





# **Customs Amendment Act 2015**

**No. 4, 2015**

**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 Act 2015

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

[Assented to 25 February 2015]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Customs Amendment Act 2015*.

### **2 Commencement**

This Act commences on the day after this Act receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Customs Act 1901*

#### **1 Subsection 4(1) (at the end of the definition of *authorised officer*)**

Add:

Note: See also subsection (1A).

#### **2 Subsection 4(1) (after paragraph (a) of the definition of *designated place*)**

Insert:

- (aa) a place to which a ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1), while that ship or aircraft remains at that place; or

#### **3 Subsection 4(1) (paragraph (f) of the definition of *designated place*)**

After “paragraph (a),”, insert “(aa),”.

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

Insert:

(1A) If:

- (a) the CEO gives an authorisation under the definition of *authorised officer* in subsection (1); and
- (b) the authorisation is for officers of Customs from time to time holding, occupying or performing the duties of specified offices or positions to exercise the powers or perform the functions of an authorised officer under specified sections of this Act;

then the authorisation extends to such an office or position that comes into existence after the authorisation is given.

#### **5 Section 31**

Repeal the section, substitute:

### **31 Goods on ships and aircraft subject to Customs control**

All goods on board any ship or aircraft from a place outside Australia are subject to the control of the Customs while the ship or aircraft:

- (a) is within the limits of any port or airport in Australia; or
- (b) is at a place to which the ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1); or
- (c) is at a place that is the subject of a permission under subsection 58(2).

### **6 Subsection 64AA(3)**

Omit “The report”, substitute “Subject to subsection (3A), the report”.

### **7 After subsection 64AA(3)**

Insert:

- (3A) The CEO may, by legislative instrument, determine that reports for specified ships, or specified aircraft, in specified circumstances must be made before a specified time or before the occurrence of a specified event. Such reports must be made in accordance with the instrument.

### **8 Subsections 64AA(4) and (5)**

Omit “the report of the arrival of the ship or aircraft”, substitute “a report mentioned in subsection (3) or (3A)”.

### **9 Subsection 64AAA(3)**

Omit “The report”, substitute “Subject to subsection (3A), the report”.

### **10 After subsection 64AAA(3)**

Insert:

- (3A) The CEO may, by legislative instrument, determine that reports for specified ships, or specified aircraft, in specified circumstances must be made before a specified time or before the occurrence of a specified event. Such reports must be made in accordance with the instrument.

**11 Subsection 64AAA(4)**

Omit “The report”, substitute “A report mentioned in subsection (3) or (3A)”.

**12 At the end of subsection 118(2) (before the note)**

Add:

Note 1: See subsection (8) for application requirements.

**13 Subsection 118(2) (note)**

Omit “Note”, substitute “Note 2”.

**14 Subsection 118(3)**

Repeal the subsection.

**15 At the end of subsection 118(5)**

Add:

Note 1: See subsection (8) for application requirements.

Note 2: Section 118A sets out the requirements for granting a Certificate of Clearance in respect of certain ships or aircraft.

**16 At the end of section 118**

Add:

(8) An application under subsection (2) or (5) must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

(9) The CEO may approve different forms for applications to be made under subsection (2) or (5) in different circumstances, by different kinds of masters of ships or pilots of aircraft or in respect of different kinds of ships or aircraft.

**17 Subsection 127(3)**

Omit “consented to”, substitute “approved”.

## **18 At the end of section 127**

Add:

- (4) An approval under subsection (3) may only be given on application under subsection (5).
- (5) The master or owner of a ship, or the pilot or owner of an aircraft, may apply for an approval under subsection (3) in respect of the ship or aircraft.
- (6) An application under subsection (5) must:
  - (a) be in writing; and
  - (b) be in an approved form; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form.
- (7) The CEO may approve different forms for applications to be made under subsection (5) in different circumstances, by different kinds of masters or owners of ships or pilots or owners of aircraft or in respect of different kinds of ships or aircraft.
- (8) An approval given to a person under subsection (3) is subject to any conditions specified in the approval, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue of the Customs or for the purpose of ensuring compliance with the Customs Acts.
- (9) A person commits an offence of strict liability if:
  - (a) the person is the holder of an approval under subsection (3); and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission breaches a condition of the approval.

Penalty for contravention of this subsection: 60 penalty units.

## **19 Section 128**

Omit “consent”, substitute “approval”.

## **20 At the end of subsection 129(1)**

Add:

Note: See subsection (5) for application requirements.

