





# **Customs Amendment (Strengthening Border Controls) Act 2008**

**No. 74, 2008**

**An Act to amend the *Customs Act 1901*, and for  
related purposes**

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



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# Customs Amendment (Strengthening Border Controls) Act 2008

No. 74, 2008

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## An Act to amend the *Customs Act 1901*, and for related purposes

[Assented to 12 July 2008]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Customs Amendment (Strengthening  
Border Controls) Act 2008*.

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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.	12 July 2008
2. Schedule 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.	
3. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent.	9 August 2008

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Import controls

### *Customs Act 1901*

#### **1 Subsection 64AB(12)**

Before “Division 5”, insert “Subdivision A of”.

#### **2 Paragraph 71AAAR(2)(a)**

Before “Division 5”, insert “Subdivision A of”.

#### **3 Paragraph 71H(2)(a)**

Before “Division 5”, insert “Subdivision A of”.

#### **4 Subsection 119B(2A)**

Before “Division 5”, insert “Subdivision A of”.

#### **5 Paragraph 203(3)(e)**

Before “Division 5”, insert “Subdivision A of”.

#### **6 Paragraph 205A(d)**

After “return of the goods”, insert “may be made and a claim”.

#### **7 After paragraph 205A(d)**

Insert:

(da) a statement that a claim for the return of the goods cannot be made if:

- (i) an infringement notice for an offence in relation to the importation of the goods has been served with the seizure notice; and
- (ii) the penalty specified in the infringement notice is paid within the period within which, or by the time by which, the penalty is required to be paid; and
- (iii) the infringement notice is not withdrawn;

#### **8 Paragraph 205A(e)**

Omit “made such a claim”, substitute “made a claim for the return of the goods”.

**9 Subsection 205B(1)**

Omit “If”, substitute “Subject to subsection (1A), if”.

**10 After subsection 205B(1)**

Insert:

(1A) A claim may not be made for the return of goods that have been taken to be condemned as forfeited to the Crown under section 243ZK.

**11 After paragraph 205C(b)**

Insert:

(ba) a claim for the return of the goods may be made under section 205B; and

**12 After paragraph 205D(1)(a)**

Insert:

(aa) a claim for the return of the goods may be made under section 205B; and

**13 After paragraph 205D(2)(a)**

Insert:

(aa) the goods have been taken to be condemned as forfeited to the Crown under section 243ZK; or

**14 After Subdivision GA of Division 1 of Part XII**

Insert:

**Subdivision GB—Surrender of prescribed prohibited imports**

**209M Application of Subdivision**

This Subdivision applies to goods that are prohibited imports of a kind prescribed by regulations made for the purposes of this section.

## **209N Surrender of goods**

- (1) An officer of Customs may, instead of seizing goods under section 203B, permit a person to surrender the goods to the officer in a section 234AA place if:
  - (a) the officer has reasonable grounds to believe that the goods:
    - (i) have been imported by the person; and
    - (ii) have not been concealed from Customs by the person; and
    - (iii) are accompanied personal or household effects of the person; and
  - (b) the person has been informed by the officer, in writing, of the available options for dealing with the goods and the consequences of exercising each of those options; and
  - (c) the person has indicated to Customs, in writing, that he or she intends to surrender the goods; and
  - (d) the officer has indicated to the person that the goods may be surrendered to the officer.
- (2) Without limiting the meaning of *concealed* in subparagraph (1)(a)(ii), a person is taken to have concealed goods from Customs if the person was required to give information about the goods to Customs in accordance with section 71, 71K or 71L and the person failed to do so.

## **209P Effect of surrender**

If goods are surrendered under section 209N:

- (a) proceedings cannot be brought for an offence against this Act in relation to the importation of the goods; and
- (b) the goods are taken to be condemned as forfeited to the Crown, such that the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

## **209Q Right of compensation in certain circumstances for goods disposed of or destroyed**

- (1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because the goods have been surrendered

under section 209N, a person may apply to a court of competent jurisdiction under this section for compensation.

