



Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004

No. 25, 2004

**An Act to provide for certain application and
transitional matters relating to international trade
modernisation, to amend customs legislation, and
for other purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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[Assented to 25 March 2004]

The Parliament of Australia enacts:

*Customs Legislation Amendment (Application of International Trade Modernisation and Other
Measures) Act 2004 No. 25, 2004 1*

Part 1—Preliminary

1 Short title

This Act may be cited as the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 18 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	25 March 2004
2. Section 19	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) the time when item 38 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences.	
3. Schedule 1, items 1 to 3	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) the time when item 38 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences.	

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Schedule 1, item 4	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 118 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> .	
5. Schedule 1, item 5	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 1 of Schedule 1 to the <i>Customs Legislation Amendment Act (No. 2) 2003</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
6. Schedule 1, items 6 to 11	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) the time when item 38 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences.	
7. Schedule 1, item 12	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 22 of Schedule 3 to the <i>Customs Legislation Amendment Act (No. 1) 2002</i> .	

Part 1 Preliminary

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
8. Schedule 1, item 13	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 138 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> .	
9. Schedule 1, items 14 to 25	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) the time when item 38 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> commences.	
10. Schedule 2, items 1 to 3	The day on which this Act receives the Royal Assent.	25 March 2004
11. Schedule 2, item 4	5 January 2003.	5 January 2003
12. Schedule 2, item 5	The day on which this Act receives the Royal Assent.	25 March 2004
13. Schedule 2, items 6 to 12	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.	

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
14. Schedule 2, item 13	The later of: (a) the time when the provision(s) covered by table item 13 commence; and (b) immediately after the commencement of item 3 of Schedule 1 to the <i>Customs Legislation Amendment Act (No. 2) 2003</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
15. Schedule 2, item 14	At the same time as the provision(s) covered by table item 13.	
16. Schedule 2, item 15	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 40 of Schedule 3 to the <i>Customs Legislation Amendment Act (No. 1) 2002</i> .	
17. Schedule 2, items 16 to 26	The day on which this Act receives the Royal Assent.	25 March 2004
18. Schedule 2, item 27	Immediately after the commencement of section 2 of the <i>Customs Legislation Amendment Act (No. 1) 2002</i> .	10 October 2002
19. Schedule 2, items 28 to 31	The day on which this Act receives the Royal Assent.	25 March 2004
20. Schedule 2, item 32	Immediately after the commencement of section 2 of the <i>Import Processing Charges (Amendment and Repeal) Act 2002</i> .	8 October 2002
21. Schedule 2, item 33	The day on which this Act receives the Royal Assent. However, the provision(s) do not commence at all if item 6 of Schedule 6 to the <i>Migration Legislation Amendment Act (No. 1) 2004</i> commences before, or on the same day as, the day on which this Act receives the Royal Assent.	

Section 3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
22. Schedule 2, item 34	Immediately after the commencement of item 6 of Schedule 6 to the <i>Migration Legislation Amendment Act (No. 1) 2004</i> . However, the provision(s) do not commence at all if this Act receives the Royal Assent on a day that is before the day on which item 6 of Schedule 6 to the <i>Migration Legislation Amendment Act (No. 1) 2004</i> commences.	
23. Schedule 2, item 35	Immediately after the commencement of the provision(s) covered by table item 21 or table item 22, whichever of those provision(s) commences.	
24. Schedule 2, item 36	The day on which this Act receives the Royal Assent.	25 March 2004

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.

Part 2—Transitional and application rules in relation to international trade modernisation

Division 1—Preliminary

4 Interpretation of this Part

In this Part:

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

CEO means the Chief Executive Officer of the Australian Customs Service.

import cut-over time means the time specified by the CEO under section 5.

ITM import amendments means:

- (a) the amendments of the *Customs Act 1901* made by:
 - (i) the items of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* that commence at the same time as item 38 of that Schedule (whether they commence under subsection 2(3) or another provision of that Act); and
 - (ii) Part 2 of Schedule 4 to the *Border Security Legislation Amendment Act 2002*; and
 - (iii) items 1 to 7, 11 to 23, 26, 44 to 47 and 55 of Schedule 3 to the *Customs Legislation Amendment Act (No. 1) 2002*; and
 - (iv) Part 2 of Schedule 5 to the *Customs Legislation Amendment Act (No. 1) 2002*; and
 - (v) Part 1 of Schedule 1 to the *Customs Legislation Amendment Act (No. 2) 2003*; and

Section 5

- (b) the amendment of the *A New Tax System (Goods and Services Tax) Act 1999* made by item 8 of Schedule 1 to the *Customs Legislation Amendment Act (No. 1) 2002*; and
- (c) the amendments of the *A New Tax System (Wine Equalisation Tax) Act 1999* made by items 9 and 10 of Schedule 1 to the *Customs Legislation Amendment Act (No. 1) 2002*; and
- (d) the items in Schedule 1 to this Act.

ITM import commencement date means the day on which item 38 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* commences.

turn-off time means the time specified by the CEO under section 6.

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

5 CEO to specify the import cut-over time

Before the ITM import amendments commence, the CEO must, by notice published in the *Gazette*, specify a time not more than 40 days (including Sundays and holidays) after those amendments commence as the import cut-over time.

6 CEO to specify the turn-off time

Before the ITM import amendments commence, the CEO must, by notice published in the *Gazette*, specify a time not more than 40 days (including Sundays and holidays) after the import cut-over time as the turn-off time.

