



Customs Legislation Amendment Act (No. 2) 2003

No. 136, 2003

**An Act to amend the law relating to customs, and
for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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An Act to amend the law relating to customs, and for related purposes

[Assented to 17 December 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Legislation Amendment Act
(No. 2) 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	17 December 2003
2. Schedule 1, Part 1	Immediately after the commencement of item 118 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i>	
3. Schedule 1, Part 2	Immediately after the commencement of item 62 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i>	
4. Schedule 1, Part 3, Division 1	Immediately after the commencement of item 1 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i>	
5. Schedule 1, Part 3, Division 2	Immediately after the commencement of item 38 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i>	
6. Schedule 1, Part 4	The 28th day after the day on which this Act receives the Royal Assent	14 January 2004
7. Schedule 1, Part 5	Immediately after the commencement of item 5 of Schedule 6 to the <i>Border Security Legislation Amendment Act 2002</i>	
8. Schedule 1, Parts 5A, 6 and 7	The day on which this Act receives the Royal Assent	17 December 2003

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 is for additional information that is not part of this Act. This information may be included 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Trade modernisation

Part 1—Timing and content of outturn reports

Customs Act 1901

1 Subsection 64ABAB(2)

Repeal the subsection, substitute:

- (2) Subsections (2A), (2B), (2C), (2D) and (2E) of this section apply to outturn reports a stevedore must communicate under subsection 64ABAA(2) because of the unloading of one or more containers from a ship at a wharf.
- (2A) The stevedore must communicate a report at the end of each period:
- (a) that starts at a time described in subsection (2B); and
 - (b) that is 3 hours long; and
 - (c) during which a container is unloaded.
- (2B) A period starts:
- (a) at the time the first container is unloaded; or
 - (b) immediately after the end of the most recent period covered by subsection (2A); or
 - (c) at the first time a container is unloaded after the end of the most recent period covered by subsection (2A), if a container has not been unloaded in the 3 hours starting at the end of the most recent period covered by that subsection.
- (2C) The first report must state the time the first container is unloaded.
- (2D) The last report must state the time when the unloading of the containers was completed.
- (2E) If the stevedore communicates a report that:
- (a) covers the unloading of a container that, because of a decision not to unload any more containers that was made after the communication, completes the unloading of the containers; and

- (b) does not state the time when the unloading of the containers was completed;
the stevedore must communicate another report that states that the unloading of the containers has been completed. The stevedore must do so within 3 hours of the decision being made.
- (2F) If the regulations prescribe a period other than 3 hours, subsections (2A), (2B) and (2E) have effect as if they referred to the period prescribed instead of 3 hours.

2 Application

Subsections 64ABAB(2) to (2F) (inclusive) of the *Customs Act 1901* as amended by this Part apply in relation to unloading of containers from a ship starting after the commencement of this Part.

Part 2—Notice of removal of export goods

Customs Act 1901

3 Subsection 114F(1B)

Repeal the subsection, substitute:

- (1B) Before the goods are removed from the wharf or airport for a purpose other than loading them onto a ship or aircraft for export, the person must give notice (the *removal notice*) to Customs electronically:
- (a) stating that the goods are to be removed; and
 - (b) giving such particulars of the proposed removal as are required by an approved statement.

If the regulations require the person to give the removal notice at least a specified time before the removal, the person must comply with the requirement.

Part 3—Electronic communications

Division 1—Communications generally

Customs Act 1901

4 Subsection 114(4)

Repeal the subsection, substitute:

- (4) An electronic export declaration must communicate such information as is set out in an approved statement.

5 Part VIA (heading)

Repeal the heading, substitute:

Part VIA—Electronic communications

6 After section 126DA

Insert:

126DB Authentication of certain electronic communications

An electronic communication that is made to Customs and is required or permitted by this Act is taken to be made by a particular person, even though the person did not authorise the communication, if:

- (a) the communication meets the information technology requirements that the CEO has determined under section 126DA have to be met to satisfy a requirement that the person's signature be given to Customs in connection with information in the communication; and
- (b) the person did not notify Customs of a breach of security relating to those information technology requirements before the communication;

unless the person provides evidence to the contrary.

