

## Customs Act 1901 extracts

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### 50 Prohibition of the importation of goods

- (1) The Governor-General may, by regulation, prohibit the importation of goods into Australia.
- (2) The power conferred by the last preceding subsection may be exercised:
  - (a) by prohibiting the importation of goods absolutely;
  - (aa) by prohibiting the importation of goods in specified circumstances;
  - (b) by prohibiting the importation of goods from a specified place; or
  - (c) by prohibiting the importation of goods unless specified conditions or restrictions are complied with.
- (3) Without limiting the generality of paragraph (2)(c), the regulations:
  - (a) may provide that the importation of the goods is prohibited unless a licence, permission, consent or approval to import the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations made under this Act or the *Therapeutic Goods Act 1989*; and
  - (b) in relation to licences or permissions granted as prescribed by regulations made under this Act—may make provision for and in relation to:
    - (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;
    - (ii) the granting of a licence or permission to import goods subject to compliance with conditions or requirements, either before or after the importation of the goods, by the holder of the licence or permission at the time the goods are imported;
    - (iii) the surrender of a licence or permission to import goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to import goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to import goods; and
    - (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for a failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against subsection (4) in respect of the failure.
- (3A) Without limiting the generality of subparagraph (3)(b)(ii), a condition referred to in that subparagraph may be a condition that, before the expiration of a period specified in the permission or that period as extended with the approval of the Collector, that person, or, if that person is a natural person who dies before the expiration of that period or that period as extended, as the case may be, the legal personal representative of that person, shall export, or cause the exportation of, the goods from Australia.
- (4) A person is guilty of an offence if:

- (a) a licence or permission has been granted, on or after 16 October 1963, under the regulations; and
- (b) the licence or permission relates to goods that are not narcotic goods; and
- (c) the licence or permission is subject to a condition or requirement to be complied with by the person; and
- (d) the person engages in conduct; and
- (e) the person's conduct contravenes the condition or requirement.

Penalty: 100 penalty units.

- (5) Subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) Absolute liability applies to paragraph (4)(a), despite subsection (5).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (7) A person is guilty of an offence if:

- (a) a licence or permission has been granted, on or after 16 October 1963, under the regulations; and
- (b) the licence or permission relates to goods that are narcotic goods; and
- (c) the licence or permission is subject to a condition or requirement to be complied with by the person; and
- (d) the person engages in conduct; and
- (e) the person's conduct contravenes the condition or requirement.

- (8) A person who is convicted of an offence against subsection (7) is punishable as provided by section 235.

- (9) Absolute liability applies to paragraph (7)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (10) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

## **51 Prohibited imports**

- (1) Goods, the importation of which is prohibited under section 50, are prohibited imports.
- (2) Notwithstanding the generality of subsection (1), ships, boats and aircraft the importation of which is prohibited under section 50 are prohibited imports if, and only if, they have been imported into Australia.

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## **112 Prohibited exports**

- (1) The Governor-General may, by regulation, prohibit the exportation of goods from Australia.
- (2) The power conferred by subsection (1) may be exercised:

- (a) by prohibiting the exportation of goods absolutely;
- (aa) by prohibiting the exportation of goods in specified circumstances;
- (b) by prohibiting the exportation of goods to a specified place; or
- (c) by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

(2A) Without limiting the generality of paragraph (2)(c), the regulations:

