may give permission in relation to an inwards duty free shop only if the applicant for the permission:

- is the holder of a warehouse licence authorising the sale of airport shop goods at the inwards duty free shop; and
- has been granted a lease or licence and an authority to operate an inwards duty free shop on land within the airport.

The application must:

- in writing; and
- relate to a single inwards duty free shop; and
- specify:
 - the name of the proprietor of the shop; and
 - the name of the inwards duty free shop; and
 - the location of the airport where the shop is located; and
- be lodged with a Collector for the place where the shop is located.

Section 61 – Period of effect of permission

This section provides that if permission for an inwards duty free shop is given, the permission has effect starting on the day when the permission is given and for the period specified in the permission.

Section 62 – Revocation of permission

This section provides the grounds on which a permission in relation to an inwards duty free shop may be revoked under subsection 96B(12) of the Act.

The grounds are as follows:

- that a condition to which the permission is subject and that must be complied with by the proprietor of the shop, or an employee or agent of the proprietor has not been complied with; or
- that a revocation of the permission is necessary for the protection of the revenue or for ensuring compliance with the Customs Acts; or
- that a lease, licence or authority to operate the inwards duty free shop on land within the airport has expired or been cancelled.

Subdivision B – Conditions for inwards duty free shops

Section 63 – Preliminary

This section provides that Subdivision B sets out conditions to which a permission in relation to goods sold in an inwards duty free shop is subject.

In Subdivision B, ‘the shop’ refers to the inwards duty free shop to which the permission relates, and ‘goods’ refer to goods sold at the shop.

An inwards duty free shop is defined in subsection 96(B)(1) of the Act as a warehouse in respect of which the relevant warehouse licence authorises the sale in the warehouse of airport shop goods to relevant travellers. ‘Relevant traveller’ for the purposes of an inwards duty free shop is also defined in subsection 96(B)(1) of the Act.

Section 64 – Arrangements and proof of travel

This section sets out conditions for the proprietor for inwards duty free shops relating to arrangements and proof of travel.

The proprietor of the shop must not sell goods to a person *who is in* the shop unless:

- the person is a relevant traveller; and
- the person has shown the proprietor a ticket, or other document that shows that the person has arrived in Australia on an international flight.

The proprietor of the shop must not enter into an agreement to sell goods to a person *who is not in* the shop unless:

- the person is, or intends to be, a relevant traveller; and

- the person has given the proprietor, orally or in writing, the date and flight number or other designation of the international flight for the person's arrival or intended arrival in Australia;
- the proprietor has informed the person of:
 - the amounts of alcoholic beverages and tobacco products that may be entered for home consumption by a relevant traveller free of duty; and
 - the conditions with which, for the purposes of the Customs Acts a relevant traveller must comply with in relation to the purchase of goods at the shop; and
- the agreement is subject to the condition that the sale takes place in the shop.

Where an agreement is made to sell goods to a person who is not in the shop, the proprietor must not deliver goods to the relevant traveller unless they have shown the proprietor a ticket or other document that confirms the date and flight number or other designation of the person's arrival in Australia.

The proprietor of the shop, or an employee or agent of the proprietor, must not enter into an arrangement with a relevant traveller under which goods delivered to the relevant traveller under the permission are:

- to be transferred to the proprietor, or an employee or agent of the proprietor, after the relevant traveller has cleared customs; or
- to remain with the proprietor or an employee or agent of the proprietor.

Section 65 – Signs to be displayed

This section provides that the proprietor of the shop must display in the shop signs in the approved form, that clearly state:

- the conditions with which, for the purposes of the Customs Acts, a relevant traveller must comply in relation to the purchase of goods at the shop; and
- if alcoholic beverages or tobacco products are for sale in the shop, the amounts of alcoholic beverages and tobacco products that may be entered for home consumption by a relevant traveller free of duty.

The references to 'alcoholic liquor' in the 1926 Regulation will be replaced with 'alcoholic beverages', as this aligns with the term used in the passenger concessions.

If confectionary is available for sale in the shop the proprietor of the shop must display signs that clearly state the following:

The confectionary you have purchased from this outlet has been approved for entry to Australia by Quarantine and does not need to be declared on your incoming passenger card. However, please remember you must declare any other items of food or anything which you can eat, which you have purchased before arriving in Australia.