126DC Records of certain electronic communications

- (1) The CEO must keep a record of each electronic communication made as required or permitted by this Act. The CEO must keep the record for 5 years after the communication is made.

Note: It does not matter whether the communication is made to Customs or by Customs.

Evidentiary value of the record

- (2) The record kept is admissible in proceedings under this Act.
- (3) In proceedings under this Act, the record is prima facie evidence that a particular person made the statements in the communication, if the record purports to be a record of an electronic communication that:
- (a) was made to Customs; and
 - (b) met the information technology requirements that the CEO has determined under section 126DA have to be met to satisfy a requirement that the person's signature be given to Customs in connection with information in the communication.
- (4) In proceedings under this Act, the record is prima facie evidence that Customs made the statements in the communication, if the record purports to be a record of an electronic communication that was made by Customs.

126DD Authentication, records and *Electronic Transactions Act 1999*

Sections 126DB and 126DC have effect despite section 15 of the *Electronic Transactions Act 1999*.

Division 2—Communications relating to imports

Customs Act 1901

7 Subsection 71F(4)

Repeal the subsection.

Part 4—False and misleading statements

Customs Act 1901

8 Paragraph 234(1)(d)

Omit “either:”, substitute “do any of the following:”.

9 Subparagraph 234(1)(d)(i)

After “make”, insert “or cause to be made”.

10 Subparagraph 234(1)(d)(i)

Omit “or” (last occurring).

11 Subparagraph 234(1)(d)(ii)

After “omit”, insert “or cause to be omitted”.

12 At the end of paragraph 234(1)(d)

Add:

- (iii) intentionally give information to another person, knowing that the information is false or misleading in a material particular and that the other person or someone else will include the information in a statement to an officer;
- (iv) intentionally give information to another person, knowing that the information is misleading in a material particular because of the omission of other information that the person has and that the other person or someone else will include the information in a statement to an officer;

13 At the end of subsection 240AB(1)

Add “or gives someone else information for inclusion in such a communication”.

14 At the end of subsection 240AB(2)

Add “and to trace information included in communications made to Customs to its source”.

15 Subsection 240AB(3)

Omit “The”, substitute “If the person makes the communication to Customs, the”.

16 After subsection 240AB(3)

Insert:

- (3A) If the person (the *giver*) gives information to another person (the *recipient*) for the recipient or someone else to include in a communication to Customs, the giver must keep, in accordance with this section, for one year after the information is given, one or more records that:
- (a) either verify the information or, if the giver was given the information by someone else, verify that the giver was given that information and identify the person who gave it to the giver; and
 - (b) verify the fact that the giver gave the information to the recipient; and
 - (c) identify the recipient.

Penalty: 30 penalty units.

17 At the end of section 240AB

Add:

- (8) To avoid doubt, this section does not affect the operation of section 240.

Note: Section 240 requires owners of imported or exported goods, and certain persons who deal with such goods, to keep for 5 years relevant commercial documents relating to the goods.

18 Paragraph 243T(1)(b)

Omit “any of the following”, substitute “either of the following”.

19 Subparagraphs 243T(1)(b)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil);

20 Subsection 243T(3)

Omit “exceeding:”, substitute “more than the excess.”.

21 Paragraphs 243T(3)(a), (b) and (c)

Repeal the paragraphs.

