



Customs Legislation Amendment (Airport, Port and Cargo Security) Act 2004

No. 111, 2004

**An Act to amend customs legislation, and for
related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Customs Legislation Amendment (Airport, Port and Cargo Security) Act 2004

No. 111, 2004

An Act to amend customs legislation, and for related purposes

[Assented to 13 July 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Legislation Amendment
(Airport, Port and Cargo Security) Act 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	13 July 2004
2. Schedule 1	The day after this Act receives the Royal Assent.	14 July 2004
3. Schedule 2, item 1	The 28th day after the day on which this Act receives the Royal Assent.	10 August 2004
4. Schedule 2, item 2	At the same time as the provision(s) covered by table item 3. However, if the provision(s) covered by table item 3 commence after the provision(s) covered by table item 8, this provision does not commence at all.	
5. Schedule 2, item 3	At the same time as the provision(s) covered by table item 3. However, if the provision(s) covered by table item 3 commence before, or at the same time as, the provision(s) covered by table item 8, this provision does not commence at all.	
6. Schedule 2, item 4	At the same time as the provision(s) covered by table item 3. However, if the provision(s) covered by table item 3 commence after the provision(s) covered by table item 8, this provision does not commence at all.	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
7. Schedule 2, item 5	At the same time as the provision(s) covered by table item 3. However, if the provision(s) covered by table item 3 commence before, or at the same time as, the provision(s) covered by table item 8, this provision does not commence at all.	
8. Schedule 3, item 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
9. Schedule 3, item 2	The later of: (a) the time the provision(s) covered by table item 8 commence; and (b) immediately after the commencement of item 62 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> .	
10. Schedule 3, item 3	At the same time as the provision(s) covered by table item 8. However, if item 62 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences before, or at the same time as, the provision(s) covered by table item 8, this provision does not commence at all.	
11. Schedule 3, item 4	At the same time as the provision(s) covered by table item 8. However, if the provision(s) covered by table item 3 commence before, or at the same time, as the provision(s) covered by table item 8, this provision does not commence at all.	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
12. Schedule 3, item 5	<p>The later of:</p> <p>(a) the time the provision(s) covered by table item 8 commence; and</p> <p>(b) immediately after the commencement of the provision(s) covered by table item 3.</p> <p>However, if the provision(s) covered by table item 3 commence after the provision(s) covered by table item 8, this provision does not commence at all.</p>	
13. Schedule 3, item 6	<p>At the same time as the provision(s) covered by table item 8.</p> <p>However, if the provision(s) covered by table item 3 commence before, or at the same time, as the provision(s) covered by table item 8, this provision does not commence at all.</p>	
14. Schedule 3, item 7	<p>The later of:</p> <p>(a) the time the provision(s) covered by table item 8 commence; and</p> <p>(b) immediately after the commencement of the provision(s) covered by table item 3.</p> <p>However, if the provision(s) covered by table item 3 commence after the provision(s) covered by table item 8, this provision does not commence at all.</p>	
15. Schedule 4	The 28th day after the day on which this Act receives the Royal Assent.	10 August 2004
16. Schedule 5	The day after this Act receives the Royal Assent.	14 July 2004
17. Schedule 6, items 1 to 3	<p>At the same time as the provision(s) covered by table item 18.</p> <p>However, if item 118 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences before, or at the same time as, the provision(s) covered by table item 18, these provisions do not commence at all.</p>	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
18. Schedule 6, item 4	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
19. Schedule 6, items 5 to 12	The later of: (a) the time the provision(s) covered by table item 18 commence; and (b) immediately after the commencement of item 118 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> .	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

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

4 Application of amendments

- (1) The amendments made by Schedule 3 do not apply to a ship or aircraft in relation to a place from which, at the time those amendments commence, the ship or aircraft is due to depart in 72 hours or less.
- (2) To avoid doubt, the amendment made by Schedule 5 does not affect the validity of an appointment made before the commencement of that Schedule.

