



# **Customs and Other Legislation Amendment Act 2017**

**No. 19, 2017**

**An Act to amend the law relating to customs, trade  
descriptions and maritime powers, and for related  
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**An Act to amend the law relating to customs, trade  
descriptions and maritime powers, and for related  
purposes**

*[Assented to 4 April 2017]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Customs and Other Legislation Amendment Act  
2017*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 April 2017
2. Schedule 1	The 28th day after this Act receives the Royal Assent.	2 May 2017
3. Schedule 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedules 3 to 9	The day after this Act receives the Royal Assent.	5 April 2017

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Prohibited exports**

### ***Customs Act 1901***

#### **1 At the end of subparagraphs 112(2A)(b)(i) and (ii)**

Add “and”.

#### **2 At the end of paragraph 112(2A)(b)**

Add:

; and (v) the revocation of a licence or permission to export goods if the Defence Minister is satisfied that the exportation of the goods would prejudice the security, defence or international relations of Australia.

#### **3 Subsections 112(2AB) to (2AD)**

Repeal the subsections.

#### **4 Application provision**

Regulations made for the purposes of subparagraph 112(2A)(b)(v) of the *Customs Act 1901*, as added by this Schedule, apply in relation to:

- (a) a licence or permission that is granted on or after the commencement of this item; and
- (b) a licence or permission that was granted before that commencement and that was in force immediately before that commencement.

## Schedule 2—Australian Trusted Trader Programme

### *Customs Act 1901*

#### **1 Subdivision A of Division 2 of Part XA (heading)**

Repeal the heading, substitute:

#### **Subdivision A—Entry into trusted trader agreement**

#### **2 Paragraph 176A(1)(b)**

Repeal the paragraph, substitute:

- (b) the Comptroller-General of Customs is satisfied that the entity satisfies the qualification criteria set out in the rules.

#### **3 Subsection 176A(3)**

Repeal the subsection, substitute:

- (3) If the Comptroller-General of Customs enters into a trusted trader agreement with an entity, the Comptroller-General of Customs may do either or both of the following:
  - (a) specify in the agreement one or more of the obligations covered by subparagraph 179(1)(d)(i);
  - (b) specify in the agreement:
    - (i) one or more of the obligations covered by subparagraph 179(1)(d)(ii); and
    - (ii) for each such obligation—the way in which the entity may satisfy the obligation.

Note 1: The effect of specifying an obligation under paragraph (3)(a) is that the entity will be released from the obligation under Part IV or VI: see sections 49C and 107.

Note 2: The effect of specifying an obligation under paragraph (3)(b) is that the entity will be able to satisfy the obligation under Part IV or VI in the way specified in the agreement: see sections 49C and 107.

Note 3: Parts IV and VI are about the importation and exportation of goods.

- (4) The entity may receive benefits of a kind that are covered by paragraph 179(1)(e) and are specified in the agreement.

#### **4 Subdivision B of Division 2 of Part XA**

Repeal the Subdivision.

#### **5 Paragraphs 179(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the qualification criteria that an entity must satisfy in order for a trusted trader agreement to be entered into with the entity under section 176A;
- (b) the matters that the Comptroller-General of Customs must consider when deciding whether to enter into a trusted trader agreement under section 176A;

#### **6 Subparagraph 179(1)(j)(ii)**

Repeal the subparagraph.

#### **7 Paragraph 273GA(1)(jd)**

Repeal the paragraph.

#### **8 Application provision**

The amendments made by this Schedule apply in relation to the following:

- (a) a nomination under paragraph 176A(1)(a) of the *Customs Act 1901* made on or after the commencement of this Schedule;
- (b) a nomination under paragraph 176A(1)(a) of that Act made before that commencement, where the Comptroller-General had not made a decision before that commencement about whether to enter into a trusted trader agreement under subsection 176A(1) of that Act.

