





# **Customs Legislation Amendment (Border Compliance and Other Measures) Act 2007**

**No. 5, 2007**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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

*[Assented to 19 February 2007]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Customs Legislation Amendment  
(Border Compliance and Other Measures) Act 2007*.

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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>Provision(s)</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 on which this Act receives the Royal Assent.	19 February 2007
2. Schedule 1	The day after this Act receives the Royal Assent.	20 February 2007
3. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent.	19 March 2007
4. Schedules 3 and 4	The day after this Act receives the Royal Assent.	20 February 2007
5. Schedule 5	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.	
6. Schedule 6	The day on which this Act receives the Royal Assent.	19 February 2007
7. Schedule 7, items 1 and 2	The day on which this Act receives the Royal Assent.	19 February 2007
8. Schedule 7, items 3 and 4	Immediately after the commencement of item 2 of Schedule 3 to the <i>Customs Legislation Amendment Act (No. 1) 2003</i> .	4 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 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.

## Schedule 1—Dangerous goods

### *Customs Act 1901*

#### **1 After subsection 206(1)**

Insert:

##### *Dangerous goods*

(1A) If:

- (a) goods are seized under a seizure warrant or under subsection 203B(2) or (2A), 203CA(3) or 203CB(2); and
- (b) the CEO or a Regional Director for a State or Territory is satisfied that the retention of the goods would constitute a danger to public health or safety;

the CEO or Regional Director concerned may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).

Note 1: The following heading to subsection 206(1) is inserted “*Perishable goods and live animals*”.

Note 2: The following heading to subsection 206(2) is inserted “*Unseaworthy vessels*”.

#### **2 Subsection 206(3)**

Omit “(1) or (2)”, substitute “(1), (1A) or (2)”.

Note: The following heading to subsection 206(3) is inserted “*Notice*”.

#### **3 Paragraph 206(5)(c)**

Omit “(1) or (2)”, substitute “(1), (1A) or (2)”.

#### **4 Subsection 206(6)**

Omit “(1) or (2)”, substitute “(1), (1A) or (2)”.

Note: The following heading to subsection 206(6) is inserted “*Right to recover market value of goods*”.

#### **5 Subsection 206(7)**

Omit “(1) or (2)”, substitute “(1), (1A) or (2)”.

#### **6 Application**

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The amendments made by this Schedule apply in relation to goods seized on or after the commencement of this Schedule.

## Schedule 2—Unauthorised entry

### *Customs Act 1901*

#### **1 Paragraph 234A(1A)(a)**

Omit “by authority”, substitute “by the authority of a Collector”.

#### **2 Paragraph 234A(1A)(ab)**

Repeal the paragraph, substitute:

- (ab) is the holder of a security identification card (within the meaning of section 213A) who:
  - (i) enters into, or is in, the place for the purposes of his or her employment; and
  - (ii) is not subject to a direction under subsection (1B); or

#### **3 Paragraph 234A(1A)(b)**

Omit “by authority”, substitute “by the authority of a Collector”.

#### **4 After subsection 234A(1A)**

Insert:

(1B) A Collector may, at any time, by written notice given to a person who is the holder of a security identification card (within the meaning of section 213A), direct the person not to enter into, or be in or on:

- (a) a place in relation to which a sign is displayed under subsection 234AA(1); or
- (b) any of the following:
  - (i) a ship;
  - (ii) an aircraft;
  - (iii) the wharf at which, or the part of a wharf adjacent to which, a ship is berthed;

at a time when goods being the personal baggage of passengers disembarking from, or embarking on that ship or aircraft are being examined, for the purposes of this Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf.

#### **5 Subsection 234A(2)**

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Repeal the subsection, substitute:

- (2) Subsection (1) does not prohibit a person who has, or is a member of an authority which has, the management or control of a wharf or wharves or an airport or airports from entering on, or being in or on, a place, ship, aircraft, wharf or part of a wharf for the purposes of that management or control.

## Schedule 3—US originating goods

### *Customs Act 1901*

#### **1 Subsection 153YA(1) (definition of *national*)**

Repeal the definition.

#### **2 Subsection 153YA(1)**

Insert:

*person of the US* means a person of a Party within the meaning, in so far as it relates to the US, of Article 1.2 of the Agreement.

#### **3 Paragraph 153YB(2)(g)**

Omit “national of the US”, substitute “person of the US”.

#### **4 Paragraph 153YB(2)(h)**

Omit “national of the US”, substitute “person of the US”.

#### **5 Subparagraph 153YE(2)(b)(i)**

After “materials”, insert “, that do not satisfy the transformation test (see subsection (8)),”.

#### **6 After paragraph 153YH(1)(b)**

Insert:

(ba) if the component of the goods that determines the final classification for the goods contains elastomeric yarns—the elastomeric yarns are produced entirely in the US or Australia; and

#### **7 Subsection 153YH(1) (note)**

Omit “Note”, substitute “Note 1”.