- (aa) may identify the goods to which the regulations relate by reference to their inclusion:
  - (i) in a list or other document formulated by a Minister and published in the *Gazette* or otherwise; or
  - (ii) in that list or other document as amended by the Minister and in force from time to time; and
- (a) may provide that the exportation of the goods is prohibited unless a licence, permission, consent or approval to export the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations made under this Act or the *Therapeutic Goods Act 1989*; and
- (b) in relation to licences or permissions granted as prescribed by regulations made under this Act—may make provision for and in relation to:
  - (i) the assignment of licences or permissions so granted or of licences or permissions included in a prescribed class of licences or permissions so granted;
  - (ii) the granting of a licence or permission to export goods subject to compliance with conditions or requirements, either before or after the exportation of the goods, by the holder of the licence or permission at the time the goods are exported;
  - (iii) the surrender of a licence or permission to export goods and, in particular, without limiting the generality of the foregoing, the surrender of a licence or permission to export goods in exchange for the granting to the holder of the surrendered licence or permission of another licence or permission or other licences or permissions to export goods; and
  - (iv) the revocation of a licence or permission that is granted subject to a condition or requirement to be complied with by a person for failure by the person to comply with the condition or requirement, whether or not the person is charged with an offence against subsection (2B) in respect of the failure.

(2AA) Where a Minister makes an amendment to a list or other document:

- (a) that is formulated and published by the Minister; and
- (b) to which reference is made in regulations made for the purposes of paragraph (2)(c);

the amendment is a disallowable instrument within the meaning of section 46A of the *Acts Interpretation Act 1901*.

(2B) A person is guilty of an offence if:

- (a) a licence or permission has been granted, on or after 10 November 1977, under the regulations; and
- (b) the licence or permission relates to goods that are not narcotic goods; and

- (c) the licence or permission is subject to a condition or requirement to be complied with by the person; and
- (d) the person engages in conduct; and
- (e) the person's conduct contravenes the condition or requirement.

Penalty: 100 penalty units.

(2BA) Subsection (2B) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2BB) Absolute liability applies to paragraph (2B)(a), despite subsection (2BA).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

(2BC) A person is guilty of an offence if:

- (a) a licence or permission has been granted, on or after 10 November 1977, under the regulations; and
- (b) the licence or permission relates to goods that are narcotic goods; and
- (c) the licence or permission is subject to a condition or requirement to be complied with by the person; and
- (d) the person engages in conduct; and
- (e) the person's conduct contravenes the condition or requirement.

(2BD) A person who is convicted of an offence against subsection (2BC) is punishable as provided by section 235.

(2BE) Absolute liability applies to paragraph (2BC)(a).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

(2AB) It is a condition of any licence or permission to export goods, being a licence or permission granted under paragraph (2)(c) by the Minister for Defence or an authorised person within the meaning of subregulation 13B(1) or 13E(1) of the Customs (Prohibited Exports) Regulations after the commencement of this subsection, that the Minister for Defence may, at any time, by notice:

- (a) published:
  - (i) in the *Gazette*; and
  - (ii) in each State and internal Territory, in a newspaper circulating throughout that State or Territory; and
- (b) in writing given to the holder of the licence or permission;

inform the holder that, with effect from a day specified in the notice, all goods to which the licence or permission relates, or such kinds of those goods as are specified in the notice, shall not be exported to a specified place because in the opinion of the Minister for Defence:

- (c) a situation in that place; or
- (d) a situation in another place to which there is a reasonable likelihood that such goods will be re-exported from that specified place;

makes the exportation of such goods from Australia contrary to the national interest, and, where the Minister for Defence gives such a notice, the authority of the holder to export such goods to that specified place shall be taken to have been withdrawn until the Minister for Defence, by further notice in writing given to the holder, revokes the original notice.

- (2AC) The day specified in a notice under subsection (2AB) shall be a day not earlier than the day on which the notice is published in the *Gazette* under subparagraph (2AB)(a)(i).
- (2AD) Any failure to comply with the requirements of paragraph (2AB)(b) in relation to a notice under subsection (2AB) does not affect the validity of the notice.
- (3) Goods the exportation of which is prohibited under this section are prohibited exports.
- (4) In this section:
- engage in conduct*** means:
- (a) do an act; or
  - (b) omit to perform an act.