The signs mentioned in this section must be reasonable prominent and in enough numbers to give reasonable notice to the relevant travellers of the matters mentioned in this section.

Division 8 – Other matters relating to warehouses

Section 66 – Repacking in warehouse

This section provides that a Collector may give permission to repack goods in a warehouse only if:

- the owner applies for permission in writing; and
- the application includes a description of the goods and the manner in which it is proposed to sort, bottle, pack or repack the goods.

Permission may be given for the goods to be sorted, bottled, packed or repacked in accordance with the application or in the manner specified by the Collector.

Section 67 – Bottling, canning, blending or reducing strength of spirits

This section provides that a Collector may permit the owner of spirits that:

- have been imported in bulk; and
- are in a warehouse,

to be, in accordance with a warehouse licence, bottled, canned, blended or reduced in strength of the spirits in the warehouse for home consumption or for exportation.

This section also sets out additional packaging conditions for bottling or canning spirits. The section also describes the method for calculating duty on reduced or blended spirits.

Outer containers, as referenced in the additional packing conditions, may include, for example; cardboard boxes, plastic wrapping, or some form of strapping.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Section 68 – Delivery from warehouse

This section provides that warehoused goods dutiable at fixed rates may, subject to section 99 of the Act, be cleared and delivered at original quantity and strength if the owner so desires.

Section 69 – Duty-paid or free goods in warehouse

This section provides that any goods remaining in a warehouse after duty for the goods has been paid remain at the risk of the owner and Customs is not liable in any way to a claim of any kind in relation to the goods.

The section also provides that the holder of the warehouse licence may remove the goods from a warehouse if the Collector has ordered the removal; and the holder of the warehouse licence has given notice to the owner.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Section 70 – Permitting goods to leave warehouse

This section provides that for paragraph 99(3)(c) of the Act, clause 1 of Schedule 3 prescribes goods which are permitted to leave the warehouse.

Section 71 – Notices to Customs by holder of warehouse licence

This section provides that for subsection 102A(1) of the Act, clause 1 of Schedule 3 prescribes goods.

This section also provides that for subsection 102A(2) of the Act the prescribed period beings 24 hours before the estimated time of release of the goods and the prescribed period at which it ends is immediately before the goods are released.

For subsection 102A(3) of the Act, if goods that have previously been released from a warehouse for export are returned to the warehouse, the holder of the warehouse licence must give notice to Customs electronically, within 3 hours after the return of the goods.

Part 7 – Cargo Terminals

Section 72 – Particulars about persons who enter a cargo terminal

This section specifies what particulars must be recorded when a person enters a cargo terminal. These particulars vary depending on whether a person enters the terminal using an electronic access card or by other means.

Part 8 – Special provisions relating to beverages

Section 73 – Customable beverages

This section provides that for paragraph (b) of the definition of *customable beverages* in section 103 of the Act, clause 4 of Schedule 1 prescribes goods.

Part 9 – Information about persons departing Australia

Section 74 – Kinds of ship

This section provides that for section 106A of the Act the kind of ship is an international passenger cruise ship. This section also defines what an *international passenger cruise ship* means.

Part 10 – The exportation of goods

Division 1 – Export of goods for a military end-use

Section 75 – Methods of service and time of receipt of notices

This section provides that this Division sets out the methods and timeframes for giving notice to a person on the export of goods for military end-use.

Section 76 – Notice given personally

This section provides that a notice may be given to the recipient by a person authorised by the Minister for subsection 76(1) at the last address notified by the recipient to the Minister for the purpose of receiving notices and either by giving it to the recipient or by giving it to a person who appears to work at the address provided in a management or executive position.

The recipient is taken to have received the notice when it is given to the recipient or person in accordance with paragraph 76(1)(b).

Section 77 – Notice sent by registered mail

This section provides that a notice may be posted by registered mail to the recipient at the postal address last notified by the recipient to the Minister for the purposes of receiving notices.

The recipient is taken to have received the notice if the notice was posted from a place in Australia to an address in Australia—7 business days (at the place from which it was sent) after the date the notice was sent; or in any other case—21 days after the date the notice was sent.

Section 78 – Notice faxed, emailed or sent by other electronic means

If a person has notified to the Minister a fax number, email address or other electronic address for the purpose of receiving notices then this section provides that a notice may be provided to a recipient by fax, email or other electronic means.

