



Customs Amendment (Enhanced Border Controls and Other Measures) Act 2009

No. 34, 2009

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

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

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No. 34, 2009

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

[Assented to 22 May 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment (Enhanced Border Controls and Other Measures) Act 2009*.

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 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 May 2009
2. Schedules 1 and 2	The day on which this Act receives the Royal Assent.	22 May 2009
3. Schedule 3	The 28th day after the day on which this Act receives the Royal Assent.	
4. Schedule 4	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.	
5. Schedules 5 to 11	The 28th day after the day on which this Act receives the Royal Assent.	
6. Schedule 12, item 1	The 28th day after the day on which this Act receives the Royal Assent.	
7. Schedule 12, item 2	Immediately after the commencement of the provisions covered by table item 5.	
8. Schedules 13 and 14	The 28th day after the day on which this Act receives the Royal Assent.	
9. Schedule 15	The day on which this Act receives the Royal Assent.	22 May 2009
10. Schedules 16 and 17	The 28th day after the day on which this Act receives the Royal Assent.	
Note:	This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.	

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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Arrival report and report of stores and prohibited goods

Customs Act 1901

1 Subparagraph 64AA(3)(a)(i)

Omit “Sunday or holiday”, substitute “Saturday, Sunday or holiday”.

2 Subparagraph 64AAA(3)(a)(i)

Omit “Sunday or holiday”, substitute “Saturday, Sunday or holiday”.

3 Application provision

The amendments made by items 1 and 2 of this Schedule apply to arrivals at a port in Australia less than 24 hours before, or at or after, the commencement of those items.

Schedule 2—Infringement notices

Customs Act 1901

1 After paragraph 243Z(1)(f)

Insert:

(fa) state that, if the person pays to the CEO, before the end of the period referred to in paragraph (f):

(i) the penalty; and

(ii) in the case of an alleged offence against section 243T—
any unpaid duty or any unrepaid refund or drawback of
duty;

the person cannot be prosecuted for the alleged offence and
will not be regarded as having been convicted of the offence;
and

Schedule 3—Cargo reports

Customs Act 1901

1 After subsection 64AB(14)

Insert:

- (14A) A cargo reporter who is required to make a cargo report in respect of particular goods is not liable to be prosecuted for, and cannot be served with an infringement notice under Division 5 of Part XIII for, an offence against this section if:
- (a) the cargo reporter made a cargo report, but contravened subsection (8) because the report was not made before the start of a certain period; and
 - (b) the time (the *actual time of arrival*) at which the ship or aircraft in question arrived at the first port or airport in Australia since it last departed from a port or airport outside Australia was later than the estimated time of arrival referred to in subsection (8); and
 - (c) the cargo reporter would not have contravened subsection (8) if the estimated time of arrival of the ship or aircraft had been its actual time of arrival.

Schedule 4—Missing goods and goods delivered without authority

Customs Act 1901

1 At the end of paragraphs 35A(1)(b), (1A)(c) and (1B)(b)

Add “in accordance with section 37”.

Note: The heading to section 35A is replaced by the heading “**Amount payable for failure to keep dutiable goods safely etc.**”.

2 After section 35A

Insert:

36 Offences for failure to keep goods safely or failure to account for goods

Offences for failure to keep goods safely

- (1) A person commits an offence if:
- (a) goods are subject to the control of the Customs; and
 - (b) the person has, or has been entrusted with, the possession, custody or control of the goods; and
 - (c) the person fails to keep the goods safely.

Penalty: 500 penalty units.

- (2) A person commits an offence if:
- (a) goods are subject to the control of the Customs; and
 - (b) the person has, or has been entrusted with, the possession, custody or control of the goods; and
 - (c) the person fails to keep the goods safely.