22 Subsection 243T(4)

Repeal the subsection, substitute:

- (4) Subsection (1) does not apply if:
- (a) a person (other than an officer) voluntarily gives written notice (an *error notice*) to an officer doing duty in relation to the matter to which the statement relates, indicating that:
 - (i) the statement is false or misleading in a material particular; or
 - (ii) the statement is false or misleading in a material particular because of the omission of a matter or thing; and
 - (b) between the making of the statement and the person giving the error notice, a notice under section 214AD had not been given to:
 - (i) the owner of the goods (other than an agent in relation to the goods); or
 - (ii) if the statement was made by an agent of the owner—the agent who made the statement; and
 - (c) if subparagraph (1)(b)(i) would apply apart from this subsection—the duty properly payable on the goods is paid in full before either of the following happens:
 - (i) an infringement notice is served under Division 5 on the owner of the goods for an offence against subsection (1);
 - (ii) proceedings are commenced against the owner of the goods for an offence against subsection (1); and
 - (d) if subparagraph (1)(b)(ii) would apply apart from this subsection and an amount of refund or drawback exceeding the amount (if any) properly payable has been paid before the time either of the following happens:

- (i) an infringement notice is served under Division 5 on the owner of the goods for an offence against subsection (1);
 - (ii) proceedings are commenced against the owner of the goods for an offence against subsection (1);
- the excess has been repaid before that time.
- (4A) For the purposes of paragraph (4)(a), the error notice is taken not to be given voluntarily if it is given after:
- (a) an officer exercises a power under a Customs-related law to verify information in the statement; or
 - (b) an infringement notice is served under Division 5 on the owner of the goods for an offence against subsection (1); or
 - (c) proceedings are commenced against the owner of the goods for an offence against subsection (1).

23 Subparagraph 243U(1)(a)(i)

After “makes”, insert “, or causes to be made,”.

24 Subparagraph 243U(1)(a)(ii)

After “omits”, insert “, or causes to be omitted,”.

25 Paragraph 243U(1)(b)

Omit “none of the following”, substitute “neither of the following”.

26 Subparagraphs 243U(1)(b)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil).

27 After subsection 243U(3)

Insert:

- (3A) For the purposes of this section, a person is taken to cause to be made a statement (other than a statement in a cargo report or outturn report) that is false or misleading in a material particular if:

- (a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement (other than a statement in a cargo report or outturn report) by the other person or someone else to an officer; and
- (b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause such a statement to be made.

- (3B) For the purposes of this section, a person is taken to cause to be made an omission (a ***punishable omission***) from a statement (other than a statement in a cargo report or outturn report) of a matter or thing without which the statement is false or misleading in a material particular, if:

- (a) the person gives to another person, for inclusion in a statement (other than a statement in a cargo report or an outturn report) by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and
- (b) the other person or someone else makes such a statement including the information to an officer.

This subsection does not limit the ways in which a person may cause a punishable omission to be made.

28 Subsection 243U(4)

Repeal the subsection, substitute:

- (4) Subsection (1) does not apply to a statement if:
 - (a) a person (other than an officer) voluntarily gives written notice (an ***error notice***) to an officer doing duty in relation to the matter to which the statement relates, indicating that:
 - (i) the statement is false or misleading in a material particular; or
 - (ii) the statement is false or misleading in a material particular because of the omission of a matter or thing; and
 - (b) between the making of the statement and the person giving the error notice, a notice under section 214AD had not been given to either of the following:

- (i) a person who made the statement or caused it to be made;
 - (ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading.
- (4A) For the purposes of paragraph (4)(a), the error notice is taken not to be given voluntarily if it is given after:
- (a) an officer exercises a power under a Customs-related law to verify information in the statement; or
 - (b) an infringement notice for an offence against subsection (1) is served under Division 5 on:
 - (i) a person who made the statement or caused it to be made; or
 - (ii) a person who omitted, or caused to be omitted, from the statement a matter or thing without which the statement was false or misleading; or
 - (c) proceedings are commenced against a person described in subparagraph (b)(i) or (ii) of this subsection for an offence against subsection (1).

29 Paragraph 243V(1)(a)

After “makes”, insert “, or causes to be made,”.

30 Paragraph 243V(1)(b)

After “omits”, insert “, or causes to be omitted,”.

31 At the end of section 243V

Add:

- (4) For the purposes of subsection (1), a person is taken to cause to be made a statement described in paragraph (1)(a) if:
 - (a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement, in a cargo report or an outturn report, by the other person or someone else to an officer; and
 - (b) the other person or someone else makes a statement including the information to an officer, in a cargo report or an outturn report.