The person is taken to have received the notice at the end of the day (in the person's location) that it was sent or, if that day is not a business day, at the end of the next business day.

Division 2 – Entry and clearance of goods for export

Subdivision A – Entry of goods for export

Section 79 – Goods not exempt

This section prescribes for the purposes of paragraph 113(2)(b) of the Act goods that are not exempt from the requirement to enter goods for export.

Section 80 – Exempt goods

This section specifies for the purposes of paragraph 113(2)(f) of the Act goods that are exempt from the requirement to enter goods for export and conditions which need to be satisfied for these goods to be exempt.

Section 81 – Live animals

This section specifies that for the purposes of subsection 113(2A) of the Act, live animals are prescribed if they satisfy the requirements listed.

Subdivision B – Export declaration and export entry advices

Section 82 – Refusal to accept or deal with export declaration

This section provides that for the purposes of subsection 114(8) of the Act, Customs may refuse to accept or deal with an export declaration if:

- the intended day of exportation notified in the declaration is more than 6 months after the declaration is communicated to Customs; or
- any of the information required by an approved form under subsection 114(3) of the Act or an approved statement under subsection 114(4) of the Act is not given in the declaration.

Section 83 – Giving export entry advices

This section sets out the manner and form in which Customs must give an export entry advice. The section also specifies what information an entry advice must contain.

Subdivision C – Goods sent to, or received at, a wharf of an airport for export

Section 84 – Sending goods - goods entered for export

This section sets out particulars and the manner in which the particulars are to be given for the purposes of subparagraph 114E(1)(a)(i) of the Act.

Section 85– Sending goods—goods not required to be entered for export

This section sets out particulars and the manner in which the particulars are to be given for the purposes of paragraph 114E(1)(b) of the Act.

Section 86– Sending goods - other matters

This section prescribes for the purposes of paragraph 114E(1)(c) of the Act that the time period for which goods are to be entered for export after the time of delivery is 3 hours.

This section also prescribes for the purposes of subsection 114E(5) of the Act, that all goods are exempt from section 114E of the Act, other than the goods mentioned in section 88 of the Regulation.

Section 87 – Receiving goods—notices

This section provides that the airport on Horn Island is excluded from the application of section 114F of the Act.

This section also prescribes for the purposes of paragraph 114F(1A) of the Act the time periods for which notices are to be given to Customs electronically for goods received at a wharf or airport.

This section also prescribes for the purposes of subsection 114F(4) of the Act, that all goods are exempt from section 114F of the Act, other than the goods mentioned in section 88 of the Regulation.

Section 88 – Goods not exempt

This section specifies those goods which are not exempt from sections 114E and 114F of the Act.

Subdivision D – Certificate of clearance

Section 89 – Kinds of ships and aircraft

This section specifies the kinds of ships and aircraft for the purposes of subsection 118A(1) of the Act.

Subdivision E – Other matters

Section 90 – Consolidation of certain goods for export

This section provides that for section 117AA of the Act, clause 1 of Schedule 3 prescribes goods.

This section also prescribes places for the purposes of subsection 117AA(1) of the Act and timeframes for which notice must be given under subsections 117AA(2) and (4) of the Act.

Section 91 – Documentary export entries and documentary withdrawal of export entries

This section provides, that for the purposes of subsection 119D(1) of the Act, a documentary export entry may be sent to an officer by giving the document to a person employed at an authorised Australia Post outlet, for delivery to Customs.

A documentary withdrawal of an export entry may be sent to an officer by sending the document to Customs by fax at a fax number specified by Customs for the purpose; or posting the document by pre-paid post to a postal address specified by Customs for the purpose.

The officer to whom the entry is sent must promptly apply a stamp denoting the time when the officer received it. The documentary withdrawal is taken to have been communicated to Customs at the time of receipt denoted by the stamp.

Section 92 – Shipment of goods

This section prescribes goods for the purposes of paragraph 120(b) of the Act.

