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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Customs Amendment (Anti-Dumping
Commission) Bill 2013**

No. , 2013

(Home Affairs)

**A Bill for an Act to amend the law relating to
customs, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **customs, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Customs Amendment (Anti-Dumping*
6 *Commission) Act 2013*.

7 **2 Commencement**

8 This Act commences on 1 July 2013.

9 **3 Schedule(s)**

10 Each Act that is specified in a Schedule to this Act is amended or
11 repealed as set out in the applicable items in the Schedule

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2

concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Customs Act 1901*

4 **1 Subsection 4(1) (definition of *Commissioner*)**

5 Repeal the definition, substitute:

6 *Commissioner* means the Commissioner of the Anti-Dumping
7 Commission established under section 269SMB.

8 **2 After subsection 9(3)**

9 Insert:

10 (3A) The Minister may, by signed instrument, delegate to the
11 Commissioner any of the functions and powers of the Minister
12 under Part XVB.

13 **3 Subsection 9(4)**

14 Omit “Despite subsection (1)”, substitute “Despite subsections (1) and
15 (3A)”.

16 **4 Paragraph 30(1)(d)**

17 Omit “Commissioner’s”, substitute “Commissioner of Taxation’s”.

18 **5 Paragraph 42(1B)(a)**

19 Omit “CEO”, substitute “Commissioner”.

20 **6 Subsection 114D(2)**

21 Omit “Commissioner’s”, substitute “Commissioner of Taxation’s”.

22 **7 After subsection 269SM(2)**

23 Insert:

24 (2A) Division 1A deals with the establishment of the Anti-Dumping
25 Commission and the Commissioner.

26 **8 Before Division 1 of Part XVB**

1 **269SME Anti-Dumping Commission has privileges and immunities**
2 **of the Crown**

3 The Anti-Dumping Commission has the privileges and immunities
4 of the Crown in right of the Commonwealth.

5 **Subdivision C—Commissioner**

6 **269SMF Establishment**

- 7 (1) There is to be a Commissioner of the Anti-Dumping Commission.
8 (2) The Commissioner has the powers and functions conferred or
9 imposed on him or her by this Act or any other law.

10 **269SMG Powers of Commissioner**

11 The Commissioner has the power to do all things necessary or
12 convenient to be done for or in connection with the performance of
13 his or her functions.

14 **269SMH Appointment**

- 15 (1) The Commissioner is to be appointed by the Minister by written
16 instrument.
17 (2) The Commissioner may be appointed on a full-time or part-time
18 basis.

19 **269SMI Term of appointment**

20 The Commissioner holds office for the period specified in the
21 instrument of appointment. The period must not exceed 5 years.

22 Note: The Commissioner may be reappointed: see section 33AA of the *Acts*
23 *Interpretation Act 1901*.

24 **269SMJ Acting Commissioner**

25 The Minister may appoint an individual to act as the
26 Commissioner:

- 27 (a) during a vacancy in the office of the Commissioner (whether
28 or not an appointment has previously been made to the
29 office); or

- 1 (b) during any period, or during all periods, when the
2 Commissioner is absent from duty or from Australia, or is,
3 for any reason, unable to perform the duties of the office.

4 Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules
5 that apply to acting appointments.

6 **269SMK Terms and conditions of appointment**

- 7 (1) The Commissioner holds office on such terms and conditions as
8 are determined in writing by the Minister.
9 (2) The office of Commissioner is not a public office for the purposes
10 of Part II of the *Remuneration Tribunal Act 1973*.

11 **269SML Disclosure of interests to the Minister**

12 The Commissioner must give written notice to the Minister of all
13 interests, pecuniary or otherwise, that the Commissioner has or
14 acquires and that conflict or could conflict with the proper
15 performance of the Commissioner's functions.

16 **269SMM Outside employment**

17 *Full-time Commissioner*

- 18 (1) If the Commissioner is appointed on a full-time basis, he or she
19 must not engage in paid employment outside the duties of his or
20 her office without the Minister's approval.

21 *Part-time Commissioner*

- 22 (2) If the Commissioner is appointed on a part-time basis, he or she
23 must not engage in any paid employment that, in the Minister's
24 opinion, conflicts or may conflict with the proper performance of
25 his or her duties.

26 **269SMN Resignation**

- 27 (1) The Commissioner may resign his or her appointment by giving
28 the Minister a written resignation.

- 1 (2) The resignation takes effect on the day it is received by the
2 Minister or, if a later day is specified in the resignation, on that
3 later day.