Division 2—Application of the amended Customs Act

7 Application of cargo reporting provisions

- (1) To the extent that the ITM import amendments would, apart from this section, apply in relation to:
 - (a) the impending arrival, or arrival, of a ship or aircraft at its first port or airport in Australia from a place outside Australia; or
 - (b) the unloading of cargo from a ship or aircraft;those amendments only apply in relation to a ship or aircraft, or the unloading of cargo from a ship or aircraft:
 - (c) that is due to arrive at its first port or airport in Australia at or after the import cut-over time; or
 - (d) that has arrived at its first port or airport in Australia and that was due to arrive at that port or airport at or after the import cut-over time; or
 - (e) that arrives at its first port or airport in Australia at or after the turn-off time.
- (2) To avoid doubt, paragraphs (1)(c) and (d) apply even if the ship or aircraft arrives at its first port or airport in Australia before the import cut-over time.
- (3) To avoid doubt, the unamended Customs Act continues to apply in relation to a ship or aircraft that is due to arrive at its first port or airport in Australia before the import cut-over time, unless the ship or aircraft arrives after the turn-off time.

8 Application of import entry provisions and provisions for goods not requiring entry

- (1) To the extent that the ITM import amendments would, apart from this section, apply in relation to goods that are, or are intended to be, imported into Australia, then, subject to sections 9, 10 and 11, those amendments only apply in relation to:

Section 9

- (a) goods that are on board a ship or aircraft that is due to arrive at its first port or airport in Australia from a place outside Australia at or after the import cut-over time; or
 - (b) goods that are or were on board a ship or aircraft that has arrived at its first port or airport in Australia from a place outside Australia, if the ship or aircraft was due to arrive at that port or airport at or after the import cut-over time; or
 - (c) goods that are or were on board a ship or aircraft that arrives at its first port or airport in Australia from a place outside Australia at or after the turn-off time.
- (2) To avoid doubt, paragraphs (1)(a) and (b) apply even if the ship or aircraft arrives at its first port or airport in Australia before the import cut-over time.
- (3) To avoid doubt, the unamended Customs Act continues to apply in relation to the goods if the ship or aircraft is due to arrive at its first port or airport in Australia before the import cut-over time, unless the ship or aircraft arrives after the turn-off time.

9 Entry of warehoused goods

In relation to warehoused goods (within the meaning of the *Customs Act 1901*) that are intended to be entered for home consumption:

- (a) an entry of those goods for home consumption made before the ITM import commencement date must be made in accordance with the unamended Customs Act; and
- (b) an entry of those goods for home consumption made on or after the ITM import commencement date must be made in accordance with the amended Customs Act.

10 Returns for like customable goods

In relation to a return that a person is required to give Customs under subsection 69(5) of the *Customs Act 1901*:

- (a) a return given before the ITM import commencement date must be given in accordance with the unamended Customs Act; and

- (b) a return given after the ITM import commencement date must be given in accordance with the amended Customs Act.

11 Returns for special clearance goods

In relation to a return that a person is required to give Customs under subsection 70(7) of the *Customs Act 1901*:

- (a) a return given before the ITM import commencement date must be given in accordance with the unamended Customs Act; and
- (b) a return given after the ITM import commencement date must be given in accordance with the amended Customs Act.

12 Application of import entry provisions for imported ships or aircraft

In relation to a ship or aircraft that is intended to be imported into Australia:

- (a) an entry of the ship or aircraft made before the ITM import commencement date must be made in accordance with the unamended Customs Act; and
- (b) an entry of the ship or aircraft made after the ITM import commencement date must be made in accordance with the amended Customs Act.

Section 13

Division 3—Modification of the unamended Customs Act

13 Impending arrival reports under the unamended Customs Act after the turn-off time

If a person is required to make a report under section 64 of the unamended Customs Act after the turn-off time, then, despite subsection (2A) of that section, the person must make the report by document, telephone call or fax and not by computer.

14 Cargo reports under the unamended Customs Act after the turn-off time

If a person is required to make a report under section 64AB of the unamended Customs Act after the turn-off time, then, despite subsection (3A) of that section, the person must make the report by document and not by computer.

15 Amendment of cargo reports after the turn-off time

A person who, after the turn-off time, communicates a variation of a cargo report that was made under section 64AB of the unamended Customs Act must, despite section 64ABA of the unamended Customs Act, communicate the variation by document and not by computer.

16 No authority to deal provided before the turn-off time

If:

- (a) the owner of goods has entered the goods under section 71A of the unamended Customs Act; and
- (b) the entry was effected by computer; and
- (c) Customs has not, by the turn-off time, given the person to whom the import entry advice was given in relation to the goods an authority to deal with the goods (within the meaning of section 4 of the *Customs Act 1901*);

then, despite paragraph 71B(4)(d) of the unamended Customs Act, Customs may give that authority to the person in writing without transmitting the authority by computer.

17 Goods not entered before the turn-off time

If:

- (a) a ship or aircraft was due to arrive at its first port or airport in Australia from a place outside Australia before the import cut-over time; and
- (b) the ship or aircraft arrived before the turn-off time; and
- (c) goods that are or were on board the ship or aircraft are goods to which section 68 applies; and
- (d) by the turn-off time, those goods have not been entered under section 71A of the *Customs Act 1901*;

then:

- (e) the goods must be entered under the unamended Customs Act; and
- (f) despite paragraph 71A(1)(d) of the unamended Customs Act, the entry must be made by document.

18 Computer contingency provisions cease to have effect

Despite Division 2 of this Act, the following sections of the unamended Customs Act cease to have effect from the turn-off time:

- (a) section 67E (what happens if a cargo automation system is down);
- (b) section 77C (contingency arrangements to apply when the COMPILE computer system is down);
- (c) section 77D (contingency arrangements for goods not the subject of an import entry advice);
- (d) section 77E (contingency arrangements for goods the subject of an import entry advice).

Division 4—Electronic communications systems

19 Application of sections 126D and 126DA of the amended Customs Act

Despite subitem 38(1) of Schedule 1 to the *Customs Legislation Amendment Act (No. 2) 2003*, sections 126D and 126DA of the *Customs Act 1901* have effect according to their terms from the ITM import commencement date.