- (2) A right to compensation exists if:
  - (a) the goods were not prohibited imports; and
  - (b) the goods were not used or otherwise involved in the commission of an offence; and
  - (c) the person establishes, to the satisfaction of the court, that he or she is the rightful owner of the goods.
- (3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to the market value of the goods at the time of their disposal or destruction.

## **209R Disposal of surrendered goods**

All goods surrendered under section 209N must be dealt with and disposed of in accordance with the directions of the CEO.

## **Subdivision GC—Post-importation permission**

### **209S Definitions**

- (1) In this Subdivision:

*application period*, for goods that have been detained under section 209U, means the period that, in accordance with subparagraph 209X(1)(d)(i), is specified in the detention notice identifying the goods.

*detention notice* means a notice of the kind mentioned in section 209X.

*grant period*, for goods that have been detained under section 209U, means the period that, in accordance with subparagraph 209X(1)(d)(ii), is specified in the detention notice identifying the goods.

- (2) If regulations made under section 50 provide that the importation of goods is prohibited unless a licence, permission, consent, approval or other document (however described) is granted or

given, then the licence, permission, consent, approval or other document is a *required permission to import the goods*.

### 209T Application of Subdivision

This Subdivision applies to goods that are prohibited imports of a kind prescribed by regulations made for the purposes of this section.

### 209U Power to detain goods

- (1) An officer of Customs may, instead of seizing goods under section 203B, detain the goods if:
  - (a) the goods have been imported without one or more required permissions to import the goods having been granted or given; and
  - (b) any other conditions or restrictions specified in regulations made under section 50 in respect of the importation of the goods have been complied with; and
  - (c) the officer has reasonable grounds to believe that:
    - (i) the goods have not been concealed from Customs by the person who imported them; and
    - (ii) no application for any of the required permissions to import the goods has previously been refused; and
  - (d) if the goods are accompanied personal or household effects of the person—the person:
    - (i) has been informed by the officer, in writing, of the available options for dealing with the goods and the consequences of exercising each of those options; and
    - (ii) has indicated to Customs, in writing, that he or she has applied, or intends to apply, for each of the required permissions to import the goods that have not already been granted or given.
- (2) Without limiting the meaning of *concealed* in subparagraph (1)(c)(i), a person is taken to have concealed goods from Customs if the person was required to give information about the goods to Customs in accordance with section 71, 71K or 71L and the person failed to do so.

### **209V Detained goods to be secured**

- (1) In this section:

*approved place*, in relation to goods detained under section 209U, means a place approved by a Collector as a place for the storage of goods of that kind.

- (2) If an officer of Customs detains goods under section 209U, the officer must, as soon as practicable, take those goods to an approved place.

### **209W Requirement to serve detention notice**

- (1) If an officer of Customs detains goods under section 209U, the officer must serve, within 7 days after the day on which the goods were detained, a detention notice on:

- (a) the owner of the goods; or
- (b) if the owner cannot be identified after reasonable inquiry—the person in whose possession or under whose control the goods were when they were detained.

- (2) The notice must be in writing and must be served:

- (a) personally or by post; or
- (b) if no person of the kind referred to in paragraph (1)(a) or (b) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were detained.

- (3) A detention notice may be served on a person who is outside Australia.

### **209X Matters to be dealt with in detention notices**

- (1) A detention notice must set out the following:

- (a) a statement identifying the goods;
- (b) the day on which the goods were detained;
- (c) the ground, or each of the grounds, on which the goods were detained;
- (d) a statement that the goods will be taken to be seized if:
  - (i) written evidence of the making of an application for each required permission to import the goods that was