Penalty: 60 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

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

Offences for failure to account for goods

- (4) A person commits an offence if:
- (a) goods are subject to the control of the Customs; and
 - (b) the person has, or has been entrusted with, the possession, custody or control of the goods; and
 - (c) the person, when so requested by a Collector, does not account for the goods to the satisfaction of a Collector in accordance with section 37.

Penalty: 500 penalty units.

- (5) A person commits an offence if:
- (a) goods are subject to the control of the Customs; and
 - (b) the person has an authority to deal with the goods, or is given a permission under section 71E in relation to the goods; and
 - (c) the goods are taken, in accordance with the authority to deal or by authority of the permission under section 71E, from a place for removal to another place; and
 - (d) the goods are not, or part of the goods is not, delivered to that other place; and
 - (e) the person, when so requested by a Collector, does not account for the goods or for that part of the goods (as the case may be) to the satisfaction of a Collector in accordance with section 37.

Penalty: 500 penalty units.

- (6) A person commits an offence if:
- (a) goods are subject to the control of the Customs; and
 - (b) the person has, or has been entrusted with, the possession, custody or control of the goods; and
 - (c) the person, when so requested by a Collector, does not account for the goods to the satisfaction of a Collector in accordance with section 37.

Penalty: 60 penalty units.

- (7) A person commits an offence if:
- (a) goods are subject to the control of the Customs; and
 - (b) the person has an authority to deal with the goods, or is given a permission under section 71E in relation to the goods; and
-

- (c) the goods are taken, in accordance with the authority to deal or by authority of the permission under section 71E, from a place for removal to another place; and
- (d) the goods are not, or part of the goods is not, delivered to that other place; and
- (e) the person, when so requested by a Collector, does not account for the goods or for that part of the goods (as the case may be) to the satisfaction of a Collector in accordance with section 37.

Penalty: 60 penalty units.

- (8) An offence against subsection (6) or (7) is an offence of strict liability.

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

Removal of goods by authority of section 71E permission

- (9) Without limiting subsection (1), (2), (4) or (6), if goods are removed to a place other than a warehouse by authority of a permission given to a person under section 71E, the person is taken to have, or to have been entrusted with, the possession, custody or control of the goods for the purposes of paragraph (1)(b), (2)(b), (4)(b) or (6)(b).

Other liabilities not affected

- (10) This section does not affect the liability of a person arising under or by virtue of:
 - (a) any other provision of this Act; or
 - (b) a security given under this Act.

37 Accounting for goods

A person accounts for goods or a part of goods to the satisfaction of a Collector in accordance with this section if, and only if:

- (a) the Collector sights the goods; or
- (b) if the Collector is unable to sight the goods—the person satisfies the Collector that the goods have been dealt with in accordance with this Act.

3 Subsection 243X(1)

Schedule 4 Missing goods and goods delivered without authority

After “33(2), (3) or (6),”, insert “36(2), (6) or (7),”.

Schedule 5—Boarding powers and the United Nations Convention on the Law of the Sea

Customs Act 1901

1 Subsection 184A(1)

Repeal the subsection, substitute:

General power to board a ship

- (1) In the circumstances described in subsection (2), (3), (4), (4A), (5), (6), (7), (8) or (9), an officer (within the meaning of section 185) may board a ship.

Note: Sections 185 and 185A give further powers related to boarding a ship.

Note: The heading to section 184A is replaced by the heading “**Power to board a ship**”.

2 Subsection 184A(2)

Omit “The commander may make the request if”, substitute “The officer may board a ship if”.

3 Paragraphs 184A(2)(a) and (b)

Omit “master’s”.

4 Subparagraph 184A(2)(c)(i)

Omit “the commander makes the request for the purposes of this Act or an Act prescribed by the regulations consistently with UNCLOS”, substitute “the boarding would be for the purposes of this Act or an Act prescribed by the regulations for the purposes of this Subdivision”.

5 Subparagraph 184A(2)(c)(ii)

Omit “the commander reasonably suspects that the master’s ship”, substitute “the commander of a Commonwealth ship or Commonwealth aircraft reasonably suspects that the ship”.