Schedule 1—ITM import amendments

Customs Act 1901

1 Subsection 4(1) (at the end of the definition of *Authority to deal*)

Add:

; or (e) in relation to goods that are Subdivision AA goods within the meaning of section 71AAAA or that are specified low value goods within the meaning of section 71AAAD—an authority under section 71.

2 Subsection 4(1) (definition of *self-assessed clearance declaration*)

Repeal the definition, substitute:

self-assessed clearance declaration means a declaration given to Customs under section 71 in the circumstances mentioned in section 71AAAF.

3 Subsection 4(1)

Insert:

self-assessed clearance declaration advice means a self-assessed clearance declaration advice given under section 71AAAG.

4 Subsection 64AAA(2)

Omit “on board”, substitute “contained in those stores”.

5 Subsection 64ABAB(2)

Omit “wharf”, substitute “port”.

6 Section 71

Repeal the section, substitute:

71 Information and grant of authority to deal with goods not required to be entered

Information to be given under this section

- (1) A person to whom section 71AAAB or 71AAAF applies must give information to Customs under this section in the circumstances mentioned in those sections.

Authority to deal granted under this section

- (2) Customs must, if circumstances mentioned in Subdivision AA or AB of this Division require it, give an authority to deal with goods under this section.

Refusal to grant authority to deal under this section

- (3) Customs may, in the circumstances mentioned in section 71AAAB, refuse under this section to authorise the delivery of goods into home consumption.

Subdivision AA—Information and grant of authority to deal with Subdivision AA goods

71AAAA Meaning of *Subdivision AA goods*

In this Subdivision:

Subdivision AA goods means:

- (a) goods of a kind referred to in paragraph 68(1)(d); and
- (b) goods that are prescribed by regulations made for the purposes of subsection 71AAAE(1).

71AAAB Report and grant of authority to deal with Subdivision AA goods

Providing information about Subdivision AA goods

- (1) A person:
 - (a) who is the owner of Subdivision AA goods; or
 - (b) who is covered by regulations made under subsection 71AAAE(2);
-

must, in the circumstances specified in the regulations, provide, under section 71, the information specified in the regulations:

- (c) at the time; and
- (d) in the manner and form; specified in the regulations.

Authority to deal with Subdivision AA goods

- (2) If Subdivision AA goods are imported into Australia, Customs must, having regard to information about the goods given under subsection (1) and (if any) section 196C:
 - (a) authorise the delivery of the goods into home consumption under section 71; or
 - (b) refuse to authorise the delivery of the goods into home consumption and give reasons for the refusal.
- (3) A decision of Customs mentioned in subsection (2) must be communicated in writing, electronically, or by another method prescribed by the regulations.

Duty etc. to be paid before authority given

- (4) Customs must not give an authority to deal with Subdivision AA goods unless the duty (if any) and any other charge or tax (if any) payable on the importation of the goods has been paid.

71AAAC Suspension of authority to deal with Subdivision AA goods

Suspension of authority to deal

- (1) If:
 - (a) Customs has given an authority to deal with Subdivision AA goods; and
 - (b) before the goods are dealt with in accordance with the authority, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law;the officer may suspend the authority for a specified period.
- (2) An officer suspends an authority to deal with Subdivision AA goods by signing a notice:
 - (a) stating that the authority is suspended; and

- (b) setting out the reasons for the suspension;
and serving a copy of the notice on:
- (c) the owner of the goods; or
- (d) if the owner does not have possession of the goods—on the person who has possession of the goods.

Revoking a suspension of authority to deal

- (3) If, during the period of a suspension of an authority to deal with Subdivision AA goods, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension.
- (4) An officer revokes a suspension of an authority to deal with Subdivision AA goods by signing a notice:
 - (a) stating that the authority is suspended; and
 - (b) setting out the reasons for the suspension;and serving a copy of the notice on:
 - (c) the owner of the goods; or
 - (d) if the owner does not have possession of the goods—on the person who has possession of the goods.

When suspension or revocation of suspension has effect

- (5) A suspension of an authority to deal with Subdivision AA goods, or a revocation of a suspension of such an authority, has effect from the time when the relevant notice was given.

Subdivision AB—Information and grant of authority to deal with specified low value goods

71AAAD Meaning of *specified low value goods*

In this Subdivision:

specified low value goods means goods of a kind referred to in paragraph 68(1)(e), (f) or (i).

71AAAE Regulations

- (1) The regulations may prescribe goods that are excluded from being specified low value goods.

Note 1: These goods are Subdivision AA goods for the purposes of Subdivision AA of this Division.

Note 2: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) The regulations may prescribe persons who are not required to comply with the provisions of this Subdivision.

Note 1: These persons must comply with Subdivision AA of this Division.

Note 2: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

71AAAF Making a self-assessed clearance declaration

- (1) Despite section 181, the owner of specified low value goods, or a person acting on behalf of the owner, must give Customs a declaration (a ***self-assessed clearance declaration***) under section 71 containing the information that is set out in an approved statement.
- (2) A self-assessed clearance declaration must be communicated electronically to Customs.
- (3) A self-assessed clearance declaration may be communicated together with a cargo report.

71AAAG Customs' response if a self-assessed clearance declaration is communicated separately from a cargo report

- (1) If a self-assessed clearance declaration is communicated to Customs but not together with a cargo report, Customs must communicate a self-assessed clearance declaration advice electronically to the person who made the declaration.
- (2) A self-assessed clearance declaration advice:
- (a) must refer to the number given by Customs to identify the self-assessed clearance declaration to which the advice is a response; and
 - (b) must contain:

- (i) a statement that the goods covered by the declaration are cleared for home consumption; or
- (ii) a direction that the goods covered by the declaration be held in their current location or further examined.