#### **8 At the end of subsection 153YH(1)**

Add:

Note 2: Paragraph (1)(ba) relates to paragraph 7 of Article 4.2 (Rules of origin and related matters) of the Agreement.

**9 Subparagraph 153YH(2)(b)(i)**

Repeal the subparagraph, substitute:

- (i) the total weight of all the relevant non-originating materials (see subsection (8)) does not exceed 7% of the total weight of the component of the goods that determines the final classification for the goods;

**10 Subsection 153YH(2) (note)**

Omit “paragraphs 6 and 7”, substitute “paragraph 6”.

**11 At the end of section 153YH**

Add:

- (8) In this section:

*relevant non-originating materials*, in relation to goods, means non-originating materials that:

- (a) are used to produce the component of the goods that determines the final classification for the goods; and
- (b) do not satisfy the transformation test (see subsection (7)).

**12 Paragraph 153YL(1)(b)**

After “production”, insert “, or any other operation,”.

## Schedule 4—Providing Customs with information

### *Customs Act 1901*

#### **1 Subsection 213B(1)**

Repeal the subsection, substitute:

- (1) If a person has issued a security identification card to another person in respect of an airport appointed under section 15, an issuing authority in relation to the card must, within 7 days after the card is issued, provide to an authorised officer the required identity information in respect of the other person.

#### **2 Subsection 213B(2)**

Omit “the person who issued the card”, substitute “an issuing authority in relation to the card”.

#### **3 Subsection 213B(2)**

Omit “The person so requested”, substitute “The issuing authority”.

#### **4 After subsection 213B(2)**

Insert:

- (2A) If a person has issued a security identification card to another person in respect of an airport appointed under section 15, an authorised officer may, at any time, in writing, request an issuing authority in relation to the card to provide to the authorised officer, within 7 days after receiving the request, information for the purposes of updating required identity information previously provided in respect of the other person under subsection (1) or this subsection. The issuing authority must comply with the request.
- (2B) If a security identification card expires or is revoked, an issuing authority in relation to the card must notify an authorised officer of the expiry or revocation within 7 days after it occurs.

#### **5 Subsection 213B(3)**

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Omit “subsection (1) or (2)”, substitute “subsection (1), (2), (2A) or (2B)”.

## **6 Subsection 213B(4)**

Insert:

*issuing authority*, in relation to a security identification card, means any of the following:

- (a) the person who issued the card;
- (b) a person who is authorised to perform the functions, or exercise the powers, of the person who issued the card.

## **7 Application**

- (1) The amendment made by item 1 of this Schedule applies in relation to security identification cards that are issued after the commencement of this Schedule.
- (2) Subsection 213(2B) of the *Customs Act 1901* applies in relation to security identification cards that expire, or are revoked, after the commencement of this Schedule.

## Schedule 5—Accredited clients

### *Customs Act 1901*

#### **1 Subsection 4(1)**

Insert:

*accredited client* means a person who has entered into an import information contract.

#### **2 Subsection 4(1)**

Insert:

*accredited client payment day*, for a particular month, means the 15th day of that month.

#### **3 Paragraph 71DB(3)(a)**

After “a person”, insert “(an *accredited client*)”.

#### **4 Subsection 71DC(1)**

Omit “, the person who has entered into the relevant import information contract”, substitute “by or on behalf of an accredited client, the accredited client”.

#### **5 Subsection 71DC(2)**

Repeal the subsection, substitute:

- (2) RCR processing charge in respect of an RCR in respect of goods is payable on the accredited client payment day for the month following the month during which the goods are taken, under section 71DB, to have been entered for home consumption.

#### **6 Subsection 71DD(1)**

Repeal the subsection, substitute:

- (1) Subject to subsection (2), the CEO may enter into a contract (an *import information contract*) with a person for the purposes of:
- (a) enabling RCRs to be made by, or on behalf of, the person;
  - and

- (b) enabling payments of amounts of import duty, accredited client monthly duty estimate, RCR processing charge and periodic declaration processing charge to be made on accredited client payment days.

Note: The CEO may make business rules that a person who wishes to enter into, or is a party to, an import information contract must comply with (see section 273EB).

## **7 At the end of subsection 71DD(4)**

Add:

- ; and (d) how amounts of accredited client monthly duty estimate payable under section 71DGA are to be determined.

## **8 After subsection 71DD(4)**

Insert:

- (4A) Provisions in an import information contract relating to how amounts of accredited client monthly duty estimate payable by a person are to be determined must provide a method of working out the amounts that results in the estimate payable by the person for a particular month being approximately equal to the total amount of import duty that the person will be liable to pay in respect of goods that are:
  - (a) covered by the import information contract; and
  - (b) taken, under section 71DB, to have been entered for home consumption during the month.