Schedule 1—Detaining persons for purposes of law enforcement co-operation

Customs Act 1901

1 After Division 1B of Part XII

Insert:

Division 1BA—Detention and search of persons for purposes of law enforcement co-operation

Subdivision A—Preliminary

219ZJA Definitions

In this Division, unless the contrary intention appears:

Commonwealth offence has the same meaning as in Part 1C of the *Crimes Act 1914*.

frisk search has the same meaning as in Division 1 of Part XII.

ordinary search has the same meaning as in Division 1 of Part XII.

prescribed State or Territory offence means an offence prescribed for the purposes of section 219ZJAA.

serious Commonwealth offence has the same meaning as in section 15HB of the *Crimes Act 1914*.

219ZJAA Prescribed State or Territory offences

- (1) The regulations may prescribe offences against the laws of a State or a Territory that are punishable on conviction by imprisonment for a term of at least 3 years.
- (2) An offence against a law of a State or Territory must not be prescribed unless:
 - (a) the Attorney-General of that State or Territory and the Minister (*Police Minister*) responsible for the administration

of that State's or Territory's police force have jointly requested the Minister that the offence be prescribed for the purposes of this Division; or

- (b) if the Attorney-General of the State or Territory is also the Police Minister of the State or Territory—the Attorney-General has requested the Minister that the offence be prescribed for the purposes of this Division.

Subdivision B—Powers to detain

219ZJB Detention of person suspected of committing serious Commonwealth offence or prescribed State or Territory offence

- (1) An officer may detain a person if:
 - (a) the person is in a designated place; and
 - (b) the officer has reasonable grounds to suspect that the person has committed, or is committing, a serious Commonwealth offence or a prescribed State or Territory offence.
- (2) The officer must advise a police officer of the person's detention as soon as practicable after detaining the person.
- (3) An officer who is detaining a person under this section must ensure that the person is delivered, as soon as practicable, into the custody of a police officer to be dealt with according to law.
- (4) If an officer who is detaining a person under this section ceases to have reasonable grounds to suspect that the person has committed, or was committing, a serious Commonwealth offence or a prescribed State or Territory offence, the officer must release the person from detention immediately.
- (5) Subject to subsection (7), if a person is detained under this section for a period of greater than 45 minutes, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.
- (6) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or another person.

- (7) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:
- (a) safeguard the processes of law enforcement; or
 - (b) protect the life and safety of any person.

219ZJC Detention of person subject to warrant or bail condition

- (1) An officer may detain a person if:
- (a) the person is in a designated place; and
 - (b) the officer has reasonable grounds to suspect that the person intends to leave the designated place; and
 - (c) either:
 - (i) there is a warrant for the arrest of the person in relation to a Commonwealth offence or a prescribed State or Territory offence; or
 - (ii) the person is on bail subject to a condition that the person not leave Australia and the bail relates to a Commonwealth offence or a prescribed State or Territory offence.
- (2) The officer must advise a police officer of the person's detention as soon as practicable after detaining the person.
- (3) An officer who is detaining a person under this section must ensure that the person is delivered, as soon as practicable, into the custody of a police officer to be dealt with according to law.
- (4) Subject to subsection (6), if a person is detained under this section for a period of greater than 45 minutes, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.
- (5) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or another person.
- (6) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's
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detention if the officer believes on reasonable grounds that such notification should not be made in order to:

- (a) safeguard the processes of law enforcement; or
- (b) protect the life and safety of any person.

Subdivision C—Matters affecting detention generally

219ZJD Search of person detained under this Division

- (1) An officer may, in relation to a person detained under this Division:
 - (a) conduct a frisk search or an ordinary search of the person; and
 - (b) search the clothing that the person is wearing and any property under the person's immediate control, if the officer believes on reasonable grounds that it is necessary to do so; for the purposes of:
 - (c) determining whether there is concealed on the person, or in the person's clothing or property, a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from detention; or
 - (d) in the case of a person detained under section 219ZJB—preventing the concealment, loss or destruction of evidence of, or relating to, the offence concerned.
- (2) A search under this section must be conducted:
 - (a) as soon as practicable after the person is detained; and
 - (b) by an officer of the same sex as the detained person.
- (3) An officer who conducts a search under this section may seize:
 - (a) any weapon or thing mentioned in paragraph (1)(c); and
 - (b) anything the officer has reasonable grounds to believe is a thing:
 - (i) with respect to which an offence has been committed; or
 - (ii) that will afford evidence of the commission of an offence; or
 - (iii) that was used, or intended to be used, for the purpose of committing an offence.
- (4) An officer who seizes a weapon or other thing under subsection (3) must ensure that it is delivered to the police officer into whose

custody the person is delivered under subsection 219ZJB(3) or 219ZJC(3).