Part 11 – Ships' stores, drugs and aircraft's stores

Section 93 – Ships' stores

This section provides for the purposes of section 130 of the Act that the ship's stores liable to duty are those consisting of:

- alcoholic beverages (other than beer or wine) sold to a passenger or member of the crew or ship, other than by the glass or nip; or

- cigars sold to a passenger or to a member of a crew of a ship, other than by the individual packet, tin or box containing 25 or less cigars; or
- cigarettes sold to a passenger or to a member of the crew of a ship, other than by the individual packet or tin containing 50 or less cigarettes; or
- tobacco products (other than cigars or cigarettes mentioned above) sold to a passenger or to a member of the crew of a ship in a quantity that exceeds 120 grams in weight; or
- alcoholic beverages (including beer or wine), cigarettes, cigars or other tobacco products sold to a person other than a passenger or a member of the crew of a ship.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Section 94 – Drugs that are prohibited imports

This section provides that, if directed by an officer the master of a ship must, on arrival at the first port of call in Australia, complete and sign in the presence of the Collector and give to the Collector, a statement verified by declaration made in the presence of the Collector setting out particulars of all drugs that are prohibited imports that form part of the ship's stores.

If directed by an officer the master of a ship must then, before the ship leaves its last port of call in Australia, give to the Collector a statement, setting out particulars of all drugs that are prohibited imports that are shipped in Australia on the ship and the quantity consumed on the ship while the ship was in Australian waters.

The statements and declarations mentioned in this section may be in an approved form.

Part 12 – The duties

Division 1 – Duty on alcoholic beverages

Section 95 – Meaning of alcoholic beverage

This section provides that for the purposes of the definition of *alcoholic beverage* in section 153AA of the Act, an alcoholic beverage is a good that is classified under tariff heading 2203, 2204, 2205, 2206 or 2208.

Division 2 – Allowable expenditure of a factory

Section 96 – Costs of a factory - labour

This section prescribes costs to be included in the calculation of the allowable expenditure of a factory on labour for the purposes of section 153F of the Act.

Section 97 – Costs of a factory—overheads

This section provides that for the purposes of subsection 153G(1) of the Act, costs related to allowable expenditure of a factory on overheads are prescribed in clause 1 of Schedule 5.

Division 3 – Value of goods

Section 98 – Manner of acceptance of estimated value of goods

This section provides that a Collector signifies acceptance of an estimate of the value of goods by:

- giving an authority to deal with the goods under section 71 of the Act; or
- giving an authority mentioned in subsection 71C(4) or subsection 71DJ(4) of the Act.

Division 4 – Delivery of goods on giving of security or undertaking

Section 99 – Matters relating to granting permission

This section specifies the classes of persons, classes of goods, prescribed purposes and manner of applying for permission for the purposes of subsection 162(1) of the Act concerning delivery of goods upon the giving of a security or undertaking.

Section 100- Permission to take delivery of goods - requirements

This section provides, for the purposes of subsection 162(2) of the Act that a person must not export goods for which permission has been granted unless:

- the person has given to the Collector a notice of intention to export the goods; and
- the goods have been brought into a place prescribed for paragraph 30(1)(d) of the Act.

This section also provides what a person can and cannot do when taking delivery of the goods.

Section 101 – Circumstances in which duty is not payable

This section specifies the circumstance in which duty is not payable for the purposes of subparagraph 162(3)(b)(ii) of the Act.

Division 5 – Refunds, rebates and remissions of duty

Subdivision A – Circumstances for refund, rebate or remission

Section 102 – Circumstances for refunds, rebates and remissions of duty

This section provides that for the purposes of paragraph 163(1)(b) of the Act, clause 1 of Schedule 6 prescribes the circumstances in which a refund, rebate or remission of duty may be made by a Collector.

Section 103– Requirements for refund of duty on petrol

This section provides the requirements for a refund of duty on petrol for the purposes paragraph (c) of item 14 of the table in clause 1 of Schedule 6. The section also specifies how the composition of contaminated petrol will be determined.

Section 104 – Remission of duty - rounding down duty paid in cash

This section provides that for the purposes of section 163 of the Act, if an amount of duty is to be paid in cash and is not in a multiple of five cents, remission of the number of cents in excess of the next lower amount that is a multiple of five cents may be made - that is, the amount of duty payable is rounded down to the nearest five cents.

Section 105 – Remission or refund of duty - import entry or self-assessed clearance declaration taken to be withdrawn

This section sets out the amount of a remission or refund of duty where an import entry or self-assessed clearance declaration is taken to be withdrawn for the purposes of section 163 of the Act.