6 Subsection 184A(3)

Omit “The commander may make the request if”, substitute “The officer may board a ship if”.

7 Paragraphs 184A(3)(a) and (b)

Omit “master’s”.

8 Subsection 184A(3)

Omit “The commander must not make the request under this subsection if it may be made under”, substitute “However, this subsection does not apply if the ship may be boarded under”.

9 Subsection 184A(4)

Omit “The commander may make the request if”, substitute “The officer may board a ship if”.

Note: The heading to subsection 184A(4) is altered by omitting “*or near installations*”.

10 Paragraph 184A(4)(a)

Omit “master’s”.

11 Paragraph 184A(4)(b)

Repeal the paragraph, substitute:

(b) the ship is in the contiguous zone of Australia; and

12 Paragraph 184A(4)(c)

After “commander”, insert “of a Commonwealth ship or Commonwealth aircraft”.

13 Subparagraphs 184A(4)(c)(i) and (ii)

Omit “master’s”.

14 Subparagraph 184A(4)(c)(ii)

Omit “consistently with UNCLOS”, substitute “for the purposes of this Subdivision”.

15 After subsection 184A(4)

Insert:

Foreign ships near installations

- (4A) The officer may board a ship if:
- (a) the ship is a foreign ship; and
 - (b) the ship is within 500 metres of an Australian resources installation or Australian sea installation (the **500 metre zone**); and
 - (c) the commander of a Commonwealth ship or Commonwealth aircraft:
 - (i) wishes to establish the identity of the ship; or
 - (ii) reasonably suspects that the ship is, will be or has been involved in a contravention, or an attempted contravention, in the 500 metre zone of this Act, section 72.13 or Division 307 of the *Criminal Code* or an Act prescribed by the regulations for the purposes of this Subdivision.

16 Subsection 184A(5)

Omit “The commander may make the request if”, substitute “The officer may board a ship if”.

17 Paragraphs 184A(5)(a) and (b)

Omit “master’s”.

18 Subparagraph 184A(5)(b)(ii)

Repeal the subparagraph.

19 Paragraph 184A(5)(c)

Omit “reasonably suspects that the master’s ship”, substitute “of a Commonwealth ship or Commonwealth aircraft reasonably suspects that the ship”.

20 Paragraph 184A(5)(c)

Omit “consistently with UNCLOS”, substitute “for the purposes of this Subdivision”.

21 Paragraph 184A(5)(d)

Repeal the paragraph, substitute:

- (d) the boarding occurs as soon as practicable after the contravention happens.

22 Subsection 184A(6)

Omit “The commander may make the request if”, substitute “The officer may board a ship if”.

23 Paragraphs 184A(6)(a) and (b)

Omit “master’s”.

24 Paragraph 184A(6)(c)

Omit “reasonably suspects that the master’s ship”, substitute “of a Commonwealth ship or Commonwealth aircraft reasonably suspects that the ship”.

25 Paragraph 184A(6)(c)

Omit “consistently with UNCLOS”, substitute “for the purposes of this Subdivision”.

26 Subsection 184A(7)

Omit “The commander may make the request if”, substitute “The officer may board a ship if”.

27 Paragraphs 184A(7)(a) and (b)

Omit “master’s”.

28 Subparagraph 184A(7)(b)(ii)

Repeal the subparagraph.

29 Paragraph 184A(7)(c)

Omit “reasonably suspects that the master’s ship”, substitute “of a Commonwealth ship or Commonwealth aircraft reasonably suspects that the ship”.

30 Paragraph 184A(7)(c)

Omit “consistently with UNCLOS”, substitute “for the purposes of this Subdivision”.

31 Paragraph 184A(7)(d)

Repeal the paragraph, substitute:

- (d) the boarding occurs as soon as practicable after the contravention happens.