## Schedule 3—Import processing charges

### *Customs Act 1901*

#### **1 At the end of section 71B**

Add:

##### *Exemptions from charge*

- (4) The Minister may, by legislative instrument, determine one or more of the following:
- (a) that specified persons are exempt from liability to pay import declaration processing charge;
  - (b) that persons are exempt from liability to pay import declaration processing charge in respect of import declarations relating to specified goods;
  - (c) that specified persons are exempt from liability to pay import declaration processing charge in respect of import declarations relating to specified goods.
- (5) An instrument under subsection (4) takes effect on the day specified in the instrument (which may be earlier or later than the day the instrument is made).

##### *Refund of charge*

- (6) If:
- (a) a person pays an amount of import declaration processing charge on or after the day an instrument under subsection (4) takes effect; and
  - (b) the person is exempt from liability to pay that amount of charge because of that instrument;
- the Comptroller-General of Customs must, on behalf of the Commonwealth, refund to the person an amount equal to the amount of charge paid.

##### *Debt*

- (7) An amount of import declaration processing charge that a person is liable to pay:
-

- (a) is a debt due by the person to the Commonwealth; and
- (b) may be recovered by action in a court of competent jurisdiction.

**2 At the end of section 71DI**

Add:

*Debt*

- (4) An amount of warehouse declaration processing charge that a person is liable to pay:
  - (a) is a debt due by the person to the Commonwealth; and
  - (b) may be recovered by action in a court of competent jurisdiction.

## **Schedule 4—Permissions to move, alter or interfere with goods for export**

### ***Customs Act 1901***

#### **1 Subsection 119AA(1)**

After “applies to goods”, insert “if”.

#### **2 Paragraph 119AA(1)(a)**

Omit “that”, substitute “the goods”.

#### **3 Paragraphs 119AA(1)(b) and (c)**

Repeal the paragraphs, substitute:

(b) either:

- (i) the goods have been entered for export and an authority to deal with the goods is in force; or
- (ii) the goods are the subject of a permission in force under subsection 96A(2).

#### **4 Application provision**

The amendments made by this Schedule apply in relation to an application made under subsection 119AA(2) of the *Customs Act 1901* on or after the commencement of this item to move, alter or interfere with goods on or after that commencement, whether:

- (a) the goods were entered for export before, on or after that commencement; or
- (b) the authority to deal with the goods was given before, on or after that commencement; or
- (c) the permission under subsection 96A(2) of that Act was given before, on or after that commencement.

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## **Schedule 5—Tariff concession orders**

### ***Customs Act 1901***

#### **1 Subsection 269D(1)**

Repeal the subsection, substitute:

- (1) For the purposes of this Part, goods, other than unmanufactured raw products, are taken to be produced in Australia if the goods are wholly or partly manufactured in Australia.

#### **2 Subsections 269D(4) and (5)**

Repeal the subsections.

#### **3 Subsection 269E(2)**

Repeal the subsection, substitute:

- (2) For the purposes of this Part, substitutable goods, in respect of goods the subject of a TCO application, are taken to have been produced in Australia in the ordinary course of business if:
  - (a) a producer in Australia could produce substitutable goods, in respect of goods the subject of the TCO application, with existing facilities; and
  - (b) the substitutable goods the producer could produce would be made-to-order capital equipment; and
  - (c) in the 5 years before the application was lodged, the producer has made goods requiring the same labour skills, technology and design expertise as the substitutable goods the producer could produce; and
  - (d) the producer is prepared to accept an order to supply substitutable goods in respect of goods the subject of the TCO application.

#### **4 Application provision**

The amendments made by this Schedule apply in relation to an application under section 269F of the *Customs Act 1901*, or a request under section 269SB of that Act, that is made on or after the commencement of this item.

## Schedule 6—Delivery of goods

### *Customs Act 1901*

**1 Subsection 162A(5A)**

Repeal the subsection.