Subdivision B – Application for refund, rebate, or remission

Section 106 – When an application is required for a refund, rebate or remission of duty

This section sets out when an application is required for a refund, rebate or remission of duty for the purposes of section 163 of the Act.

Section 107 – Application for a refund, rebate or remission of duty

This section provides how an application for a remission, rebate or refund must be made.

Section 108 – Communication of application by computer to Customs

This section provides that for the purposes of subsection 163(1AB) of the Act, an application has been communicated to Customs when an electronic message is transmitted by Customs to the person who made the application stating that the application has been accepted and the refund, rebate or remission has been approved or the application has been received but further information is required.

Section 109 – Period for making an application for a refund, rebate or remission

This section provides that the application for a remission of duty must be made before the goods to which the remission relates leave the control of Customs.

This section also provides that an application for a refund or rebate of duty in a circumstance mentioned in an item of the table in the section must be made within the period mentioned in the item.

Section 110 – Procedures for dealing with application for refund, rebate or remission

For the purposes of paragraph 163(1AA)(b) of the Act, this section sets out procedures to be followed by Customs in dealing with applications for a refund, rebate or remission of duty.

Subdivision C – Conditions for refund, rebate or remission of duty

Section 111 – Conditions for refund, rebate or remission of duty

For the purposes of subparagraph 163(1)(b) of the Act, this section sets out conditions and restrictions to which a refund, rebate or remission of duty is subject.

Subdivision D – Amount of refund, rebate, or remission of duty

Section 112 – Calculation of refund, rebate or remission of duty

For the purposes of subsection 163(1A), this section provides the amount of a refund, rebate or remission of duty that may be made by a Collector in a circumstance mentioned in an item of the table.

Part 13 – Agents and customs brokers

Division 1 – Broker’s licences

Section 113 – Information to be included in application for licence

This section provides for the purposes of paragraph 183CA(1)(f) of the Act, that an application for the grant or renewal of a broker’s licence must indicate whether the applicant for the licence intends to act as a customs broker in his or her own right when the licence is in force. This requirement applies to both an application for the grant of a broker’s licence, and an application for the renewal of a broker’s licence.

Section 114 – Condition on licence

This section applies to a broker’s licence that is granted to or renewed for a natural person who does not intend to act as a customs broker in his or her own right when the licence is in force.

For the purposes of subsection 183CG(5) of the Act, this section provides that the broker’s licence is subject to the condition that the holder of the licence must not, when the licence is in force, act as an agent authorised by an owner of goods under subsection 181(1) of the Act.

Section 115 – Broker’s licence fees

This section sets out the fee payable for the grant or renewal of a broker’s licence for the purposes of subsection 183CL(1) of the Act.

Section 116 – Time for payment of fee for grant or renewal of licence

For the purposes of paragraph 183CL(2)(b) of the Act, this section provides that a fee for the grant or renewal of a broker’s licence must be paid no later than the day on which the licence, or the renewal of the licence, is to come into force.

Division 2 – National Customs Brokers Licencing Advisory Committee

Section 117 – Committee meetings and record of proceedings

This section provides that meetings of the National Brokers Licensing Authority Committee must be convened by the Chair of the Committee and that the Committee must keep a record of its proceedings, including a transcript of all evidence given before it.

Part 14 - Officers

Division 1 – Powers of officers

Section 118 – Documents containing information relevant to an offence against an Act

This section prescribes Acts for the purposes of subparagraph 186A(1)(b)(ii) of the Act.

Section 119 – Approved firearms

This section declares firearms for the purposes of the definition of *approved firearm* in subsection 189A(5) of the Act.

Section 120 – Post-importation permission - kinds of prohibited imports

This section prescribes the kinds of prohibited imports for the purposes of section 209T of the Act.

Section 121 – Required identify information

This section provides that for paragraph (c) of the definition of *required identity information* in subsection 213A(7) of the Act, the information is details of any area that is covered by a notice under subsection 234AA(3) of the Act, and to which the person mentioned in the definition has access, to perform his or her duties.

Section 122 – Security identification cards

This section provides that for the definition of *security identification card* in subsection 213A(7) of the Act, cards of the following kinds are specified:

- an aviation security identification card (ASIC) within the meaning of the *Aviation Transport Security Regulations 2005*;
- a visitor identification card (VIC) within the meaning of those Regulations.