32 Subsection 184A(8)

Omit “The commander may make the request if”, substitute “The officer may board a ship if”.

33 Paragraph 184A(8)(a)

Omit “master’s”.

34 Paragraph 184A(8)(b)

Omit “reasonably suspects that the master’s ship”, substitute “of a Commonwealth ship or Commonwealth aircraft reasonably suspects that the ship”.

35 Subsection 184A(8)

Omit “The commander must not make the request under this subsection if it may be made under subsection (5), (6) or (7)”, substitute “However, this subsection does not apply if the ship may be boarded under subsection (4A), (5), (6) or (7)”.

36 Subsection 184A(9)

Omit “The commander may make the request if”, substitute “The officer may board a ship if”.

37 Paragraph 184A(9)(a)

Repeal the paragraph, substitute:

(a) the ship is outside the territorial sea of a foreign country; and

38 Subparagraph 184A(9)(b)(i)

Omit “master’s”.

39 Subparagraph 184A(9)(b)(ii)

Omit “master’s” (first occurring).

40 Subparagraphs 184A(9)(b)(ii) and (iii)

Omit “reasonably suspects that the master’s ship”, substitute “of a Commonwealth ship or Commonwealth aircraft reasonably suspects that the ship”.

41 Paragraph 184A(9)(c)

Repeal the paragraph, substitute:

- (c) the commander of a Commonwealth ship or Commonwealth aircraft wishes to establish the identity of the ship.

42 Subsection 184A(9)

Omit “The commander must not make the request under this subsection if it may be made under subsection (5), (6), (7) or (8)”, substitute “However, this subsection does not apply if the ship may be boarded under subsection (4A), (5), (6), (7) or (8)”.

43 Subsections 184A(10) and (11)

Repeal the subsections.

44 Subsection 184A(12)

Omit “comply with a request made under this section (other than subsection (9))”, substitute “facilitate, by all reasonable means, the boarding of the master’s ship under this section (apart from subsection (9))”.

Note: The heading to subsection 184A(12) is altered by omitting “*comply with request*” and substituting “*facilitate boarding*”.

45 Subsection 184A(12) (note)

Repeal the note, substitute:

Note: The powers related to boarding under section 185 or 185A may still be exercised even though the master has not facilitated the boarding of his or her ship under this section.

46 Subsection 184A(14) (at the end of the definition of *commander*)

Add:

- ; (c) a warrant officer of the Australian Defence Force;
(d) a non-commissioned officer of the Australia Defence Force.

47 Subsection 184A(14) (definition of *member of the commander’s crew*)

Repeal the definition.

48 Subsection 184A(14)

Insert:

non-commissioned officer of the Australian Defence Force means a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982*.

49 Subsection 184A(14)

Insert:

warrant officer of the Australian Defence Force means a sailor, soldier or airman who holds the rank of warrant officer.

50 Subsections 184B(1) and (2)

Repeal the subsections, substitute:

Generally, a foreign ship may be chased if it may be boarded and an order to stop is given

- (1) To enable the boarding of a foreign ship under section 184A (apart from subsection 184A(9)), the commander of a Commonwealth ship or Commonwealth aircraft may use it to chase, or continue the chase of, the foreign ship to any place outside the territorial sea of a foreign country if:
- (a) a visual or auditory signal:
 - (i) to bring the foreign ship to a position to enable boarding; or
 - (ii) to stop the foreign ship;has been given (whether by the commander of the Commonwealth ship or Commonwealth aircraft or otherwise); and
 - (b) the signal was given in such a way that it could be seen or heard (as the case may be) by the foreign ship; and
 - (c) at the time the signal was given, the foreign ship was in a maritime zone in which it could be boarded under section 184A (regardless of the location of the Commonwealth ship or Commonwealth aircraft).

Note: Subsection 184A(9) is about boarding ships without nationality that are on the high seas. Section 185A allows those ships to be boarded, even though the master of the ship has not facilitated the boarding of his or her ship.