- not granted, or given, by the time the goods were imported is not provided to Customs by the end of a specified period (the *application period*); or
- (ii) not all of the required permissions to import the goods are granted, or given, by the end of a specified period (the *grant period*); or
  - (iii) during the application period or the grant period, the owner of the goods notifies Customs, in writing, that an application for a required permission to import the goods has been refused;
- (e) a statement that, if the goods are taken to be seized because written evidence is not provided to Customs by the end of the application period, the goods will be taken to be seized on the day after the end of the application period;
  - (f) a statement that, if the goods are taken to be seized because not all of the required permissions to import the goods are granted, or given, by the end of the grant period, the goods will be taken to be seized on the day after the end of the grant period;
  - (g) a statement that, if the goods are taken to be seized because during the application period or the grant period the owner of the goods notifies Customs, in writing, that an application for a required permission to import the goods has been refused, the goods will be taken to be seized on the day after Customs is so notified;
  - (h) the ground, or each of the grounds, on which the goods will be taken to be seized;
  - (i) a statement that, if the goods are taken to be seized and a claim for the return of the goods has not already been made, and is not made within 30 days after the day the goods are taken to be seized, the goods will be taken to be condemned as forfeited to the Crown;
  - (j) if the notice is to be served in a foreign country—a statement that the person served, if that person has not yet made a claim for the return of the goods, may not make such a claim unless he or she has first appointed in writing an agent in Australia with authority to accept service of documents, including process in any proceedings arising out of the matter.
- (2) The application period specified in a detention notice under subparagraph (1)(d)(i) must be the period that:
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- (a) starts on the day that the notice is served; and
  - (b) ends 30 days, or such other period as is prescribed by the regulations, after that day.
- (3) The grant period specified in a detention notice under subparagraph (1)(d)(ii) must be the period that:
- (a) starts on the day written evidence of the making of an application for a required permission to import the goods is first provided to Customs; and
  - (b) ends 30 days, or such other period as is prescribed by the regulations, after the first day on which written evidence of the making of an application for all of the required permissions to import the goods that were not granted, or given, by the time the goods were imported has been provided to Customs.

### **209Y Effect of detaining goods**

While goods are detained under section 209U:

- (a) an application for a required permission to import the goods may be made; and
  - (b) a required permission to import the goods may be granted or given;
- despite the goods having already been imported.

### **209Z Evidence not provided or permission not granted or given**

- (1) This section applies if:
- (a) goods have been detained under section 209U; and
  - (b) a detention notice identifying the goods has been served; and
  - (c) any of the following apply:
    - (i) written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported has not been provided to Customs by the end of the application period for the goods;
    - (ii) not all of the required permissions to import the goods have been granted, or given, by the end of the grant period for the goods;

- (iii) during the application period, or the grant period, for the goods, the owner of the goods has notified Customs, in writing, that an application for a required permission to import the goods has been refused.
- (2) If the goods are at an approved place within the meaning of section 209V, they cease to be detained under section 209U and are taken to be seized under section 203B on:
- (a) if, during the application period, the owner of the goods notified Customs, in writing, that an application for a required permission to import the goods was refused—the day after Customs was so notified; or
  - (b) if paragraph (a) does not apply and written evidence of the making of an application for each required permission to import the goods that was not granted, or given, by the time the goods were imported was not provided to Customs by the end of the application period—the day after the end of the application period; or
  - (c) if paragraphs (a) and (b) do not apply and, during the grant period, the owner of the goods notified Customs, in writing, that an application for a required permission to import the goods was refused—the day after Customs was so notified; or
  - (d) if paragraphs (a), (b) and (c) do not apply and not all of the required permissions to import the goods were granted, or given, by the end of the grant period—the day after the end of the grant period.
- (3) The detention notice is also taken to be a seizure notice that:
- (a) is in accordance with section 205A; and
  - (b) was served:
    - (i) under section 205 by the responsible person; and
    - (ii) on the day the goods are taken to be seized.

### **209ZA Evidence provided and permission granted or given**

- (1) This section applies if:
- (a) goods have been detained under section 209U; and
  - (b) a detention notice identifying the goods has been served; and
  - (c) written evidence of the making of an application for each required permission to import the goods that was not granted,
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or given, by the time the goods were imported has been provided to Customs by the end of the application period for the goods; and

- (d) all of the required permissions to import the goods have been granted, or given, on or before the end of the grant period for the goods.
- (2) An officer of Customs must return the goods to the owner.
- (3) At the time the last required permission to import the goods is granted or given, the goods cease to be prohibited imports.
- (4) Proceedings cannot be brought for an offence against this Act in relation to the importation of the goods.