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### **233 Smuggling and unlawful importation and exportation**

- (1) A person shall not:
- (a) smuggle any goods; or
  - (b) import any prohibited imports; or
  - (c) export any prohibited exports; or
  - (d) unlawfully convey or have in his possession any smuggled goods or prohibited imports or prohibited exports.
- (1AA) A person who contravenes subsection (1) is guilty of an offence punishable upon conviction:
- (a) in the case of an offence against paragraph (1)(a) or an offence against paragraph (1)(d) in relation to smuggled goods—as provided by subsection 233AB(1); or
  - (b) in any other case—as provided by subsection 233AB(2).
- (1AB) Subsection (1AA) is an offence of strict liability, to the extent that it relates to paragraphs (1)(b), (c) and (d).
- Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.
- (2) It shall not be lawful for any person to convey or have in his possession without reasonable excuse (proof whereof shall lie upon him) any smuggled goods or prohibited imports.
- (3) It shall not be lawful for any person to convey or have in his possession any prohibited exports with intent to export them or knowing that they are intended to be unlawfully exported.
- (3A) A Customs officer 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.
- (3B) 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 a Customs officer 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.

- (4) Merchandise on board a ship or aircraft calling at any port or airport in Australia, but intended for and consigned to some port or airport or place outside Australia, shall not be deemed to be unlawfully imported into Australia if the goods are specified on the ship's or aircraft's manifest and are not transhipped or landed in Australia or are transhipped or landed by authority.
- (5) This section does not apply to, or in relation to, narcotic goods.
- (6) The Minister must lay before each House of the Parliament, not later than the first sitting day of that House after 1 October each year, a report about any conduct by Customs officers that, apart from subsection (3A), would constitute an offence against a law of the Commonwealth or of a State or Territory relating to the possession or conveyance, or facilitation of the conveyance, of prohibited imports, prohibited exports or smuggled goods.

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#### **233AB Penalties for offences against sections 233 and 233A**

- (1) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:
  - (a) where the Court can determine the amount of the duty that would have been payable on the smuggled goods to which the offence relates if those goods had been entered for home consumption on:
    - (i) where the date on which the offence was committed is known to the Court—that date; or
    - (ii) where that date is not known to the Court—the date on which the prosecution for the offence was instituted;a penalty not exceeding 5 times the amount of that duty; or
  - (b) where the Court cannot determine the amount of that duty, a penalty not exceeding 1,000 penalty units.
- (2) Where an offence is punishable as provided by this subsection, the penalty applicable to the offence is:
  - (a) where the Court can determine the value of the goods to which the offence relates, a penalty not exceeding:
    - (i) 3 times the value of those goods; or
    - (ii) 1,000 penalty units;whichever is the greater; or
  - (b) where the Court cannot determine the value of those goods—a penalty not exceeding 1,000 penalty units.

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#### **270 Regulations**

- (1) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be

prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing:

- (a) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped;
  - (b) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package;
  - (d) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and
  - (e) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.
- (2) The regulations may prescribe penalties not exceeding \$1,000 in respect of any contravention of any of the regulations.
- (3) The power to make regulations for the purposes of the definition of *airport shop goods* in subsection 4(1) extends to making regulations that:
- (a) declare local use goods to be airport shop goods for the purposes of section 96B; or
  - (b) declare a class of local use goods, or a class of goods that includes local use goods, to be a class of airport shop goods for the purposes of that section.
- (3A) Where, in any regulations made for the purposes of this Act, reference is made to the document known as the Australian Harmonized Export Commodity Classification published by the Australian Bureau of Statistics, that reference shall, unless the contrary intention appears in those regulations, be read as a reference to that document as so published and as in force from time to time.
- (4) The power to make regulations for the purposes of paragraph 96B(3)(b) or (c) extends to making regulations that prescribe quantities in relation to airport shop goods that are local use goods.
- (5) In subsections (3) and (4), *local use goods* means goods:
- (a) that have not been, and are not proposed to be, imported into Australia; and
  - (b) that have not been, and are not proposed to be, exported from Australia.