71AAAH Customs' response if a self-assessed clearance declaration is communicated together with a cargo report

If a self-assessed clearance declaration is communicated together with a cargo report, Customs may communicate electronically to the person who made the declaration a direction that the goods covered by the declaration be held in their current location or further examined.

71AAAI Authority to deal with goods covered by a self-assessed clearance declaration

If declaration is communicated separately from a cargo report

- (1) If Customs gives a self-assessed clearance declaration advice in response to a self-assessed clearance declaration, Customs must communicate electronically to the person to whom the advice was given an authority under section 71 to deliver into home consumption the goods covered by the declaration.

Note 1: Section 71AAAL prevents Customs from authorising the delivery of goods into home consumption while certain duty etc. payable on the goods is outstanding.

Note 2: Customs does not have to give an authority to deal with the goods while the goods are subject to a direction under subparagraph 71AAAG(2)(b)(ii) (see section 71AAAK) or while an officer is seeking further information (see section 71AAAO).

If declaration is communicated together with a cargo report

- (2) If Customs receives a self-assessed clearance declaration together with a cargo report, Customs must communicate electronically:
 - (a) if Customs gave a direction under section 71AAAH in response to the declaration—to the person who has possession of the goods covered by the declaration; or
 - (b) otherwise—to the person who made the declaration;an authority under section 71 to deliver into home consumption the goods covered by the declaration.

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- Note 1: Section 71AAAL prevents Customs from authorising the delivery of goods into home consumption while certain duty etc. payable on the goods is outstanding.
- Note 2: Customs does not have to give an authority to deal with the goods while the goods are subject to a direction under section 71AAAH (see section 71AAAK) or while an officer is seeking further information (see section 71AAAO).

71AAAJ Contents of authority to deal with specified low value goods

- (1) An authority to deal with specified low value goods must set out:
 - (a) any condition under subsection (2) of this section that applies to the authority; and
 - (b) the date on which the authority is given; and
 - (c) any other prescribed information.
- (2) An authority to deal with specified low value goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however described) be obtained under another law of the Commonwealth.
- (3) If an authority to deal with specified low value goods is expressed to be subject to the condition that a specified permission be obtained, the authority is taken not to have been given until the permission has been obtained.

71AAAK No authority to deal with specified low value goods while subject to a direction to hold or further examine

Customs is not required to grant an authority to deal with specified low value goods at any time while the goods are subject to a direction under subparagraph 71AAAG(2)(b)(ii) or section 71AAAH.

71AAAL No authority to deal with specified low value goods unless duty etc. paid

Duty etc. to be paid before authority given

- (1) Customs must not give an authority to deal with specified low value goods unless the duty (if any) and any other charge (other than self-assessed clearance declaration charge) or tax (if any) payable on the importation of the goods has been paid.

First exception

- (2) Subsection (1) does not apply in relation to an authority to deal with specified low value goods, if the goods are covered by item 2 of the table in subsection 132AA(1).

Note: Subsection 132AA(1) provides that import duty on goods covered by item 2 of the table in that subsection must be paid by a time worked out under the regulations.

Second exception

- (3) Subsection (1) does not apply in relation to an authority to deal with specified low value goods, if:
- (a) the only duty, charge or tax outstanding on the importation of the goods is one or more of the following:
 - (i) the GST payable on the taxable importation (as defined in the GST Act), if any, that is associated with the import of the goods;
 - (ii) if a taxable importation of a luxury car (as defined in the Luxury Car Tax Act) is associated with the import of the goods—the luxury car tax payable on that taxable importation;
 - (iii) if a taxable dealing (as defined in the Wine Tax Act) is associated with the import of the goods—the wine tax payable on that dealing; and
 - (b) because of the following provisions, the unpaid GST, luxury car tax or wine tax (as appropriate) is not payable until after duty on the goods was payable (or would have been payable if the goods had been subject to duty):
 - (i) paragraph 33-15(1)(b) of the GST Act;
 - (ii) paragraph 13-20(1)(b) of the Luxury Car Tax Act;
 - (iii) paragraph 23-5(1)(b) of the Wine Tax Act.

71AAAM Suspension of authority to deal with specified low value goods

Suspension of authority to deal

- (1) If:
- (a) Customs has given an authority to deal with specified low value goods; and
-

-
- (b) before the goods are dealt with in accordance with the authority, an officer has reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law;
- the officer may suspend the authority for a specified period.
- (2) An officer suspends an authority to deal with specified low value goods by:
- (a) if the authority was given in the circumstances mentioned in subsection 71AAAI(1)—sending electronically to the person who made the self-assessed clearance declaration a message stating that the authority is suspended and setting out the reasons for the suspension; or
 - (b) if the authority was given in the circumstances mentioned in subsection 71AAAI(2)—sending electronically to the person who has possession of the goods a message stating that the authority is suspended and setting out the reasons for the suspension.

Revoking a suspension of authority to deal

- (3) If, during the period of a suspension of an authority to deal with specified low value goods, an officer becomes satisfied that there are no longer reasonable grounds to suspect that the goods were imported into Australia in contravention of a Customs-related law, the officer must revoke the suspension.
- (4) An officer revokes a suspension of an authority to deal with specified low value goods by:
- (a) if the authority was given in the circumstances mentioned in subsection 71AAAI(1)—sending electronically to the person who made the self-assessed clearance declaration relating to the goods a message stating that the suspension is revoked; or
 - (b) if the authority was given in the circumstances mentioned in subsection 71AAAI(2)—sending electronically to the person who has possession of the goods a message stating that the suspension is revoked.

When suspension or revocation of suspension has effect

- (5) A suspension of an authority to deal with specified low value goods, or a revocation of a suspension of such an authority, has
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effect from the time when the relevant notice was given or the relevant message was sent.