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**21 At the end of section 129**

Add:

- (5) An application under subsection (1) must:
  - (a) be in writing; and
  - (b) be in an approved form; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form.
- (6) The CEO may approve different forms for applications to be made under subsection (1) in different circumstances, by different kinds of masters or owners of ships or pilots or owners of aircraft or in respect of different kinds of ships or aircraft.

**22 After subsection 175(3C)**

Insert:

- (3D) A permission under subsection (3C) may only be given on application under subsection (3E).
- (3E) The owner or master of a coastal ship, or the owner or pilot of a coastal aircraft, may apply for a permission under subsection (3C).
- (3F) An application under subsection (3E) must:
  - (a) be in writing; and
  - (b) be in an approved form; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form.
- (3G) The CEO may approve different forms for applications to be made under subsection (3E) in different circumstances, by different kinds of owners or masters of coastal ships or owners or pilots of coastal aircraft or in respect of different kinds of coastal ships or coastal aircraft.

**23 Subsection 175(4)**

Omit “referred to in”, substitute “under”.

**24 Subsections 175(5) and (7)**

Omit “under subsection (4)”.

**25 Subsection 183UA(1) (after paragraph (a) of the definition of *Customs place*)**

Insert:

- (aaa) a place to which a ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1), while that ship or aircraft remains at that place; or

**26 Subsection 183UA(1) (paragraph (i) of the definition of *Customs place*)**

After “(a),” insert “(aaa),”.

**27 After section 186**

Insert:

**186AA General powers of examination of goods loaded onto or unloaded from ships or aircraft**

- (1) This section applies in relation to the following:
  - (a) a ship or aircraft in respect of a voyage or flight to a place in Australia from a place outside Australia;
  - (b) a ship or aircraft in respect of a voyage or flight to a place outside Australia from a place in Australia.

*Goods to be loaded onto the ship or aircraft*

- (2) If:
  - (a) an officer has reason to believe that goods are to be loaded onto the ship or aircraft at an examinable place; and
  - (b) the goods are to be unloaded at another examinable place on the same voyage or flight;then:
  - (c) any officer may, subject to subsections (5) and (6), examine the goods while the goods are at the examinable place mentioned in paragraph (a); and
  - (d) the goods are subject to the control of the Customs while the goods are being so examined.

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*Goods unloaded from the ship or aircraft*

- (3) If:
- (a) goods are loaded onto the ship or aircraft at an examinable place; and
  - (b) the goods are unloaded from the ship or aircraft at another examinable place on the same voyage or flight;
- then:
- (c) any officer may, subject to subsections (5) and (6), examine the goods while the goods are at the examinable place mentioned in paragraph (b); and
  - (d) the goods are subject to the control of the Customs while the goods are being so examined.

*Rules relating to examination of goods*

- (4) The expense of an examination referred to in subsection (2) or (3), including the cost of removal to the place of examination, is to be borne by the owner of the goods.
- (5) In the exercise of the power to examine goods, 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 goods.
- (6) Without limiting subsection (5), examples of what may be done in the examination of goods include the following:
- (a) opening any package in which goods are or may be contained;
  - (b) using a device, such as an X-ray machine or ion scanning equipment, on the goods;
  - (c) testing or analysing the goods;
  - (d) measuring or counting the goods;
  - (e) if the goods are a document—reading the document either directly or with the use of an electronic device;
  - (f) using dogs to assist in examining the goods.

*No limit on other provisions*

- (7) This section does not:
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- (a) limit the application of any other provision of this Act that provides for goods to be subject to the control of the Customs; and
- (b) limit the application of any other provision of this Act that provides for the examination of goods.

*Definition*

- (8) In this section:

*examinable place* means the following:

- (a) a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight);
- (b) a place to which a ship or aircraft has been brought because of stress of weather or other reasonable cause as mentioned in subsection 58(1);
- (c) a place that is the subject of a permission under subsection 58(2).

**28 Paragraph 186A(1)(a)**

After “section 186”, insert “or 186AA”.

**29 Paragraphs 205A(d) and (da)**

Repeal the paragraphs, substitute:

- (d) the effect of sections 205B and 205C; and

**30 Subsection 205B(1)**

Omit “subsection (1A)”, substitute “subsections (1A) and (1B)”.

**31 After subsection 205B(1A)**

Insert:

- (1B) Subsection (1A) ceases to apply in relation to the goods if subsection 243Y(1) ceases to apply in relation to the goods because of the operation of subsection 243Y(4).

**32 Section 205C**

Before “If”, insert “(1)”.

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**33 Paragraph 205C(ba)**

Repeal the paragraph.