### **209ZB Service by post**

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a detention notice under this Subdivision on a person, such a notice posted as a letter addressed to that person at the last address of that person known to the sender is taken to be properly addressed.

### **209ZC Liability for detention of goods**

Neither the Commonwealth nor an officer or other person is under any liability in relation to the detention of any goods under this Subdivision for which there was reasonable cause.

### **15 Subparagraph 243T(4)(c)(i)**

Before “Division 5”, insert “Subdivision A of”.

### **16 Subparagraph 243T(4)(d)(i)**

Before “Division 5”, insert “Subdivision A of”.

### **17 Paragraph 243T(4A)(b)**

Before “Division 5”, insert “Subdivision A of”.

### **18 Paragraph 243U(4A)(b)**

Before “Division 5”, insert “Subdivision A of”.

### **19 Before section 243X**

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Insert:

**Subdivision A—Penalties in lieu of prosecution for offences relating to false statements, cargo reporting, movement of goods etc.**

**20 Subsection 243X(1)**

Omit “Division”, substitute “Subdivision”.

Note: The heading to section 243X is altered by omitting “**Division**” and substituting “**Subdivision**”.

**21 Subsection 243XA(1)**

Omit “Division” (wherever occurring), substitute “Subdivision”.

**22 Subsection 243Y(1)**

Omit “Division”, substitute “Subdivision”.

**23 Subsection 243Y(2)**

After “infringement notice”, insert “served under this Subdivision”.

**24 Subsection 243Y(3)**

After “infringement notice”, insert “served under this Subdivision”.

**25 Subsection 243Z(1)**

After “infringement notice” (first occurring), insert “served under this Subdivision”.

**26 Paragraph 243Z(2)(a)**

Omit “Division”, substitute “Subdivision”.

**27 Subsection 243Z(3)**

After “infringement notice”, insert “served under this Subdivision”.

**28 Subsection 243ZA(1)**

After “served”, insert “under this Subdivision”.

**29 Subsection 243ZA(2)**

After “a person”, insert “under this Subdivision”.

**30 Subsection 243ZA(3)**

After “infringement notice” (first occurring), insert “served under this Subdivision”.

**31 Paragraph 243ZA(3)(c)**

After “infringement notice”, insert “under this Subdivision”.

**32 Paragraph 243ZB(1)(a)**

After “a person”, insert “under this Subdivision”.

**33 Section 243ZC**

Omit “Division”, substitute “Subdivision”.

**34 Section 243ZD**

Omit “Division”, substitute “Subdivision”.

**35 Subsection 243ZE(3)**

Omit “Division” (wherever occurring), substitute “Subdivision”.

**36 At the end of Division 5 of Part XIII**

Add:

**Subdivision B—Penalties in lieu of prosecution for offences relating to prohibited imports, restricted areas etc.**

**243ZF Application of Subdivision**

This Subdivision applies to an offence against, or an offence for a contravention of:

- (a) paragraph 233(1)(b), if the offence relates to goods that are prohibited imports of a kind prescribed by regulations made for the purposes of this section; or
- (b) subsection 234A(1); or
- (c) subsection 234AB(3).

### **243ZG Guidelines for serving infringement notices**

The CEO must, by legislative instrument, make guidelines in respect of the administration of this Subdivision to which he or she must have regard when exercising powers under this Subdivision.