71AAAN Cancellation of authority to deal with specified low value goods

- (1) An officer may, at any time before specified low value goods are dealt with in accordance with an authority to deal, cancel the authority.
- (2) An officer cancels an authority to deal with specified low value goods by sending electronically, to the person who has possession of the goods, a message stating that the authority is cancelled and setting out the reasons for the cancellation.
- (3) A cancellation of an authority has effect from the time when the message was sent.

71AAAO Officer may seek further information in relation to self-assessed clearance declaration

- (1) Customs may refuse to grant an authority to deal with goods covered by a self-assessed clearance declaration until an officer doing duty in relation to self-assessed clearance declarations:
 - (a) has verified particulars of the goods; or
 - (b) is satisfied of any other matter that may be relevant to the granting of an authority to deal.
- (2) If an officer doing duty in relation to self-assessed clearance declarations believes on reasonable grounds that the owner of goods covered by a self-assessed clearance declaration:
 - (a) has custody or control of commercial documents relating to the goods that will assist the officer to determine whether this Act has been or is being complied with in respect of the goods; or
 - (b) has or can obtain information that will so assist the officer; the officer may require the owner:
 - (c) to deliver to the officer the commercial documents in respect of the goods that are in the owner's custody or control (including any such documents that had previously been delivered to an officer and had been returned to the owner); or

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- (d) to deliver to the officer such information, in writing, relating to the goods (being information of a kind specified in the notice) as is within the knowledge of the owner or as the owner is reasonably able to obtain.
- (3) A requirement for the delivery of documents or information in respect of a self-assessed clearance declaration must:
- (a) be communicated electronically to the person who made the declaration; and
 - (b) contain such particulars as are set out in an approved statement.
- (4) If an owner of goods has been required to deliver documents or information in relation to the goods under subsection (2), Customs must not grant an authority to deal with the goods unless the requirement has been complied with or withdrawn.
- (5) An officer doing duty in relation to self-assessed clearance declarations may ask:
- (a) the owner of goods covered by a self-assessed clearance declaration; or
 - (b) if another person made the declaration on behalf of the owner—the other person;
- any questions relating to the goods.
- (6) If a person has been asked a question in respect of goods under subsection (5), Customs must not grant an authority to deal with the goods unless the question has been answered or withdrawn.
- (7) If an officer doing duty in relation to self-assessed clearance declarations believes on reasonable grounds that the owner of goods covered by a self-assessed clearance declaration:
- (a) has custody or control of documents relating to the goods that will assist the officer to verify the particulars shown in the declaration; or
 - (b) has or can obtain information that will so assist the officer;
- the officer may require the owner to produce the documents or supply the information to the officer.
- (8) If an owner of goods has been required to verify a matter in respect of the goods under subsection (7), Customs must not grant an authority to deal with the goods unless the requirement has been
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complied with or withdrawn, or a security has been taken for compliance with the requirement.

- (9) Subject to section 215, if a person delivers a commercial document to an officer doing duty in relation to self-assessed clearance declarations under this section, the officer must deal with the document and then return it to the person.

71AAAP Withdrawal of self-assessed clearance declarations

- (1) A self-assessed clearance declaration may, at any time before the goods covered by the declaration are dealt with in accordance with an authority to deal, be withdrawn by either:
- (a) the owner of the goods; or
 - (b) a person acting on behalf of the owner;
- communicating the withdrawal electronically to an officer doing duty in relation to self-assessed clearance declarations.
- (2) A person who makes a self-assessed clearance declaration in respect of goods may, at any time before the goods are dealt with in accordance with an authority to deal with the goods, change information in the declaration.
- (3) If a person changes information in a self-assessed clearance declaration, the person is taken, at the time when the self-assessed clearance declaration advice is communicated in respect of the altered declaration, to have withdrawn the declaration as it previously stood.
- (4) A withdrawal of a self-assessed clearance declaration has no effect during any period while a requirement under subsection 71AAAO(2) or (7) in respect of the goods to which the declaration relates has not been complied with.
- (5) A withdrawal of a self-assessed clearance declaration is effected when it is, or is taken under section 71AAAT to have been, communicated to Customs.
- (6) If:
- (a) a self-assessed clearance declaration is communicated to Customs; and
 - (b) any duty, fee, charge or tax in respect of goods covered by the declaration (other than self-assessed clearance declaration
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charge) remains unpaid in respect of the goods for 30 days starting on:

- (i) the day on which the self-assessed clearance declaration advice relating to the goods is communicated; or
 - (ii) if under subsection 132AA(1) the duty is payable by a time worked out under the regulations—the day on which that time occurs; and
- (c) after that period ends, the CEO gives written notice to the owner of the goods requiring payment of the unpaid duty, fee, charge or tax (as appropriate) within a further period set out in the notice; and
- (d) the unpaid duty, fee, charge or tax (as appropriate) is not paid within the further period;

the self-assessed clearance declaration is taken to have been withdrawn under subsection (1).

71AAAQ Further self-assessed clearance declaration not to be given while there is an existing self-assessed clearance declaration

- (1) If goods are covered by a self-assessed clearance declaration, a person must not communicate a further self-assessed clearance declaration in respect of the goods or any part of the goods unless the first-mentioned self-assessed clearance declaration is withdrawn.

Penalty: 15 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

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

71AAAR Effect of withdrawal of a self-assessed clearance declaration

- (1) When a withdrawal of a self-assessed clearance declaration takes effect, any authority to deal with the goods to which the declaration relates is revoked.

- (2) Despite the withdrawal:

- (a) a person may be prosecuted under Division 4 of Part XIII, or action may be taken under Division 5 of that Part, in respect of the self-assessed clearance declaration; and
 - (b) a penalty may be imposed on a person who is convicted of an offence in respect of the declaration;
- as if it had not been withdrawn.