Signal made even if not seen or heard by foreign ship

- (1A) To avoid doubt, a visual or auditory signal mentioned in subsection (1) is still made even if no person on board the foreign ship saw, heard or understood the signal.

Using different Commonwealth ships or aircraft

- (2) To avoid doubt, a Commonwealth ship or Commonwealth aircraft may be used in the chase:
- (a) whether or not it was a Commonwealth ship or Commonwealth aircraft referred to in section 184A in relation to the boarding of the foreign ship under that section; and
 - (b) whether or not the visual or auditory signal referred to in subsection (1) was given from the ship or aircraft.

51 Subsection 184B(3)

Omit “the commander could have made a request to board the foreign ship”, substitute “the foreign ship could have been boarded”.

52 Paragraph 185(1)(a)

Omit “a request to board the ship has been made”, substitute “the ship may be boarded”.

53 Subsection 185(1)

Omit “a request to board the ship has been made”, substitute “the ship may be boarded”.

54 Subsection 185(1) (note)

Repeal the note, substitute:

Note: Section 185A gives further powers relating to ships that may be boarded under subsection 184A(8) or (9).

55 Subparagraph 185(2)(d)(i)

Omit “consistently with UNCLOS”, substitute “for the purposes of this Subdivision”.

56 Sub-subparagraph 185(2)(d)(ii)(A)

Omit “consistently with UNCLOS”, substitute “for the purposes of this Subdivision”.

57 Sub-subparagraph 185(2)(d)(ii)(B)

Omit “consistently with UNCLOS”, substitute “for the purposes of this Subdivision”.

58 After subsection 185(2)

Insert:

(2AA) If one or more officers (other than officers who are members of the Australian Defence Force) board a ship under this section, the most senior of those officers who is an officer of Customs must:

- (a) if requested to do so by the master of the ship; and
- (b) as soon as reasonably practicable after boarding;

produce, for inspection by the master, written evidence of the fact that the officer is an officer within the meaning of this section.

(2AB) If the officer fails to produce the evidence mentioned in subsection (2AA), no officer may remain on board the ship.

59 Paragraph 185(3)(a)

Omit “an Act prescribed consistently with UNCLOS”, substitute “an Act prescribed by the regulations for the purposes of this Subdivision”.

60 Subparagraphs 185(3)(c)(i) and (ii)

Omit “an Act prescribed consistently with UNCLOS”, substitute “an Act prescribed by the regulations for the purposes of this Subdivision”.

61 Subparagraph 185(5)(a)(i)

Repeal the subparagraph, substitute:

- (i) a Commonwealth ship or Commonwealth aircraft referred to in section 184A in relation to the boarding under that section of the ship to which this section applies; or
- (ia) the aircraft from which the relevant request under section 184D was made; or

62 Subsection 185A(1)

Repeal the subsection, substitute:

- (1) This section applies to a ship if:
- (a) the ship may be boarded under subsection 184A(8) (boarding a ship of a country with which Australia has an agreement), and the ship is:
 - (i) outside the outer edge of the contiguous zone of Australia; and
 - (ii) outside the territorial sea of any country (including Australia); or
 - (b) the ship may be boarded under subsection 184A(9) (boarding a ship without nationality), and the ship is outside the territorial sea of a foreign country.

63 After subsection 185A(2)

Insert:

- (2A) If one or more officers (other than officers who are members of the Australian Defence Force) board a ship under this section, the most senior of those officers who is an officer of Customs must:
- (a) if requested to do so by the master of the ship; and
 - (b) as soon as reasonably practicable after boarding;
- produce, for inspection by the master, written evidence of the fact that the officer is an officer within the meaning of this section.
- (2B) If the officer fails to produce the evidence mentioned in subsection (2AA), no officer may remain on board the ship.