Section 123– Customs samples

For the purposes of section 218 of the Act, this section prescribes how samples of any goods under the control of the Customs may be deemed necessary by the Collector to be taken, utilized and disposed of by any officer.

Section 124 – Disposal of certain abandoned goods—prescribed period

This section prescribes 90 days as the period for the purposes of subsection 218A(2) of the Act. Subsection 218A(2) provides that a Collector is taken to have reason to believe that goods found at a Customs place have been abandoned if a period prescribed for the purposes of that subsection, not exceeding 120 days, has passed since the goods were found at that place and no person has claimed ownership of the goods.

Division 2 – Detention and search of suspects

Section 125 – Equipment used for internal non-medical scan

This section prescribes the Smiths Detection B-SCAN 16HR-DV as the equipment to be used for carrying out an internal non-medical scan.

Section 126 – Places where internal search or recovery of a substance or thing may be carried out

This section provides that an internal search, or the recovery of an internally concealed substance or thing, may be carried out at a hospital or the surgery or other practising rooms of a medical practitioner registered or licensed under a law of a State or Territory providing for the registration of medical practitioners.

Section 127 – Storage of records of an external search or an internal non-medical scan

This section provides for the secure storage of records of any search record pending its ultimate destruction. It also specifies what information must be included in the register of those records.

Section 128 – Detention places

This section prescribes places as a detention place and standards for such a place for the purposes Subdivision B, Part XII of the Act. The section also prescribes places as a detention place for the purposes of Subdivision C, Part XII of the Act.

Part 15 – Penal provisions

Division 1 –Matters other than infringement notices

Section 129 – Forfeited ships—prescribed Acts

This section prescribes the following Acts for the purposes of paragraph 228(2)(c) of the Act:

- the *Environment Protection and Biodiversity Conservation Act 1999*;
- the *Fisheries Management Act 1991*;
- the *Torres Strait Fisheries Act 1984*.

The section also prescribes the following Act for the purposes of paragraph 228(3)(c) of the Act:

- the *Maritime Powers Act 2013*.

Section 130 – Tier 1 and Tier 2 goods

This section provides that for subsections 233BAA(1) and (3) of the Act, Part 1 of proposed Schedule 7 prescribes drugs, other goods and quantities of drugs. The section also prescribes goods in Part 2 of Schedule 7 for the purposes of subsection 233BAB(1) of the Act.

Section 131 – Restricted goods

This section prescribes that the following are restricted goods for the purposes of paragraph 233BABAE(3)(b) of the Act:

- an item of child pornography;
- an item of child abuse material.

Section 132 – Commercial documents

For the purposes of paragraph 240(7)(b) of the Act, this section declares the kind of commercial documents relating to goods exported from Australia to which section 240 of the Act does not apply.

Division 2 – Infringement notices

Subdivision A – Preliminary

Section 133 - Preliminary

This section provides that Division 2 is made for subsection 243X(1) of the Act. This section also defines the meaning of *payment period* for the purposes of this Division.

Section 134 – Meaning of infringement officer

This section provides the meaning of an *infringement officer* for the purposes of the Division.

Section 135 – Provisions subject to infringement notices

This section provides that Schedule 8 prescribes provisions of the Act that are *subject to an infringement notice* under this Division.

Subdivision B – Infringement notices

Section 136 – When an infringement notice may be given

This section provides that if an infringement officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under the Division, the infringement officer may give the person an infringement notice for the alleged contravention.

This section also prescribes when an infringement notice must be issued and when a single infringement notice can relate to multiple contraventions.

Section 137 – Matters to be included in an infringement notice - general

This section specifies what information must be included in an infringement notice and does not apply to an alleged contravention of subsection 243T(1) of the Act.

Section 138 – Matters to be included in an infringement notice - false or misleading statements resulting in loss of duty

This section specifies what information must be included in an infringement notice for an alleged contravention of subsection 243T(1) of the Act (false or misleading statements resulting in loss of duty).

Section 139 – Extension of a payment period

This section provides that a person to whom an infringement notice has been given may apply to the CEO, in writing, for an extension of the payment period. The section also provides the effect of the decision to extend or not extend the period and that the CEO may extend the period more than once. This section also allows the CEO to extend the payment period without application if the CEO considers it appropriate to do so.