71AAAS Annotation of self-assessed clearance declaration by Customs for certain purposes not to constitute withdrawal

Any annotation of a self-assessed clearance declaration that is made by Customs as a result of the acceptance by Customs of an application for:

- (a) a refund or rebate of all or part of the duty paid on goods covered by the declaration; or
- (b) a remission of all or part of the duty payable on goods covered by the declaration;

is not taken to constitute a withdrawal of the declaration for the purposes of this Act.

71AAAT Manner and effect of communicating self-assessed clearance declarations to Customs

- (1) The CEO may approve different statements for electronic communications to be made in relation to different classes of goods for which a self-assessed clearance declaration is required.
- (2) For the purposes of this Act, a self-assessed clearance declaration is taken to have been communicated to Customs electronically:
 - (a) when a self-assessed clearance declaration advice is communicated by Customs electronically to the person identified in the declaration as the person sending the declaration; or
 - (b) in the case of a self-assessed clearance declaration communicated to Customs together with a cargo report—when Customs communicates electronically to the person who made the declaration an acknowledgment of the declaration.

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- (3) For the purposes of this Act, a withdrawal of a self-assessed clearance declaration is taken to have been communicated to Customs electronically when an acknowledgment of the withdrawal is communicated by Customs electronically to the person identified in the withdrawal as the person sending the withdrawal.

7 Subsection 71AAA(1)

Omit “subsection 71(2)”, substitute “section 71”.

8 At the end of subsection 71AAA(3)

Add:

- ; or (c) the person who communicated the declaration is, or is a person included in a class of persons who are, declared by the regulations to be exempt from payment of self-assessed clearance declaration charge.

9 Subparagraph 71C(7)(b)(i)

Omit “33-15(b)”, substitute “33-15(1)(b)”.

10 Subparagraph 71C(7)(b)(ii)

Omit “13-20(b)”, substitute “13-20(1)(b)”.

11 Subparagraph 71C(7)(b)(iii)

Omit “23-5(b)”, substitute “23-5(1)(b)”.

12 Subsection 71E(2A)

Repeal the subsection, substitute:

(2A) If:

- (a) the goods are goods to which section 68 applies; and
 - (b) the goods have not been entered for home consumption or warehousing; and
 - (c) subsection (2C) does not apply to the goods;
- a movement application may be made only by the operator of the ship or aircraft that carried the goods, by a cargo reporter in relation to the goods, or by a stevedore or depot operator who has, or intends to take, possession of the goods.

13 After subsection 71E(2B)

Insert:

(2C) This subsection applies to goods if:

- (a) the goods are:
 - (i) accompanied by, and described in, temporary admission papers issued in accordance with an agreement between Australia and one or more other countries that provides for the temporary importation of goods without payment of duty; or
 - (ii) subject to an application under section 162AA for permission to take delivery of goods; and
- (b) neither of the following applies:
 - (i) the CEO has refused to accept a security or undertaking under section 162A in relation to the goods;
 - (ii) a Collector has refused to grant permission under section 162A to take delivery of the goods.

14 Subsection 71L(3)

Omit “or a return for the purposes of subsection 69(5) or 70(7)”, substitute “a return for the purposes of subsection 69(5) or 70(7) or a periodic declaration”.

15 Subsection 71L(3)

Omit “or of the return”, substitute “, the return or the declaration”.

16 Subsection 71L(3)

Omit “or return”, substitute “, return or declaration”.

17 Paragraph 163(1AE)(a)

After “an import entry”, insert “or a self-assessed clearance declaration”.

18 Paragraph 163(1AE)(a)

After “the entry”, insert “or declaration”.

19 Paragraph 163(1AE)(b)

After “an import entry”, insert “or a self-assessed clearance declaration”.

20 Subsection 163(1AE)

After “altered import entry”, insert “or altered self-assessed clearance declaration”.

21 Subsection 163(1AE)

After “that import entry”, insert “or self-assessed clearance declaration”.

22 Section 243SB

After “section”, insert “71AAAO,”.

23 Subsection 243X(1)

After “64ABAA(9),” insert “71AAAQ(1),”.

24 At the end of subsection 243X(2)

Add:

; or (c) the subsection as inserted, substituted or amended by a later Act.

25 Paragraph 273GA(1)(aafa)

Repeal the paragraph, substitute:

(aafa) a decision by an officer under section 71AAAC or 71AAAM to suspend an authority to deliver goods into home consumption;

(aafb) a decision by an officer under section 71AAAN to cancel an authority to deliver goods into home consumption;

Schedule 2—Other amendments

Customs Act 1901

1 Subsection 4(1) (paragraph (a) of the definition of *arrival*)

Omit “for the loading or unloading of passengers, cargo or ship’s stores”, substitute “in a port”.

2 Subsection 9(4)

Omit “subsection 269TG(1)”, substitute “subsection 77EA(1), 77ED(1), 77EE(1), 77EF(2), 269TG(1)”.

3 Subsection 63(1)

Omit “or at the proper wharf appointed under subsection 15(2)”, substitute “, at the proper wharf appointed under subsection 15(2) or at an airport appointed under subsection 15(1)”.

4 At the end of section 64ABB

Add:

- (2) Subsection (1) does not apply to a report made under subsection 64AB(3AA) or (3AB).

5 At the end of Part IV

Add:

Division 5—Detention of goods in the public interest

77EA Minister may order goods to be detained

- (1) The Minister may, if the Minister considers that it is in the public interest to do so, order Customs to detain the goods specified in the Minister’s order.
- (2) At the time an order is made to detain goods:
 - (a) the goods must be goods the importation of which is restricted by the *Customs (Prohibited Imports) Regulations 1956*; and
 - (b) the goods must have been imported into Australia; and

- (c) the importation of the goods must not breach this Act; and
 - (d) the goods must not have been:
 - (i) delivered into home consumption in accordance with an authority to deal with the goods; or
 - (ii) exported from Australia.
- (3) An order to detain goods has effect despite any provision of this Act to the contrary.