219ZJE CEO must give directions about detaining persons under this Division

- (1) Without limiting subsection 4(4) of the *Customs Administration Act 1985*, the CEO must give directions in writing under that subsection:
 - (a) identifying places at which an officer is permitted to detain a person under this Division (whether by their character under this Act, the amenities available at the places or any other matters); and
 - (b) specifying such other matters relating to the detention of persons under this Division as the CEO considers appropriate.
- (2) A direction given for the purposes of subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

219ZJF Detainees to be given reasons for detention and shown identification on request

- (1) An officer who detains a person under this Division must inform the person, at the time the officer detains the person, of the reason for the person's detention.
- (2) Subsection (1) does not apply if the person, by the person's own actions, makes it impracticable for the officer to inform the person of the reason.
- (3) An officer exercising powers under this Division in relation to a person must produce identification that he or she is an officer when requested by the person to do so.

219ZJG Use of force in relation to detention

- (1) An officer exercising powers under this Division in relation to a person must not use more force, or subject the person to greater indignity, than is reasonable and necessary.

- (2) Without limiting the generality of subsection (1), an officer must not, in detaining or attempting to detain a person under this Division, or preventing or attempting to prevent a detained person from escaping from detention under this Division, do an act likely to cause death or grievous bodily harm to the person, unless the officer believes on reasonable grounds that doing the act is necessary to protect life or prevent serious injury to the officer or any other person.

219ZJH Moving detained persons

- (1) While a person is being taken to a particular place under this Division (except under subsection (2)), the person is regarded as being detained under this Division.
- (2) If:
- (a) a person detained under this Division is released at any place other than the place at which he or she was first detained; and
 - (b) the person so requests;
- the person must immediately be returned free of charge to the place of the first detention.

219ZJI Detainees not fluent in English

Section 219ZD applies to an officer detaining a person under this Division as if the detention under this Division were detention under Division 1B of this Part.

Note: Section 219ZD requires the officer to take reasonable steps to ensure that a competent interpreter is available for the purposes of communication.

219ZJJ Detention of minors

- (1) Subject to subsection (2), an officer who under this Division detains a person who is known or believed to be a minor must:
- (a) inform the minor of the right for a parent or guardian or person described in paragraph (c) to be notified of the minor's detention; and
 - (b) upon the request of the minor, take all reasonable steps to notify such person and inform them of:
 - (i) the fact that the minor has been detained; and

- (ii) the place in which the minor is being held; and
 - (iii) the place to which the minor is to be transferred by police, if that place is known at the time of contacting the minor's parent or guardian; and
 - (iv) the reason for the minor's detention; and
 - (c) if a parent or guardian is not acceptable to the detained minor under this subsection, the detained minor may request that another person who is capable of representing the interests of the minor be notified.
- (2) An officer who under this Division detains a person who is known or believed to be a minor may refuse to notify a parent or guardian or person described in paragraph (1)(c) of the person's detention if the officer believes on reasonable grounds that such notification should not be made in order to:
- (a) safeguard the processes of law enforcement; or
 - (b) protect the life and safety of any person.
- (3) If at the time of notifying the parent or guardian, the officer is not aware of the place referred to in subparagraph (1)(b)(iii), the officer must:
- (a) contact the parent or guardian or other person described in paragraph (1)(c) immediately after that place becomes known to the officer; and
 - (b) inform the parent or guardian of that place.
- (4) An officer who under this Division detains a person who is known or believed to be a minor must, at the time of advising a police officer of the minor's detention in accordance with subsection 219ZJB(2) or 219ZJC(2), advise the police officer of the fact that the detained person is a minor, or is believed to be a minor.
- (5) For the purposes of this section, a minor is considered to be any person under the age of 18 years.