4 **269SMO Termination of appointment**

- 5 (1) The Minister may terminate the appointment of the Commissioner:
6 (a) for misbehaviour; or
7 (b) if the Commissioner is unable to perform the duties of his or
8 her office because of physical or mental incapacity.
- 9 (2) The Minister may terminate the appointment of the Commissioner
10 if:
11 (a) the Commissioner:
12 (i) becomes bankrupt; or
13 (ii) applies to take the benefit of any law for the relief of
14 bankrupt or insolvent debtors; or
15 (iii) compounds with his or her creditors; or
16 (iv) makes an assignment of his or her remuneration for the
17 benefit of his or her creditors; or
18 (b) the Commissioner is absent, except on leave of absence, for
19 14 consecutive days or for 28 days in any 12 months; or
20 (c) the Commissioner fails, without reasonable excuse, to
21 comply with section 269SML; or
22 (d) the Commissioner is appointed on a full-time basis and
23 engages, except with the Minister's approval, in paid
24 employment outside the duties of his or her office (see
25 subsection 269SMM(1)); or
26 (e) the Commissioner is appointed on a part-time basis and
27 engages in paid employment that, in the Minister's opinion,
28 conflicts or may conflict with the proper performance of his
29 or her duties (see subsection 269SMM(2)).

30 **269SMP Delegation**

- 31 (1) The Commissioner may, by writing, delegate any of the
32 Commissioner's functions or powers to an officer of Customs.
- 33 (2) In performing functions or exercising powers under a delegation,
34 the delegate must comply with any written directions of the
35 Commissioner.

1 **Subdivision D—Staff assisting the Commissioner**

2 **269SMQ Staff**

3 (1) The staff assisting the Commissioner are to be staff referred to in
4 section 15 of the *Customs Administration Act 1985* and made
5 available for the purpose by the CEO.

6 (2) When performing services for the Commissioner under this
7 section, a person is subject to the directions of the Commissioner.

8 Note: Subsection 4(2) of the *Customs Administration Act 1985* provides that
9 the CEO, under the Minister, controls the Australian Customs and
10 Border Protection Service.

11 **9 Division 1 of Part XVB (heading)**

12 Repeal the heading, substitute:

13 **Division 1—Definitions and role of Minister**

14 **10 Part XVB**

15 Omit “CEO” (wherever occurring), substitute “Commissioner”.

16 **11 Part XVB**

17 Omit “CEO’s” (wherever occurring), substitute “Commissioner’s”.

18 **12 Part XVB**

19 Omit “CEO” (wherever occurring), substitute “**Commissioner**”.

20 **13 Part XVB**

21 Omit “CEO’s” (wherever occurring), substitute “**Commissioner’s**”.

22 **14 Part XVB**

23 Omit “*CEO*” (wherever occurring), substitute “*Commissioner*”.

24 ***Customs Administration Act 1985***

25 **15 Section 3**

26 Insert:

1 **Commissioner** means the Commissioner of the Anti-Dumping
2 Commission established under section 269SMB of the *Customs Act*
3 *1901*.

4 **16 Subsection 4(3)**

5 After “CEO”, insert “, the Commissioner”.

6 **17 Subsection 4(4)**

7 After “under a law of customs”, insert “(other than Part XVB of the
8 *Customs Act 1901)*”.

9 **18 After subsection 14(4)**

10 Insert:

11 (4A) The CEO may, by signed instrument, delegate to the
12 Commissioner any of the powers of the CEO under section 16, to
13 the extent that those powers apply in connection with Part XVB of
14 the *Customs Act 1901*.

15 **19 After paragraph 16(1AA)(a)**

16 Insert:

17 (aa) the Commissioner; and

1 **Part 2—Other amendments**

2 *Criminal Code Act 1995*

3 **20 Section 146.1 of the *Criminal Code* (after paragraph (d) of**
4 **the definition of *Commonwealth law enforcement***
5 ***officer*)**

6 Insert:

- 7 (da) the Commissioner of the Anti-Dumping Commission
8 established under section 269SMB of the *Customs Act 1901*;
9 or

10 *Law Enforcement Integrity Commissioner Act 2006*

11 **21 After paragraph 10(2A)(a)**

12 Insert:

- 13 (aa) the Commissioner of the Anti-Dumping Commission
14 established under section 269SMB of the *Customs Act 1901*;

1 **Part 3—Transitional provisions**

2 **22 Transitional—things done by, or in relation to, the CEO**

3 (1) A thing done by, or in relation to, the CEO under Part XVB of the
4 *Customs Act 1901* before the commencement of this item has effect,
5 after that commencement, as if it had been done by, or in relation to, the
6 Commissioner under that Part.

7 (2) The Minister may, by writing, determine that subitem (1) does not apply
8 in relation to a specified thing.

9 (3) A determination made under subitem (2) is not a legislative instrument.

10 **23 Transitional—legal proceedings involving the CEO**

11 (1) This item applies if:

12 (a) any proceedings to which the CEO was a party were pending
13 in any court or tribunal immediately before the
14 commencement of this item; and

15 (b) the proceedings relate to the operation of Part XVB of the
16 *Customs Act 1901*.

17 (2) The Commissioner is substituted for the CEO, from the commencement
18 of this item, as a party to the proceedings.

19 **24 Transitional regulations**

20 The Governor-General may make regulations prescribing matters of a
21 transitional nature (including prescribing any saving or application
22 provisions) relating to the amendments made by this Schedule.