### **243ZH When an infringement notice can be served**

- (1) If the CEO has reasonable grounds to believe that:
  - (a) a person has committed an offence; and
  - (b) for an offence covered by paragraph 243ZF(a)—the person concealed, from Customs, the goods to which the offence relates;then the CEO may cause an infringement notice to be served on the person in accordance with this Subdivision.
- (2) An infringement notice for an offence covered by paragraph 243ZF(a) does not have any effect unless it is served on the person:
  - (a) if the person to be served is in a section 234AA place—before the person leaves the section 234AA place for the first time after the alleged offence occurs; or
  - (b) if the person to be served is not in a section 234AA place and the goods to which the offence relates have been seized under section 203B—with the seizure notice served under section 205 in respect of the goods.
- (3) An infringement notice for an offence covered by paragraph 243ZF(b) or (c) does not have any effect unless it is served within one year after the day on which the offence is alleged to have been committed.
- (4) Without limiting the meaning of *concealed* in paragraph (1)(b), a person is taken to have concealed goods from Customs if the person was required to give information about the goods to Customs in accordance with section 71, 71K or 71L and the person failed to do so.

### **243ZI Matters to be included in an infringement notice**

- (1) An infringement notice served under this Subdivision must:
  - (a) state the name of the person on whom it is to be served; and
  - (b) state that it is being served on behalf of the CEO; and

- (c) state:
    - (i) the nature of the alleged offence; and
    - (ii) the time (if known) at which, the date on which, and the place at which, the offence is alleged to have been committed; and
    - (iii) the maximum penalty that a court could impose for the alleged offence; and
  - (d) specify that a penalty of 2 penalty units is payable under the notice in respect of the alleged offence; and
  - (e) state that, if the person on whom the notice is served does not wish the matter to be dealt with by a court, the person may pay to the CEO the amount of the penalty specified in the notice:
    - (i) if the notice is served on the person in a section 234AA place and relates to an alleged offence covered by paragraph 243ZF(a)—before the person leaves the place for the first time after the notice is served; or
    - (ii) in any other case—within 28 days after the date of service of the notice; and
  - (f) state that compliance with the notice is not an admission of guilt or liability; and
  - (g) if the notice relates to an alleged offence covered by paragraph 243ZF(a)—state that, if the penalty specified in the notice is paid and the notice is not withdrawn, the goods to which the offence relates will be taken to be condemned as forfeited to the Crown such that:
    - (i) the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question; and
    - (ii) a claim for the return of the goods cannot be made; and
    - (iii) if the penalty is paid after a claim for the return of the goods is made, the goods cannot be returned; and
  - (h) state that the person may make written representations to the CEO seeking the withdrawal of the notice.
- (2) An infringement notice served under this Subdivision may contain any other matters that the CEO considers necessary.

### **243ZJ Withdrawal of infringement notice**

- (1) A person on whom an infringement notice has been served under this Subdivision may make written representations to the CEO seeking the withdrawal of the notice.
- (2) The CEO may withdraw an infringement notice served on a person under this Subdivision (whether or not the person has made representations seeking the withdrawal) by causing written notice of the withdrawal to be served on the person within the period within which, or by the time by which, the penalty specified in the infringement notice is required to be paid.
- (3) The matters to which the CEO may have regard in deciding whether or not to withdraw an infringement notice served under this Subdivision include, but are not limited to, the following:
  - (a) whether the person has previously been convicted of an offence for a contravention of this Act;
  - (b) the circumstances in which the offence specified in the notice is alleged to have been committed;
  - (c) whether the person has previously been served with an infringement notice under this Subdivision in respect of which the person paid the penalty specified in the notice;
  - (d) any written representations made by the person.
- (4) If:
  - (a) the person pays the penalty specified in an infringement notice served under this Subdivision within the period within which, or by the time by which, the penalty is required to be paid; and
  - (b) the notice is withdrawn after the person pays the penalty;the CEO must refund to the person an amount equal to the amount paid.

### **243ZK What happens if the infringement notice penalty is paid**

- (1) This section applies if:
    - (a) an infringement notice is served on a person under this Subdivision; and
    - (b) the person pays the penalty specified in the notice before the end of the period, or by the time, referred to in paragraph 243ZI(1)(e); and
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- (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the offence specified in the notice is taken to be discharged.
- (3) Further proceedings cannot be taken against the person for the offence.
- (4) The person is not regarded as having been convicted of the offence.
- (5) If the offence specified in the notice is an offence covered by paragraph 243ZF(a), the goods are taken to be condemned as forfeited to the Crown, such that the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

Note: A right to compensation exists in certain circumstances for goods that are disposed of or destroyed (see section 243ZN).