Schedule 2—Questioning passengers etc. and persons found in restricted places

Customs Act 1901

1 After section 195

Insert:

195A Power to question persons found in restricted areas

If a person is in a section 234AA place, an officer may ask the person for, and require the person to provide:

- (a) the person's name; and
- (b) the person's reason for being in the section 234AA place; and
- (c) evidence of the person's identity.

Note: Failing to answer a question or produce a document when required to do so by an officer may be an offence (see sections 243SA and 243SB). However, a person does not have to answer if doing so would tend to incriminate the person (see section 243SC).

2 Subsection 243SA(1)

After “other than”, insert “section 195A or”.

Note: If item 1 of this Schedule commences after item 1 of Schedule 3, this item does not commence at all. See item 4 of the table in subsection 2(1).

3 Subsection 243SA(1)

After “section 106J or”, insert “195A or”.

Note: If item 1 of this Schedule commences before, or at the same time as, item 1 of Schedule 3, this item does not commence at all. See item 5 of the table in subsection 2(1).

4 At the end of section 243SA

Add:

(3) If:

- (a) an officer requires a person to answer a question under section 195A; and

(b) the officer informs the person of the officer's authority to ask the question; and

(c) the officer informs the person that it may be an offence not to answer the question;

the person must not fail to answer the question.

Penalty: 30 penalty units.

Note: If item 1 of this Schedule commences after item 1 of Schedule 3, this item does not commence at all. See item 6 of the table in subsection 2(1).

5 Paragraph 243SA(3)(a)

After "section 106J", insert "or 195A".

Note: If item 1 of this Schedule commences before, or at the same time as, item 1 of Schedule 3, this item does not commence at all. See item 7 of the table in subsection 2(1).

Schedule 3—Reports on departing passengers and crew

Customs Act 1901

1 After Part VA

Insert:

Part VB—Information about persons departing Australia

Division 1—Reports on departing persons

Subdivision A—Reports on departing persons

106A Ships and aircraft to which this Subdivision applies

- (1) This Subdivision applies to a ship or aircraft of a kind prescribed by regulations made for the purposes of this section, if the ship or aircraft is due to depart:
 - (a) from a place in Australia at the beginning of a journey to a place outside Australia (whether or not the journey will conclude outside Australia); or
 - (b) from a place in Australia in the course of such a journey.
- (2) Regulations made for the purposes of this section may specify kinds of ships or aircraft by reference to particular matters, including any or all of the following matters:
 - (a) the type, size or capacity of the ship or aircraft;
 - (b) the kind of operation or service in which the aircraft or ship will be engaged on journeys from Australia;
 - (c) other circumstances relating to the ship or aircraft or its use, or relating to the operator of the ship or aircraft.

106B Report 48 hours before ship or aircraft is due to depart

- (1) At least 48 hours (but no more than 72 hours) before the time the ship or aircraft is due to depart from the place, the operator of the

ship or aircraft must report to Customs, in accordance with Subdivision C, on the persons:

- (a) who, at the time the report is made, are expected to be on board the ship or aircraft when it departs from the place; and
 - (b) who are not identified (or to be identified) in a report made (or to be made) in relation to the ship's or aircraft's earlier departure from another place in the course of the same journey.
- (2) The operator of the ship or aircraft commits an offence if the operator intentionally contravenes subsection (1).

Penalty: 120 penalty units.

- (3) The operator of the ship or aircraft commits an offence if the operator contravenes subsection (1).

Penalty: 60 penalty units.

- (4) Strict liability applies to an offence against subsection (3).

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

106C Report 4 hours before ship or aircraft is due to depart

- (1) At least 4 hours (but no more than 10 hours) before the time the ship or aircraft is due to depart from the place, the operator of the ship or aircraft must report to Customs, in accordance with Subdivision C:
- (a) on the persons:
 - (i) who, at the time the report is made, are expected to be on board the ship or aircraft when it departs from the place; and
 - (ii) who are not identified in a report made by the operator in relation to the ship's or aircraft's departure from the place under section 106B; and
 - (iii) who are not identified (or to be identified) in a report made (or to be made) in relation to the ship's or aircraft's earlier departure from another place in the course of the same journey; or
 - (b) if there are no persons covered by paragraph (a)—that there are no persons to report.