## **9 Section 71DF**

Repeal the section, substitute:

### **71DF Periodic declarations by persons who may make RCRs**

- (1) If:
  - (a) an RCR in respect of goods covered by an import information contract is made by the accredited client who entered into the contract or a customs broker nominated in the contract to make communications to Customs on behalf of the accredited client; and
  - (b) the goods are taken, under section 71DB, to have been entered for home consumption;

the accredited client or nominated broker must send electronically to Customs one or more declarations (*periodic declarations*) containing such information in relation to the goods as is set out in an approved statement.

- (2) Any periodic declarations in respect of particular goods that are required to be sent to Customs under subsection (1) must be sent to Customs not later than:
- (a) the first day of the month following the month during which the goods are taken to have been entered for home consumption; or
  - (b) such other day of the month following the month during which the goods are taken to have been entered for home consumption as is prescribed.

### **10 Subsection 71DG(1)**

Omit “, the person who has entered into the relevant import information contract”, substitute “by or on behalf of an accredited client, the accredited client”.

### **11 Subsection 71DG(2)**

Repeal the subsection, substitute:

- (2) Periodic declaration processing charge in respect of a periodic declaration in respect of goods is payable on the accredited client payment day for the month following the month during which the goods are taken, under section 71DB, to have been entered for home consumption.

### **12 At the end of Subdivision C of Division 4 of Part IV**

Add:

#### **71DGA Liability for accredited client monthly duty estimate**

- (1) An accredited client is liable to pay accredited client monthly duty estimate for a month in respect of goods if the goods:
- (a) are covered by an import information contract entered into by the accredited client; and
  - (b) are taken, or are expected to be taken, under section 71DB, to have been entered for home consumption during the month.

- (2) Accredited client monthly duty estimate payable for a particular month is payable on the accredited client payment day for that month.
- (3) The amount of accredited client monthly duty estimate payable by an accredited client for a particular month in respect of goods is worked out in accordance with the import information contract entered into by the accredited client that covers those goods.

### **71DGB Payment of import duty**

- (1) If an accredited client becomes liable to pay import duty on goods that are covered by an import information contract entered into by the accredited client, the import duty is payable on the accredited client payment day for the month following the month during which the goods are taken, under section 71DB, to have been entered for home consumption.

Note: Other charges may be payable at the same time, such as RCR processing charge (see subsection 71DC(2)) and periodic declaration processing charge (see subsection 71DG(2)).

- (2) If an accredited client has paid an amount of accredited client monthly duty estimate for a particular month, then the amount of import duty that is payable by the accredited client in respect of goods taken, under section 71DB, to have been entered for home consumption during the month is reduced by the amount of accredited client monthly duty estimate paid by the accredited client for that month.
- (3) If the amount of accredited client monthly duty estimate that an accredited client has paid for a particular month is greater by a particular amount (the *excess amount*) than the amount of import duty that is payable by the accredited client in respect of goods taken, under section 71DB, to have been entered for home consumption during the month, then the excess amount is to be dealt with by Customs as agreed in writing with the accredited client.

### **13 Subsection 132AA(4) (after table item 1)**

Insert:

1A	subsection 71DGB(1)	payment of duty on certain goods by accredited clients
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## **Schedule 6—Protection from criminal responsibility**

### *Customs Act 1901*

#### **1 Subsections 233(3A) and (3B)**

Repeal the subsections.

#### **2 Subsection 233(6)**

Omit “subsection (3A)”, substitute “subsection 233BABA(1)”.

#### **3 After section 233BAB**

Insert:

#### **233BABA Protection from criminal responsibility**

- (1) An officer of Customs who, in the course of duty, possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.
- (2) A person who:
  - (a) possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods; and
  - (b) in doing so is acting in accordance with written instructions referring to this section issued by an officer of Customs acting in the course of duty;is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

## Schedule 7—Issue of seizure warrant

### *Customs Act 1901*

#### 1 After paragraph 203(3)(d)

Insert:

- (e) whether action might be taken under Division 5 of Part XIII in connection with any such offence;

#### 2 Application

Paragraph 203(3)(e) of the *Customs Act 1901* applies in relation to:

- (a) applications for a warrant made after the commencement of this Schedule; and
- (b) applications for a warrant that were made before the commencement of this Schedule but are being considered by a judicial officer after that commencement.

### *Customs Legislation Amendment Act (No. 1) 2003*

#### 3 Item 2 of Schedule 3

Repeal the item.

Note: Item 2 of Schedule 3 to the *Customs Legislation Amendment Act (No. 1) 2003* purported to insert a paragraph after a paragraph that had already been repealed. The amendment is no longer required as a similar amendment is being made by item 1 of this Schedule.

#### 4 Item 3 of Schedule 3

Repeal the item.

Note: Item 3 of Schedule 3 to the *Customs Legislation Amendment Act (No. 1) 2003* was the application provision for the amendment purported to be made by item 2 of Schedule 3 to that Act.

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*[Minister's second reading speech made in—  
House of Representatives on 29 March 2006  
Senate on 17 August 2006]*

(21/06)