**243ZL More than one infringement notice may not be served for the same offence**

This Subdivision does not permit the service of more than one infringement notice on a person for the same offence.

**243ZM Infringement notice not required to be served**

This Subdivision does not:

- (a) require an infringement notice to be served on a person in relation to an offence; or
- (b) affect the liability of a person to be prosecuted for an offence if:
  - (i) an infringement notice is not served on the person in relation to the offence; or
  - (ii) an infringement notice served on the person in relation to the offence has been withdrawn; or
- (c) affect the liability of a person to be prosecuted for an offence if the person does not comply with an infringement notice served on the person in relation to the offence; or
- (d) limit the amount of the penalty that may be imposed by a court on a person convicted of an offence.

**243ZN Right of compensation in certain circumstances for goods disposed of or destroyed**

- (1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown under section 243ZK because the penalty specified in an infringement notice was paid, a person may apply to a court of competent jurisdiction under this section for compensation.
- (2) A right to compensation exists if:
  - (a) the goods were not prohibited imports; and
  - (b) the goods were not used or otherwise involved in the commission of an offence; and
  - (c) the person establishes, to the satisfaction of the court, that he or she is the rightful owner of the goods.
- (3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to the market value of the goods at the time of their disposal or destruction.

**243ZO Disposal of forfeited goods**

All goods that are condemned as forfeited to the Crown under this Subdivision must be dealt with and disposed of in accordance with the directions of the CEO.

**37 Application**

- (1) The amendment made by item 14 of this Schedule applies in relation to goods imported into Australia on or after the commencement of this item.
- (2) The amendment made by item 36 of this Schedule applies in relation to offences alleged to have been committed on or after the commencement of this item.

## Schedule 2—Search powers on certain ships and aircraft

### *Customs Act 1901*

#### **1 Subsection 4(1) (definition of *Frisk search*)**

Repeal the definition, substitute:

*frisk search* means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

#### **2 Subsection 183UA(1) (definition of *frisk search*)**

Repeal the definition.

#### **3 After paragraph 185(2)(ca)**

Insert:

- (cb) take possession of any goods (other than narcotic goods) found on the ship or aircraft, and any documents produced under paragraph (c) by a person found on the ship or aircraft, if the officer has reasonable grounds to believe that the goods or documents may afford evidence of the commission of a relevant offence; and

#### **4 At the end of subsection 185(2)**

Add:

Note: Section 185AA gives power to search a person found on a ship or aircraft that has been boarded under paragraph 185(2)(a).

#### **5 At the end of subsection 185(3AA)**

Add:

Note: Section 185AA gives power to search a person placed on a ship or aircraft under subsection 185(3AA).

#### **6 At the end of section 185**

Add:

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- (7) For the purposes of paragraph (2)(cb), goods found on a ship or aircraft, or documents produced by a person found on a ship or aircraft, may afford evidence of the commission of a relevant offence only if:
- (a) in a case where the ship is in Australia—the goods or documents may afford evidence of the commission of an offence, either in or outside Australia, against this Act, section 72.13 or Division 307 of the *Criminal Code* or an Act prescribed by the regulations; or
  - (b) in a case where the ship is outside Australia—the goods or documents may afford evidence of the commission of an offence:
    - (i) in Australia against this Act, section 72.13 or Division 307 of the *Criminal Code* or an Act prescribed by the regulations; or
    - (ii) in Australia's exclusive economic zone against an Act prescribed by the regulations; or
  - (c) in a case where the aircraft is in Australia—the goods or documents may afford evidence of the commission of an offence, either in or outside Australia, against this Act or section 72.13 or Division 307 of the *Criminal Code*.

## **7 At the end of subsection 185A(2)**

Add:

Note: Section 185AA gives power to search a person found on a ship that has been boarded under paragraph 185A(2)(a).