- (2) The operator of the ship or aircraft commits an offence if the operator intentionally contravenes subsection (1).

Penalty: 120 penalty units.

- (3) The operator of the ship or aircraft commits an offence if the operator contravenes subsection (1).

Penalty: 60 penalty units.

- (4) Strict liability applies to an offence against subsection (3).

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

106D Report just before ship or aircraft departs

- (1) Before the ship or aircraft departs from the place, the operator must report to Customs, in accordance with Subdivision C:

(a) on the persons:

- (i) who will be on board the ship or aircraft when it departs from the place; and
- (ii) who are not identified in a report made by the operator in relation to the ship's or aircraft's departure from the place under section 106B or 106C; and
- (iii) who are not identified in a report made in relation to the ship's or aircraft's earlier departure from another place in the course of the same journey; or

(b) if there are no persons covered by paragraph (a)—that there are no persons to report.

- (2) The operator of the ship or aircraft commits an offence if the operator intentionally contravenes subsection (1).

Penalty: 120 penalty units.

- (3) The operator of the ship or aircraft commits an offence if the operator contravenes subsection (1).

Penalty: 60 penalty units.

- (4) Strict liability applies to an offence against subsection (3).

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

Subdivision B—Reports on matters in approved statement

106E Ships and aircraft to which this Subdivision applies

- (1) This Subdivision applies to a ship or aircraft of a kind prescribed by regulations made for the purposes of this section, if the ship or aircraft is due to depart:
 - (a) from a place in Australia at the beginning of a journey to a place outside Australia (whether or not the journey will conclude outside Australia); or
 - (b) from a place in Australia in the course of such a journey.
- (2) Regulations made for the purposes of this section may specify kinds of ships or aircraft by reference to particular matters, including any or all of the following matters:
 - (a) the type, size or capacity of the ship or aircraft;
 - (b) the kind of operation or service in which the aircraft or ship will be engaged on journeys from Australia;
 - (c) other circumstances relating to the ship or aircraft or its use, or relating to the operator of the ship or aircraft.

106F Reports on matters in approved statement

The operator of the ship or aircraft must report to Customs, in accordance with Subdivision C:

- (a) not later than the prescribed period or periods before the ship's or aircraft's departure from a place; or
- (b) at the time of a prescribed event or events; or
- (c) at the prescribed time or times.

Subdivision C—How reports under this Division are to be made

106G Reports to be made electronically

- (1) A report under this Division must:
 - (a) be made:
 - (i) electronically, using a system (if any) approved by the CEO in writing for the purposes of this subparagraph; or
 - (ii) using a format or method approved by the CEO in writing for the purposes of this subparagraph; and

- (b) contain the information set out in an approved statement.
- (2) An operator who reports electronically under subparagraph (1)(a)(i) is taken to have reported to Customs when Customs sends an acknowledgment of the report to the person identified in the report as having made it.
- (3) An operator who reports using a format or method approved under subparagraph (1)(a)(ii) is taken to have reported to Customs when the report is given to an officer doing duty in relation to ships and aircraft due to depart.
- (4) The CEO may approve different systems, formats or methods under subparagraphs (1)(a)(i) and (ii) to be used for different kinds of operators or in different circumstances.
- (5) An approval under subparagraph (1)(a)(i) or (ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

106H Reports to be made by document if approved electronic system or other approved format or method unavailable

- (1) Despite section 106G, if, when an operator is required to report under this Division:
 - (a) a system approved under subparagraph 106G(1)(a)(i) is not working; and
 - (b) the operator is not able to use a format or method approved under subparagraph 106G(1)(a)(ii);the report must:
 - (c) be made by document in writing; and
 - (d) be in an approved form; and
 - (e) contain the information required by the approved form; and
 - (f) be signed in the manner specified by the approved form; and
 - (g) be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft due to depart.
- (2) A documentary report is taken to have been made when it is sent or given to Customs in the prescribed manner.