**2 Subsection 162A(8)**

Omit “or (5A)(a) or (b)”.

**3 Subsection 162B(3)**

Omit “the provisions of subsections (5), (5A) and (6) of section 162A”, substitute “subsections 162A(5) and (6)”.

## **Schedule 7—Trade descriptions**

### ***Commerce (Trade Descriptions) Act 1905***

#### **1 Subsection 5(1)**

Omit “all prescribed goods”, substitute “goods that are, or that the officer reasonably believes are, goods prescribed by the regulations”.

#### **2 Section 16**

Omit “Governor-General”, substitute “Minister”.

#### **3 Section 17**

Before “The”, insert “(1)”.

#### **4 At the end of section 17**

Add:

- (2) Without limiting subsection (1), the regulations may prescribe penalties, not exceeding 50 penalty units, for offences against the regulations.

#### **5 Transitional provision**

Regulations in force under section 17 of the *Commerce (Trade Descriptions) Act 1905* immediately before the commencement of this item continue in force on and after that commencement as if they were regulations in force under subsection 17(1) of that Act.

## Schedule 8—Maritime powers

### *Maritime Powers Act 2013*

#### 1 Section 40

Before “This Act”, insert “(1)”.

#### 2 At the end of section 40

Add:

- (2) Subsection (1) does not apply to an exercise of powers if:
- (a) the exercise of powers:
    - (i) is part of a continuous exercise of powers that commenced in accordance with any applicable requirements of this Part (disregarding this subsection); and
    - (ii) occurs in the course of passage of a vessel or aircraft through or above waters that are part of a country; and
  - (b) a relevant maritime officer, or the Minister, considers that the passage is in accordance with the Convention.

Note 1: The definition of *country* in section 8 includes the territorial sea and any archipelagic waters of the country.

Note 2: The fact that the Minister considers that passage of a particular vessel or aircraft through or above waters that are part of a country is in accordance with the Convention may (for example) be apparent from the terms of a direction given under section 75F.

- (3) An exercise of powers in reliance (or purported reliance) on subsection (2) is not invalid because of a defective consideration of the Convention.

#### 3 Application provisions

- (1) The amendments of the *Maritime Powers Act 2013* made by this Schedule apply in relation to the exercise of powers under that Act after the commencement of this Schedule, even if:
- (a) an authorisation for the exercise of the powers was given under Division 2 of Part 2 of that Act before the commencement of this Schedule; or
  - (b) the powers are exercised:

- (i) in the course of a continuous exercise of powers that started before the commencement of this Schedule; or
  - (ii) without limiting subparagraph (i)—in relation to a person, vessel or aircraft who or that started to be detained, or otherwise held, under Division 7 or 8 of Part 3 of the *Maritime Powers Act 2013* before that commencement; or
  - (iii) in any other situation in relation to which powers were (or could have been) exercised under that Act before that commencement.
- (2) The amendments of the *Maritime Powers Act 2013* made by this Schedule do not, by implication, affect the interpretation of that Act, as in force before the commencement of this Schedule, in relation to the exercise of powers under that Act before that commencement.

## **Schedule 9—Repeals of Acts**

### **Part 1—Repeals of Acts**

#### *Customs (Tariff Concession System Validations) Act 1999*

##### **1 The whole of the Act**

Repeal the Act.

#### *Import Processing Charges (Amendment and Repeal) Act 2002*

##### **2 The whole of the Act**

Repeal the Act.

## **Part 2—Saving provisions**

### **3 Saving provision**

If, under section 5 of the *Customs (Tariff Concession System Validations) Act 1999*, a decision, act or thing was taken to be, or to continue to be, valid to any extent immediately before the commencement of this item, then the decision, act or thing continues to be taken to be valid to the same extent after the commencement of this item.

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*[Minister's second reading speech made in—  
House of Representatives on 30 November 2016  
Senate on 14 February 2017]*

(191/16)

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