## **8 Subsections 185AA(1), (2) and (3)**

Repeal the subsections, substitute:

*People found on ships and aircraft boarded under section 185*

- (1) A person may be searched for the purposes set out in subsection (1A) if:
- (a) the person is found on a ship or aircraft that has been boarded under paragraph 185(2)(a); or
  - (b) the person has been placed on a ship or aircraft under subsection 185(3AA).
- (1A) If a person may be searched for the purposes set out in this subsection, the person, the person's clothing and any property

under the immediate control of the person, may, without warrant, be searched to find out whether the person is carrying, or there is hidden on the person, in the clothing or in the property:

- (a) a weapon or other thing capable of being used to inflict bodily injury or to help the person escape; or
- (b) a document, or other thing, that the officer or other person has reasonable grounds to believe may afford evidence of the commission of a relevant offence.

Note: Division 1B of this Part provides search powers in respect of certain persons suspected of unlawfully carrying prohibited goods.

(1B) For the purposes of subsection (1A), a document, or other thing, carried or hidden on a person, in a person's clothing or in a person's property, may afford evidence of the commission of a relevant offence only if:

- (a) in a case where the person is found on a ship in Australia—the document or other thing may afford evidence of the commission of an offence, either in or outside Australia, against this Act, section 72.13 or Division 307 of the *Criminal Code* or an Act prescribed by the regulations; or
- (b) in a case where the person is found on a ship outside Australia—the document or other thing may afford evidence of the commission of an offence:
  - (i) in Australia against this Act, section 72.13 or Division 307 of the *Criminal Code* or an Act prescribed by the regulations; or
  - (ii) in Australia's exclusive economic zone against an Act prescribed by the regulations; or
- (c) in a case where the person is found on an aircraft in Australia—the document or other thing may afford evidence of the commission of an offence, either in or outside Australia, against this Act or section 72.13 or Division 307 of the *Criminal Code*.

*People found on ships boarded under section 185A*

- (2) A person may be searched for the purpose set out in subsection (2A) if the person is found on a ship that has been boarded under paragraph 185A(2)(a).
- (2A) If a person may be searched for the purpose set out in this subsection, the person, the person's clothing and any property

under the immediate control of the person, may, without warrant, be searched to find out whether the person is carrying, or there is hidden on the person, in the clothing or in the property a weapon or other thing capable of being used to inflict bodily injury.

*Power to examine things found*

- (3) If a search is conducted under this section, an officer may examine any thing found in the course of the search (including, if the thing is a document, by reading the document directly or with the use of an electronic device).
- (3A) In exercising the power to examine things, an officer may do, or arrange for another officer or other person having the necessary experience to do, whatever is reasonably necessary to permit the examination of the things.
- (3B) However, when examining a thing found in the course of a search, an officer must not damage the thing by forcing it, or a part of it, open unless:
  - (a) the person being searched has been given a reasonable opportunity to open the thing or part; or
  - (b) it is not reasonably practicable to give the person such an opportunity.

*Powers to take possession and retain things found*

- (3C) If, in the course of a search for a purpose set out in subsection (1A) or (2A), a weapon, document or other thing referred to in that subsection is found, then:
  - (a) in the case of a search conducted by an officer—an officer may take possession of the weapon, document or thing; and
  - (b) in the case of a search conducted by a person who is not an officer—the person must take possession of the weapon, document or thing and give it to an officer.

Note 1: The following heading to subsection 185AA(4) is inserted “*Limit on removal of clothing during search*”.

Note 2: The following heading to subsection 185AA(5) is inserted “*Limit on who may conduct search*”.

## **9 Subsection 185AA(6)**

Repeal the subsection, substitute:

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*Protection if officers etc. act in good faith*

- (6) An action or proceeding, whether civil or criminal, does not lie against an officer who conducts, or a person who (at the request of an officer) conducts, a search under this section if the officer, or person, acts in good faith and does not contravene subsection (7).

**10 After subsection 185AA(7)**

Insert:

*Evidence may be used in prosecutions etc.*

- (7A) To avoid doubt, if, when exercising powers under this section, an officer or other person who conducts a search under this section obtains evidence of the commission of an offence against a law of the Commonwealth, a State or a Territory, then that evidence may be used, or given to another body for use, in:

- (a) investigating the offence; or
- (b) proceedings for the prosecution for the offence.