77EB Notice to person whose goods are detained

If the Minister orders goods to be detained, the Minister must, as soon as practicable after making the order, give written notice of the order to:

- (a) the owner of the goods; or
- (b) if the owner of the goods cannot be identified after reasonable inquiry—the person in whose possession or under whose control the goods were at the time the order was given.

77EC Detention of goods by Customs

If the Minister orders Customs to detain goods under section 77EA, Customs must:

- (a) move the goods to a place that is approved by a Collector for the purpose of detaining goods under this Subdivision (unless the goods are already in such a place); and
- (b) detain the goods in that place until the goods are dealt with under section 77ED, 77EE or 77EF.

77ED Minister may authorise delivery of detained goods into home consumption

- (1) On application by the owner of goods detained under section 77EC, the Minister may authorise the delivery of the goods, or so much of the goods as the Minister specifies in the authority, into home consumption.
- (2) An authority is subject to any conditions, or other requirements, specified in the authority in relation to the goods.

- (3) An application under subsection (1) must be made before the end of the period of 12 months after the date of the order.
- (4) The owner of goods authorised to be taken into home consumption under subsection (1) must comply with any other provision of this Act in relation to taking goods into home consumption.

77EE Minister may authorise export of detained goods

- (1) On application by the owner of goods detained under section 77EC, the Minister may authorise the exportation of the goods, or so much of the goods as the Minister specifies in the authority, from Australia.
- (2) An authority is subject to any conditions, or other requirements, specified in the authority in relation to the goods.
- (3) An application under subsection (1) must be made before the end of the period of 12 months after the date of the order.
- (4) The owner of goods authorised to be exported under subsection (1) must comply with any other provision of this Act in relation to exporting goods.

77EF When goods have been detained for 12 months

Goods to be exported or disposed of

- (1) This section applies if, at the end of the period of 12 months after an order to detain goods is given, some or all of the goods (the **remaining goods**) have not been:
 - (a) delivered into home consumption in accordance with an authority given under section 77ED; or
 - (b) exported in accordance with an authority given under section 77EE.
 - (2) The Minister may grant an authority to export the remaining goods from Australia.
 - (3) The owner of goods authorised to be exported under subsection (2) must comply with any other provision of this Act in relation to exporting goods.
 - (4) If:
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- (a) the Minister does not grant an authority to export the remaining goods from Australia within 1 month of the end of the period of 12 months after the date of the order; or
 - (b) the remaining goods have not been exported from Australia within 2 months after the date of an authority to export the goods under subsection (2);
- the Minister must authorise Customs to dispose of the goods in the manner the Minister considers appropriate.

Compensation for detained goods

- (5) Nothing in this section prevents a person from seeking compensation in relation to the remaining goods, or other goods ordered to be detained under this Subdivision, in accordance with section 4AB.

6 Subparagraph 114E(1)(a)(i)

Omit “owner”, substitute “deliverer”.

7 Subparagraph 114E(1)(a)(i)

Omit “particulars of the authority”, substitute “the prescribed particulars”.

8 Subparagraph 114E(1)(a)(ii)

Omit “particulars of the goods”, substitute “the prescribed particulars”.

9 Paragraph 114E(1)(b)

Omit “particulars of the goods”, substitute “the prescribed particulars”.

10 Subsection 114E(2)

Repeal the subsection, substitute:

- (2) For the purposes of subparagraphs (1)(a)(i) and (ii) and paragraph (1)(b), the regulations may prescribe different particulars according to the kind of deliverer.

11 At the end of section 114E

Add:

- (5) The regulations may prescribe goods, or classes of goods, that are exempt from this section.

12 Subsection 114F(1A)

Omit “of the receipt of the goods”.

13 Paragraph 114F(1B)(b)

Omit “of the proposed removal”.

14 At the end of section 114F

Add:

- (4) The regulations may prescribe goods, or classes of goods, that are exempt from this section.

15 Subsection 119(1)

After “the day of departure”, insert “, or such time as is prescribed in relation to the departure”.

16 Sections 146 and 147

Repeal the sections.

17 After Division 1 of Part VIII

Insert:

Division 1AA—Calculation of duty on certain alcoholic beverages

153AA Meaning of *alcoholic beverage*

In this Division:

alcoholic beverage has the meaning given by the regulations.

153AB Customs duty to be paid according to labelled alcoholic strength of prescribed alcoholic beverages

(1) If:

- (a) an alcoholic beverage is entered for home consumption or delivered into home consumption in accordance with a permission given under section 69; and
- (b) the percentage by volume of the alcoholic content of the beverage indicated on the beverage’s label exceeds the actual

percentage by volume of the alcoholic content of the beverage;
customs duty is to be charged according to the percentage by volume of alcoholic content indicated on the label.

- (2) If:
- (a) an alcoholic beverage is entered for or delivered into home consumption in a labelled form and an unlabelled form; and
 - (b) subsection (1) applies to the beverage in its labelled form;
- then subsection (1) applies to the beverage in its unlabelled form as if it had been labelled and the label had indicated the same percentage by volume of alcoholic content as is indicated on the beverage in its labelled form.