Section 140 – Withdrawal of an infringement notice

This section provides that a person to whom an infringement notice has been given may make written representations to the CEO seeking the withdrawal of the notice. The section also specifies the timeframe for making written representations, who may withdraw an infringement notice, what is to be considered when deciding whether to withdraw the notice, and what the notice of withdrawal must state when given to the person. It also provides that an amount equal to the amount paid is to be refunded to the person if the infringement notice is withdrawn.

Section 141 – Effect of payment on an amount

This section provides that if the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount specified in the notice before the end of the payment period:

- any liability of the person for the alleged contravention is discharged; and
- the person may not be prosecuted in a court for the alleged contravention; and
- the person is not regarded as having admitted guilt or liability for the alleged contravention; and
- the person is not regarded as having been convicted of the alleged offence.

However, this does not apply if an infringement notice has been withdrawn.

Subdivision C – Other matters

Section 142 – Prohibited imports

This section prescribes goods the importation of which is prohibited under the *Customs (Prohibited Imports) Regulations 1956* for the purposes of paragraph 243Y(1)(a) of the Act.

Section 143 – Effect of this Division

This section provides that this Division does not:

- require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Division; or
- affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Division if:
 - the person does not comply with an infringement notice given to the person for the contravention; or
 - an infringement notice is not given to the person for the contravention; or
 - an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- prevent the giving of two or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Division; or
- limit a court’s discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Division.

Part 16 – Tariff concession orders

Section 144 – Prescribed organisations

This section prescribes organisations for the purposes of paragraph 269F(3)(d) and subsection 269M(6) of the Act. Paragraph 269F(3)(d) of the Act provides that a TCO application must contain the particulars of all inquires (including inquiries made of prescribed organisations) to assist in establishing that there were reasonable grounds for believing that on the day on which the application was lodged there was no produces in Australia or substitutable goods. Subsection 269M(6) of the Act provides that at any time during the period of 150 days starting on the gazettal day, the CEO may for the purpose of dealing with a TCO application, give a copy of all, or of a part, of the application to a prescribed organisation with a view to obtaining the advice of the organisation in relation to the question whether there are producers in Australia of substitutable goods.

Section 145 – Goods to which a TCO should not extend

This section sets out goods to which a TCO should not extend to for the purposes of subsection 269SJ(1)(b) of the Act.

Part 17 – Other matters

Division 1 – Prescribed laws

Section 146 – Prescribed laws of the Commonwealth

This section prescribes the *Aviation Transport Security Act 2004* for the purposes of the provisions of the Act mentioned in the table.

Division 2 – Conversion of measurements of LPG and compressed natural gas

Section 147 – Conversion of measurements of LPG and compressed natural gas

This section sets out how measurements of LPG and compressed natural gas are to be converted.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Division 3 – Collector’s sales

Section 148 – Notice of Collector’s sale

This section sets out how a public notice of a sale by a Collector must be made.

Section 149 – Conditions of Collector’s sale

This section sets out the conditions of sale in relation to sales by the Collector.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Division 4 – Offences relating to Customs documents

Section 150 – Offences relating to Customs documents

This section provides that a person commits an offence if the person makes an alteration to a customs document. A person also commits an offence if the person uses, or has in his or her possession, a customs document that has been altered.

It is a defence to both of these offences if the person proves that the alteration was made with the authority of the Collector. Notes in this section indicate that, in accordance with subsection 13.3(3) of the *Criminal Code*, the defendant bears the evidential burden in relation to these offences.

In accordance with section 270 of the Act, while this section is not required or permitted to be prescribed under the Act it is necessary or convenient to be prescribed for giving effect to the Act.

Part 18 – Transitional matters

Section 151 – Things done under the *Customs Regulations 1926*

This section provides that if a thing was done for a particular purpose under the 1926 Regulation as in force immediately before those Regulations were repealed and the thing could be done for that purpose under this instrument, the thing has effect for the purposes of this instrument as if it had been done under this instrument.

A reference to a thing being done includes a reference to a notice, application or other instrument being given or made.

Section 152 – Conditions for special reporters

This section provides that if, immediately before the commencing day, a person's registration as a special reporter was subject to the further condition in regulation 31AA of the 1926 Regulation, that registration is, on and after the commencing day, subject to the condition in subsection 24(2) of this Regulation.