106I CEO may approve different statements or forms

- (1) The CEO may approve, under section 4A, different statements for the purposes of this Division, for reports:
 - (a) made by different kinds of operators; or
 - (b) relating to different kinds of ships or aircraft; or
 - (c) made in different circumstances; or
 - (d) made in relation to different classes of persons who are expected to be, or who will be, on board a ship or aircraft.
- (2) The CEO may approve, under section 4A, different forms for the purposes of this Division, for reports:
 - (a) made by different kinds of operators; or
 - (b) relating to different kinds of ships or aircraft; or
 - (c) made in different circumstances; or
 - (d) made in relation to different classes of persons who are expected to be, or who will be, on board a ship or aircraft.

Division 2—Questions about departing persons

106J Officers may question operators about departing persons

If a ship or aircraft is due to depart or is departing Australia, or has already departed Australia, an officer may require the operator of the ship or aircraft:

- (a) to answer questions about the persons who are expected to be on board, or who are or were on board, the ship or aircraft; or
- (b) to produce documents relating to those persons.

Note: Failing to answer a question or produce a document when required to do so by an officer may be an offence (see sections 243SA and 243SB).

2 Paragraph 118(4)(a)

Omit “crew, passengers,”.

3 Paragraph 119(1)(b)

Omit “crew, passengers,”.

Note: If item 62 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* commences before, or at the same time as, item 1 of this Schedule, this item does not commence at all (see item 10 of the table in subsection 2(1)).

4 Subsection 243SA(1)

After “other than”, insert “section 106J or”.

Note: If item 1 of Schedule 2 commences before, or at the same time as, item 1 of this Schedule, this item does not commence at all. See item 11 of the table in subsection 2(1).

5 Subsection 243SA(1)

After “other than section”, insert “106J or”.

Note: If item 1 of Schedule 2 commences after item 1 of this Schedule, this item does not commence at all. See item 12 of the table in subsection 2(1).

6 At the end of section 243SA

Add:

(3) If:

- (a) an officer requires a person to answer a question under section 106J; and
- (b) the officer informs the person of the officer’s authority to ask the question; and
- (c) the officer informs the person that it may be an offence not to answer the question;

the person must not fail to answer the question.

Penalty: 30 penalty units.

Note: If item 1 of Schedule 2 commences before, or at the same time as, item 1 of this Schedule, this item does not commence at all. See item 13 of the table in subsection 2(1).

7 Paragraph 243SA(3)(a)

After “under section”, insert “106J or”.

Note: If item 1 of Schedule 2 commences after item 1 of this Schedule, this item does not commence at all. See item 14 of the table in subsection 2(1).

Schedule 4—Stopping conveyances in Customs places

Customs Act 1901

1 Subsection 197(1)

Omit “about to leave”, substitute “in”.

2 Paragraph 197(1)(b)

Omit “from the Customs place”.

3 Paragraph 197(6)(a)

Omit “about to leave”, substitute “in”.

Schedule 5—Security regulated ports

Customs Act 1901

1 After subsection 15(1)

Insert:

- (1A) In deciding whether to appoint a port under subsection (1), the CEO may take into account:
- (a) whether the port or any part of the port is a security regulated port (within the meaning of the *Maritime Transport Security Act 2003*); and
 - (b) if so—whether the person designated under section 14 of the *Maritime Transport Security Act 2003* as the port operator has a maritime security plan (within the meaning of that Act).

Schedule 6—Reporting deadlines

Part 1—Pre-ITM provisions

Customs Act 1901

1 Paragraphs 64(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) not later than the start of the prescribed period before its arrival; or
- (b) if the journey is of a kind described in regulations made for the purposes of this paragraph—not later than the start of the shorter period before its arrival that is specified in those regulations.

Note: If item 118 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* commences before, or at the same time as, item 4 of this Schedule, this item does not commence at all. See item 17 of the table in subsection 2(1).