This subsection does not limit the ways in which a person may cause to be made a statement described in paragraph (1)(a).

- (5) For the purposes of subsection (1), a person is taken to cause an omission described in paragraph (1)(b) to be made if:
- (a) the person gives to another person, for inclusion in a statement, in a cargo report or an outturn report, by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and
 - (b) the other person or someone else makes a statement including the information to an officer, in a cargo report or an outturn report.

This subsection does not limit the ways in which a person may cause an omission described in paragraph (1)(b) to be made.

32 Application

The amendments made by this Part apply in relation to statements made after the commencement of this Part.

Part 5—Technical correction

Customs Legislation Amendment Act (No. 1) 2002

33 Item 5 of Schedule 3 (heading)

Omit “64AD”, substitute “64ACE”.

**Part 5A—Commencement of the Customs
Legislation Amendment and Repeal
(International Trade Modernisation) Act 2001**

*Customs Legislation Amendment and Repeal (International
Trade Modernisation) Act 2001*

33A Subsection 2(7)

Omit “3 years”, substitute “4 years”.

Part 6—AAT review of decisions about remitting penalty under old law

Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001

34 At the end of Schedule 2

Add:

8 Saving

- (1) This item is about making an application to the Administrative Appeals Tribunal for review of a decision of the CEO under old section 243U of the *Customs Act 1901*:
- (a) not to remit a penalty payable under old section 243T of that Act in respect of duty payable on goods; or
 - (b) to remit part only of such a penalty.

Note: This item applies if the decision was made on or after 1 July 2002.

Decisions made before Royal Assent to Customs Legislation Amendment Act (No. 2) 2003

- (2) The application may be made at any time before the end of 28 days after the day on which the *Customs Legislation Amendment Act (No. 2) 2003* receives the Royal Assent, if:
- (a) the person who applied for remission of the penalty was informed of the decision before that day; or
 - (b) the CEO is taken under old subsection 243U(3) of the *Customs Act 1901* to have made the decision before that day.

This subitem has effect despite paragraph 29(1)(d) and subsections 29(2), (3), (4), (5) and (6) of the *Administrative Appeals Tribunal Act 1975*.

Later decisions

- (3) If subitem (2) does not apply, the application may be made in accordance with section 29 of the *Administrative Appeals Tribunal Act 1975*.

This item has effect despite item 7

- (4) This item has effect despite the repeal of paragraph 273GA(1)(ka) of the *Customs Act 1901* by item 7 of this Schedule.

Definitions

- (5) In this item, a reference to an old provision of the *Customs Act 1901* is a reference to that provision as it continues to apply because of item 5A of this Schedule.
- (6) In this item:
decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Part 7—Transitional arrangements for exports

Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001

35 At the end of item 62 of Schedule 3

Add:

Note: Part 7 of Schedule 1 to the *Customs Legislation Amendment Act (No. 2) 2003* explains the application of the amendments made by this item and other items that commence at the same time.

36 Item 84 of Schedule 3

Repeal the item.

37 What the rest of this Part is about

- (1) The following items of this Part are about the application of the ITM amendments and arrangements for transition to the amended Customs Act from the unamended Customs Act around the cut-over time.

Definitions

- (2) In this Part:

amended Customs Act means the *Customs Act 1901* as amended by the ITM amendments.

cut-over time means the time specified by the CEO under subitem (3).

ITM amendments means the amendments of the *Customs Act 1901* made by:

- (a) the items of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* that commence when item 62 of that Schedule commences; and
- (b) items 28 and 30 to 43 (inclusive) of Schedule 3 to the *Customs Legislation Amendment Act (No. 1) 2002*; and
- (c) Part 4 of Schedule 3 to the *Customs Legislation Amendment Act (No. 1) 2003*; and
- (d) items 3 and 4 of this Schedule.

unamended Customs Act means the *Customs Act 1901* as in force without the ITM amendments.

Specifying the cut-over time

- (3) Before the ITM amendments commence, the CEO must, by instrument published in the *Gazette*, specify a time not more than 30 days (including Sundays and holidays) after the day on which those amendments commence as the cut-over time.