153AC Rules for working out strength of prescribed alcoholic beverages

- (1) The CEO may, by instrument in writing, determine, in relation to an alcoholic beverage included in a class of alcoholic beverages, rules for working out the percentage by volume of alcohol in the beverage.
- (2) Without limiting the generality of subsection (1), rules determined by the CEO for working out the percentage by volume of alcohol in an alcoholic beverage:
 - (a) may specify sampling methods; and
 - (b) may, for the purposes of working out the customs duty payable, permit minor variations between the nominated or labelled volume of alcohol in the beverage and the actual volume of alcohol in the beverage so as to provide for unavoidable variations directly attributable to the manufacturing process.
- (3) The CEO may make different determinations for alcoholic beverages included in different classes of alcoholic beverages.
- (4) A determination applicable to an alcoholic beverage included in a class of alcoholic beverages applies only to an alcoholic beverage in that class that is entered for, or delivered into, home consumption on or after the making of the determination.
- (5) The CEO makes a determination public:

- (a) by publishing it; and
 - (b) by publishing notice of it in the *Gazette*.
- (6) The notice in the *Gazette* must include a brief description of the contents of the determination.
- (7) The determination is made at the later of the time when it is published and the time when notice of it is published in the *Gazette*.

153AD Obscuration

If, in the opinion of the Collector, the strength of any spirits cannot immediately be accurately ascertained by application of the rules (if any) made for that purpose under section 153AC, the strength may be ascertained after distillation or in any prescribed manner.

18 Subsection 184A(13) (the subsection (13) inserted by item 1 of Schedule 1 to the *Border Protection (Validation and Enforcement Powers) Act 2001*)

Repeal the subsection.

19 At the end of section 184A

Add:

- (14) In this section:

commander, in relation to a Commonwealth ship or Commonwealth aircraft, includes a reference to the following:

- (a) a commissioned officer of the Australian Defence Force;
- (b) the most senior officer of Customs on board the ship or aircraft.

commissioned officer of the Australian Defence Force means an officer within the meaning of the *Defence Act 1903*.

member of the commander's crew includes, in relation to a commander of a Commonwealth ship or Commonwealth aircraft who is a commissioned officer of the Australian Defence Force, a person acting under the command of the commissioned officer.

20 After subsection 185(3)

Insert:

Moving ship on the high seas

- (3AAAA) To avoid doubt, subsection (3) allows an officer to bring a ship, or cause it to be brought, to a place even if it is necessary for the ship to travel on the high seas to reach the place.

21 Subsections 209(2), (3), (3A) and (3B)

Repeal the subsections, substitute:

- (2) Subject to subsection (3), an officer may impound goods instead of obtaining a seizure warrant to seize them if:
- (a) the goods are in a Customs place; and
 - (b) either:
 - (i) the goods are goods to which this section applies; or
 - (ii) the officer has reason to believe that the goods are goods to which this section applies.
- (3) An officer must not exercise the power to impound goods under subsection (2) if, in the opinion of the officer, the amount of duty sought to be evaded in respect of the goods exceeds \$5,000.

22 Paragraph 209(5)(a)

Repeal the paragraph, substitute:

- (a) identifying:
- (i) if the goods are an article—the article; or
 - (ii) if the goods consist of separate articles—each of those articles; or
 - (iii) in any other case—the goods;
- and stating that the article, articles or goods have been impounded under subsection (2); and

23 At the end of paragraphs 209(5)(b) and (c)

Add “and”.

24 Paragraph 209(6)(a)

Omit “where the notice states that the goods were impounded under subsection (2)”, substitute “if the goods were found in the course of a search of the baggage of a person who has arrived in Australia from a place outside Australia”.

25 Paragraph 209(6)(b)

Omit “where the notice states that the goods were impounded under subsection (3A)”, substitute “if paragraph (a) does not apply to the goods”.

26 After subsection 240AB(1)

Insert:

- (1A) The regulations may provide that specified communications, or specified kinds of communications, are exempt from this section.

Customs Legislation Amendment Act (No. 1) 2002

27 Subsection 2(1) (column 2 of table item 23)

Omit “Part 2”, substitute “item 27”.

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

28 Subsection 2(3)

After “Schedule 3” (first occurring), insert “(other than item 43)”.

29 After subsection 2(3)

Insert:

- (3A) Subject to subsection (7), item 43 in Schedule 3 commences on a day to be fixed by Proclamation.

30 Subsection 2(7)

After “(3),”, insert “(3A),”.

31 Item 82 of Schedule 3

Repeal the item.

***Import Processing Charges (Amendment and Repeal) Act
2002***

32 Subsection 2(1) (paragraph (a) in column 2 of table item 6)

After “the commencement”, insert “of section 5”.

Migration Act 1958

**33 Subsection 245B(11) (the subsection (11) inserted by
item 6 of Schedule 2 to the *Border Protection
(Validation and Enforcement Powers) Act 2001*)**

Repeal the subsection.

Note: If item 6 of Schedule 6 to the *Migration Legislation Amendment Act (No. 1) 2004* commences before, or on the same day as, the day on which this Act receives the Royal Assent, this item does not commence at all. See item 21 of the table in subsection 2(1).

34 Subsection 245B(12)

Repeal the subsection.

Note: If this Act receives the Royal Assent on a day that is before the day on which item 6 of Schedule 6 to the *Migration Legislation Amendment Act (No. 1) 2004* commences, this item does not commence at all. See item 22 of the table in subsection 2(1).

35 At the end of section 245B

Add:

(12) In this section:

commander, in relation to a Commonwealth ship or Commonwealth aircraft, includes a reference to the following:

- (a) a commissioned officer of the Australian Defence Force;
- (b) the most senior officer of Customs on board the ship or aircraft.

commissioned officer of the Australian Defence Force means an officer within the meaning of the *Defence Act 1903*.

member of the commander’s crew includes, in relation to a commander of a Commonwealth ship or Commonwealth aircraft who is a commissioned officer of the Australian Defence Force, a person acting under the command of the commissioned officer.

36 After subsection 245F(8)

Insert:

- (8AA) To avoid doubt, subsection (8) allows an officer to bring a ship, or cause it to be brought, to a place even if it is necessary for the ship to travel on the high seas to reach the place.

*[Minister's second reading speech made in—
House of Representatives on 4 December 2003
Senate on 11 March 2004]*

(195/03)