2 At the end of section 64

Add:

- (6) Regulations made for the purposes of subsection (1) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.

Note: If item 118 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* commences before, or at the same time as, item 4 of this Schedule, this item does not commence at all. See item 17 of the table in subsection 2(1).

3 Subsections 64AB(2) and (3)

Repeal the subsections, substitute:

- (2) Before a Collector's permit is granted in respect of any goods, being cargo on board a ship to which this section applies that is due to arrive at its first port (the *first port*) in Australia since it last called at any port outside Australia, the master or owner of the ship must communicate to Customs a report of the cargo that is

intended to be unshipped at a port in Australia (whether the first port or any subsequent port on the same voyage):

- (a) not later than the start of the prescribed period before the ship's arrival at the first port; or
 - (b) if the voyage is of a kind described in regulations made for the purposes of this paragraph—not later than the start of the shorter period specified in those regulations before the ship's arrival at the first port.
- (2A) Regulations made for the purposes of subsection (2) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.
- (3) Before a Collector's permit is granted in respect of any goods, being cargo on board an aircraft to which this section applies that is due to arrive at its first airport (the **first airport**) in Australia since it last departed from any airport outside Australia, the pilot or owner of the aircraft must communicate to Customs a report of the cargo that is intended to be unshipped at an airport in Australia (whether the first airport or any subsequent airport on the same flight):
- (a) if the report is made by document—3 hours after the aircraft's arrival at the first airport; or
 - (b) if the report is made by computer—2 hours before the aircraft's arrival at the first airport.

Note: If item 118 in Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* commences before, or at the same time as, item 4 of this Schedule, this item does not commence at all. See item 17 of the table in subsection 2(1).

4 Subsection 64ACA(5)

Repeal the subsection, substitute:

- (5) If the report relates to a ship, it must be given not later than:
- (a) the start of the prescribed period before its estimated time of arrival; or
 - (b) if the journey is of a kind described in regulations made for the purposes of this paragraph—the start of the shorter period before its estimated time of arrival that is specified in those regulations.

- (5A) Regulations made for the purposes of subsection (5) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.

Part 2—Post-ITM provisions

Customs Act 1901

5 Paragraph 64(5)(b)

Repeal the paragraph, substitute:

- (b) not later than:
 - (i) the start of the prescribed period before its estimated time of arrival; or
 - (ii) if the journey is of a kind described in regulations made for the purposes of this subparagraph—the start of the shorter period specified in those regulations before its estimated time of arrival.

6 Subsection 64(6)

Repeal the subsection, substitute:

- (6) Regulations made for the purposes of paragraph (5)(b) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.

7 Subsection 64AB(2)

Repeal the subsection, substitute:

- (2) If the ship or aircraft is due to arrive at its first port or airport in Australia since it last departed from a port or airport outside Australia, each cargo reporter must report to Customs, in accordance with this section, particulars of all goods:
 - (a) that the cargo reporter has arranged to be carried on the ship or aircraft on the voyage or flight; and
 - (b) that are intended to be unloaded from the ship or aircraft at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight); and
 - (c) that are not:
 - (i) accompanied personal or household effects of a passenger or member of the crew; or

- (ii) ship's stores or aircraft's stores.

8 Subparagraph 64AB(8)(a)(i)

Repeal the subparagraph, substitute:

- (i) the start of the prescribed period; or

9 Subparagraph 64AB(8)(a)(ii)

Omit "such shorter period as is", substitute "the start of the shorter period that is".

10 Paragraph 64AB(8)(a)

Omit "specified in the report under section 64 of the impending arrival of the ship", substitute "of the ship at the first port in Australia since it last departed from a port outside Australia".

11 Paragraph 64AB(8)(b)

Omit "arrival of the aircraft", substitute "arrival of the aircraft at the first airport in Australia since it last departed from an airport outside Australia".

12 After subsection 64AB(8)

Insert:

- (8A) Regulations made for the purposes of paragraph (8)(a) may prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for those purposes.

*[Minister's second reading speech made in—
House of Representatives on 27 May 2004
Senate on 24 June 2004]*

(82/04)