38 Delayed application of ITM amendments to exports

- (1) The ITM amendments apply only in relation to:
- (a) the exportation of goods intended to be exported at or after the cut-over time; and
 - (b) the departure at or after the cut-over time of the master of a ship or the pilot of an aircraft.

Note: If the ITM amendments do not apply in relation to the exportation of particular goods, exportation of those goods is covered by the unamended Customs Act. The same principle applies to departures.

Act or omission before cut-over time not offence under new law

- (2) An act or omission before the cut-over time does not constitute an offence against subsection 114E(1) or 114F(2) of the amended Customs Act.

39 Goods originally intended to be exported before the cut-over time but not exported before that time

- (1) This item applies in relation to goods if:
- (a) they were intended before the cut-over time to be exported before that time but were not exported before that time; and
 - (b) at or after that time, they are intended to be exported at or after that time.
- (2) To avoid doubt, the ITM amendments apply (in accordance with item 38) in relation to the exportation of the goods.

Note: Item 41 provides for the ITM amendments not to apply in exceptional circumstances.

- (3) If a Certificate of Clearance was not given before the cut-over time under the unamended Customs Act for the departure that is to cause the exportation of the goods, anything done under the unamended Customs

Act in relation to the exportation of the goods does not have effect for the purposes of the amended Customs Act.

40 Departures originally intended to happen before the cut-over time but not happening before that time

- (1) This item applies in relation to the departure of the master of a ship or pilot of an aircraft from a port, airport or other place in Australia at or after the cut-over time if the departure had been intended to take place before that time but did not do so.

ITM amendments apply

- (2) To avoid doubt, the ITM amendments apply (in accordance with item 38) in relation to the departure.

Note: Item 41 provides for the ITM amendments not to apply in exceptional circumstances.

Special transitional rules relating to Certificates of Clearance

- (3) If a Certificate of Clearance was given to the master or pilot before the cut-over time under the unamended Customs Act, the Certificate also has effect for the purposes of section 118 of the amended Customs Act in relation to the departure of the master or pilot after the cut-over time.
- (4) If a Certificate of Clearance was not given before the cut-over time under the unamended Customs Act for the departure, anything done under the unamended Customs Act in relation to the departure does not have effect for the purposes of the amended Customs Act.

41 Continued application of old law to exportation after cut-over time in exceptional circumstances

- (1) In the circumstances described in subitem (2), the ITM amendments do not apply in relation to:
- (a) the exportation of particular goods at or after the cut-over time; or
 - (b) the departure of the master of a ship carrying particular goods at or after that time; or
 - (c) the departure of the pilot of an aircraft carrying particular goods at or after that time.
- (2) The circumstances are that:
- (a) before the cut-over time, the particular goods:

- (i) were intended to be exported before the cut-over time;
and
 - (ii) had been entered for export; and
 - (iii) were covered by an authority to deal with the goods that was issued before the cut-over time under section 114C of the unamended Customs Act; and
 - (b) less than 30 days (including Sundays and holidays) have passed after the intended day of exportation notified in that entry of the goods for export; and
 - (c) the goods were subject to the control of the Customs under paragraph 30(1)(d) of the *Customs Act 1901* at some time during the period starting at the start of the day on which the ITM amendments commence and ending just before the cut-over time; and
 - (d) the CEO has determined under subitem (3) of this item that the ITM amendments should not apply in relation to the exportation of the goods.
- (3) The CEO may determine in writing that the ITM amendments should not apply in relation to the exportation of goods that are specified in the determination, if the CEO is satisfied that exceptional circumstances will prevent or prevented the exportation of the goods before the cut-over time.
- Note: The CEO may specify goods by reference to a class. See subsection 46(2) of the *Acts Interpretation Act 1901*.
- (4) This item has effect despite items 38, 39 and 40.

*[Minister's second reading speech made in—
House of Representatives on 15 May 2003
Senate on 1 December 2003]*

(61/03)