Section 153 – Approved forms and approved statements

This section creates a transitional provision for approved forms and statements. The effect of this provision is that if a form or statement approved under section 4A of the Act before the repeal of the 1926 Regulation is approved for the purposes of a provision of that Regulation and this Regulation contains a corresponding provision, the form or statement has effect for the corresponding provision. For example a form approved for the purposes of Regulation 128 of the 1926 Regulation (application for a refund, rebate or remission of duty) is an approved form for the purposes of new section 107 of this Regulation.

Schedule 1 – Tariff Subheadings

Clause 1 – Tariff subheadings for excise-equivalent goods

This clause provides that for section 9, goods classified under a tariff subheading mentioned in the table contained in clause 1 are prescribed as excise-equivalent goods.

Clause 2 – Tariff subheadings for like customizable goods

This clause provides for section 10 that goods classified under a tariff subheading mentioned in the table contained in clause 2 are prescribed as like customizable goods.

Clause 3 – Tariff subheadings for goods used in the manufacture of excisable goods at a dual-licensed place

This clause provides for section 36 that goods classified under a tariff subheading mentioned in the table contained in clause 3 are prescribed as goods used in the manufacture of excisable goods at a dual-licensed place.

Clause 4 – Tariff subheadings for customable beverages

This clause provides for proposed section 73 that goods classified under a tariff subheading mentioned in the table contained in clause 4 are prescribed as customable beverages.

Schedule 2 – Access to passenger information—prescribed laws

Clause 1 – Access to passenger information - prescribed laws

This clause provides that for section 23 the laws of the Commonwealth set out in the table contained in clause 1 are prescribed.

Schedule 3 – Goods classified under an AHECC subheading

Clause 1 – Goods classified under an AHECC heading

This clause provides for section 70 and subsections 71(1) and 90(1) that goods classified under an AHECC subheading mentioned in the table contained in clause 1 are prescribed. The holder of a warehouse licence must not permit these goods to be taken from the warehouse for export unless they have been entered for export and an authority to deal with them is in force.

Schedule 4 – Particulars for goods not required to be entered for export

Clause 1 - Particulars for goods not required to be entered for export

This clause provides for paragraph 85(3)(b) that for a circumstance mentioned in an item in the table in clause 1, the particulars mentioned in the item in the table in clause 1 are prescribed.

Schedule 5 – Costs of a factory--overheads

Clause 1 – Costs of a factory - overheads

This clause provides that for section 97, the table in clause 1 sets out the costs for allowable expenditure of a factory on overheads.

Schedule 6 – Refunds, rebates and remissions of duty

Clause 1 – Circumstances in which a refund, rebate or remission may be made

This clause sets out for proposed section 102 circumstances in which a refund, rebate or remission of duty may be made by a Collector.

Schedule 7 – Tier 1 and tier 2 goods

Part 1—Tier 1 goods

Clause 1 – Tier 1 goods

This clause prescribes for subsection 130(1), the drugs and other goods listed in the table contained in clause 1 as tier 1 goods.

Clause 2 – Critical quantities of drugs

This clause sets out the critical quantities for the tier 1 goods mentioned in the table contained in clause 2.

Part 2—Tier 2 goods

Clause 3 – Tier 2 goods

This clause prescribes for subsection 130(2), the goods listed in the table contained in clause 1 as tier 2 goods.

Schedule 8 – Infringement notices

Clause 1 – Provisions subject to infringement notices

This clause sets out for section 135, those provisions in the Act which are *subject to an infringement notice* under Division 2 of Part 15.

Schedule 9 – Goods to which a TCO should not extend

Clause 1 – Goods to which a TCO should not extend

This clause provides for section 145, that goods classified under a tariff heading or tariff subheading mentioned in an item in the table contained in clause 1 are goods to which a TCO should not extend.

Clause 2 – Goods to which a TCO should not extend unless listed

This clause provides for section 145, that goods classified under a tariff heading or tariff subheading mentioned in an item in the table contained in clause 2 are goods to which a TCO should not extend, unless the goods are mentioned in column 2 of the table (other than item 5) or the goods are mentioned in column 2 of item 5 and are excise-equivalent goods.