**34 Paragraph 205C(c)**

Omit “return of the goods”, substitute “the return of the goods and subsection 205B(1A) has not applied in relation to the goods”.

**35 At the end of section 205C**

Add:

(2) If:

- (a) goods have been seized under a seizure warrant or under subsection 203B(2) or (2A), 203C(2), 203CA(3) or 203CB(2); and
- (b) a seizure notice has been served; and
- (c) an infringement notice for an offence in relation to the importation of the goods has been given; and
- (d) 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
- (e) the infringement notice is withdrawn and, as a result, subsection 205B(1A) ceases to apply in relation to the goods; and
- (f) at the end of 30 days after the day notice of the withdrawal of the infringement notice is given to the person, no claim has been made for the return of the goods;

the goods are taken to be condemned as forfeited to the Crown.

**36 Paragraph 205D(1)(b)**

Omit “not later than 30 days after the day the seizure notice was served”, substitute “before the end of the 30-day period referred to in paragraph 205C(1)(c) or (2)(f)”.

**37 After subsection 205D(2)**

Insert:

- (2A) Paragraph (2)(aa) ceases to apply in relation to the goods if subsection 243Y(1) ceases to apply in relation to the goods because of the operation of subsection 243Y(4).

**38 Subparagraph 205F(2)(c)(ii)**

Omit “not later than 30 days after the day the seizure notice was served”, substitute “before the end of the 30-day period referred to in paragraph 205C(1)(c) or (2)(f) (as the case may be)”.

**39 Paragraph 243Y(1)(b)**

Omit “goods; and”, substitute “goods.”.

**40 Paragraph 243Y(1)(c)**

Repeal the paragraph.

**41 At the end of section 243Y**

Add:

- (4) Subsections (1) and (2) cease to apply if the infringement notice is withdrawn.

**42 Application and transitional provisions**

- (1) The amendment made by item 4 applies in relation to:
  - (a) an authorisation given on or after the commencement of that item; and
  - (b) an authorisation given before the commencement of that item that was in force immediately before that commencement.
- (2) Paragraph 31(b) of the *Customs Act 1901*, as amended by this Act, applies in relation to a ship or aircraft that is at a place on or after the commencement of this item, whether the ship or aircraft is brought to that place before, on or after that commencement.
- (3) Paragraph 31(c) of the *Customs Act 1901*, as amended by this Act, applies in relation to a ship or aircraft that is at a place on or after the commencement of this item, whether the ship or aircraft is brought to that place, and whether the permission is given, before, on or after that commencement.
- (4) The amendments made by items 12 to 16 apply in relation to an application made under subsection 118(2) or (5) of the *Customs Act 1901* on or after the commencement of those items.

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- (5) The amendments made by items 17 and 18 apply in relation to an approval given under subsection 127(3) of the *Customs Act 1901* on or after the commencement of those items.
  - (6) A consent in force under subsection 127(3) of the *Customs Act 1901* immediately before the commencement of this item has effect on and after that commencement as if it were an approval in force under that subsection as amended by this Act.
  - (7) The amendment made by item 21 applies in relation to an application made under subsection 129(1) of the *Customs Act 1901* on or after the commencement of that item.
  - (8) The amendment made by item 22 applies in relation to a permission given under subsection 175(3C) of the *Customs Act 1901* on or after the commencement of that item.
  - (9) The amendment made by item 27 applies in relation to a voyage or flight that begins on or after the commencement of that item.
  - (10) The amendments made by items 29, 33 and 34 apply in relation to a seizure notice served on or after the commencement of those items.
  - (11) The amendments made by items 30, 31, 37 and 41 apply in relation to the withdrawal of an infringement notice on or after the commencement of those items, whether the infringement notice is given before, on or after that commencement.
  - (12) The amendment made by item 35 applies in relation to the withdrawal of an infringement notice on or after the commencement of that item, whether the infringement notice is given, and whether the seizure notice is served, before, on or after that commencement.
  - (13) The amendment made by item 36 applies in relation to a claim for the return of goods that is made on or after the commencement of that item.
  - (14) The amendment made by item 38 applies in relation to an application under subsection 205F(1) of the *Customs Act 1901* that is made on or after the commencement of that item.
  - (15) The amendments made by items 39 and 40 apply in relation to a penalty that is paid on or after the commencement of those items, whether the infringement notice is given before, on or after that commencement.

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*[Minister's second reading speech made in—  
House of Representatives on 17 July 2014  
Senate on 27 November 2014]*

(160/14)

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