However, this subsection does not override or limit the operation of a law of a State about the evidence that may be used in proceedings for an offence against a law of that State.

Note: The following heading to subsection 185AA(7) is inserted "*Limit on use of force to conduct search*".

**11 Subsection 185AA(8)**

Repeal the subsection, substitute:

*Definitions*

- (8) In this section:

*officer* means any of the following:

- (a) an officer within the meaning of subsection 185(5);
- (b) an officer within the meaning of subsection 185A(7).

**12 At the end of section 185AA**

Add:

*References to person found on a ship or aircraft*

- (9) In this section, a reference to a person found on a ship or aircraft includes a reference to a person suspected on reasonable grounds by an officer of having landed from, or left, the ship or aircraft.

**13 After section 185AA**

Insert:

**185AAA Retention of relevant items taken possession of under paragraph 185(2)(cb) or subsection 185AA(3C)**

- (1) Subject to any contrary order of a court, Customs must return a relevant item if:
- (a) the reason for the relevant item's retention by Customs no longer exists or it is decided that the relevant item is not to be used in evidence; or
  - (b) the period of 60 days after the relevant item was taken possession of ends;
- whichever is the earlier, unless the relevant item is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) If Customs is required to return a relevant item under subsection (1), Customs must take reasonable steps to return it to the person from whom it was taken or to the owner if that person is not entitled to possess it, unless:
- (a) proceedings in respect of which the relevant item may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) Customs may retain the relevant item because of an order under subsection (4); or
  - (c) Customs is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the relevant item.
- (3) If proceedings in respect of which the relevant item may afford evidence have not commenced:
- (a) before the end of 60 days after it was taken possession of; or

(b) before the end of a period previously specified in an order of a magistrate under subsection (4);

Customs may apply to a magistrate for an order that Customs may retain the relevant item for a further period.

- (4) If the magistrate is satisfied that it is necessary for Customs to continue to retain the relevant item:
- (a) for the purposes of an investigation as to whether an offence has been committed; or
  - (b) to enable evidence of an offence to be secured for the purposes of a prosecution;
- the magistrate may order that Customs may retain the relevant item for a period specified in the order.
- (5) Before making the application, Customs must:
- (a) take reasonable steps to discover who has an interest in the retention of the relevant item; and
  - (b) if it is practicable to do so, notify each person who Customs considers has such an interest.

(6) In this section:

*relevant item* means:

- (a) goods taken possession of under paragraph 185(2)(cb); or
- (b) a document taken possession of under paragraph 185(2)(cb) or subsection 185AA(3C); or
- (c) a weapon taken possession of under subsection 185AA(3C); or
- (d) any other thing (other than narcotic goods) taken possession of under subsection 185AA(3C).

#### **14 Subsection 219L(1B)**

Repeal the subsection.

#### **15 Subsection 219L(1C)**

Repeal the subsection.

#### **16 Subsection 219L(2)**

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

#### **17 Before subsection 219M(1)**

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Insert:

- (1A) If a person is detained under section 219L, an officer of Customs may:
- (a) carry out a frisk search of the person to determine whether the person is unlawfully carrying prohibited goods; and
  - (b) recover any prohibited goods found in the course of the frisk search.

**18 Subsection 219M(4)**

Repeal the subsection.

**19 Section 219NA**

Repeal the section.

**20 Paragraph 219ZE(1)(ca)**

Omit “in the circumstances referred to in subsection 219L(1) or (1A)”.

**21 Paragraph 219ZE(1)(cb)**

Repeal the paragraph.

**22 Application**

The amendments made by items 3, 6, 8, 9, 10, 11 and 12 of this Schedule apply in relation to ships and aircraft that are boarded on or after the commencement of this item.

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*[Minister's second reading speech made in—  
House of Representatives on 20 March 2008  
Senate on 16 June 2008]*

(53/08)