64 Subsection 185A(7)

Repeal the subsection, substitute:

- (7) In this section:

officer has the meaning given by subsection 4(1), and includes:

- (a) any person who is in command, or a member of the crew, of:
 - (i) a Commonwealth ship or Commonwealth aircraft referred to in section 184A in relation to the boarding under that section of a ship; or
 - (ii) a ship that was used under section 184B to chase the ship in relation to which this section applies; and
- (b) a police officer; and
- (c) a member of the Australian Defence Force.

65 Subsection 228(1)

Omit “(1) The following”, substitute “The following”.

66 Paragraph 228(1)(2)

Omit “refused to permit his or her ship to be boarded following a request properly made of him or her”, substitute “failed to facilitate, by all reasonable means, the boarding of his or her ship”.

67 At the end of section 270

Add:

- (6) Regulations for the purposes of Subdivision B of Division 1 of Part XII must not prescribe an Act unless the Act deals with a subject matter in relation to which UNCLOS gives Australia jurisdiction.

Schedule 6—Impending arrival reports for pleasure craft

Part 1—Amendments

Customs Act 1901

1 Subsection 4(1)

Insert:

pleasure craft means a ship that from the time of its arrival at its first port of arrival in Australia from a place outside Australia until the time of its departure from its last port of departure in Australia is:

- (a) used or intended to be used wholly for recreational activities, sporting activities or both; and
- (b) not used or intended to be used for any commercial activity; and
- (c) not offered or intended to be offered for sale or disposal.

2 Subsection 64(5)

After “a ship”, insert “(other than a pleasure craft)”.

3 After subsection 64(5)

Insert:

- (5A) A report of the impending arrival of a pleasure craft must be made:
- (a) not earlier than the prescribed number of days before the time stated in the report to be the estimated time of arrival of the pleasure craft; and
 - (b) not later than:
 - (i) the start of the prescribed period before its estimated time of arrival; or
 - (ii) if the journey is of a kind described in regulations made for the purposes of this subparagraph—the start of the shorter period specified in those regulations before its estimated time of arrival.

4 Subsection 64(6)

After “paragraph (5)(b)”, insert “or (5A)(b)”.

Part 2—Application provision

5 Application

The amendments made by this Schedule apply in relation to a pleasure craft if the start of the period, referred to in subparagraph 64(5A)(b)(i) or (ii) (as the case requires) of the *Customs Act 1901* as in force after the commencement of this Schedule, is on or after the day on which this Schedule commences.

Schedule 7—Use of devices to stop or impede a ship

Customs Act 1901

1 At the end of subsection 184B(6)

Add:

; and (c) where necessary, using a device designed to stop or impede a ship.

2 At the end of subsection 184C(3)

Add:

; and (c) where necessary, using a device designed to stop or impede a ship.

Schedule 8—Power to request aircraft to land

Customs Act 1901

1 At the end of subsection 184D(3)

Add:

; or (c) the commander reasonably suspects that the other aircraft is carrying goods satisfying either or both of the following subparagraphs:

- (i) the goods are connected, whether directly or indirectly, with the carrying out of a terrorist act, whether a terrorist act has occurred, is occurring or is likely to occur;
- (ii) the existence or the shipment of the goods prejudices, or is likely to prejudice, Australia's defence or security or international peace and security.

Schedule 9—Seizing unaccounted for goods and storing or taking custody of prohibited items

Customs Act 1901

1 Subsection 183UA(1) (definition of *special forfeited goods*)

Omit “(b) or (n)”, substitute “(b), (e) or (n)”.

2 Part XIIA (heading)

Repeal the heading, substitute:

Part XIIA—Special provisions relating to prohibited items

3 Section 227A

Omit “weapons”, substitute “items”.

4 Paragraphs 227A(a) and (b)

Omit “the weapon”, substitute “the item”.

5 Section 227B

Insert:

prohibited item means a thing to which this Part applies because of section 227D.

6 Section 227B (definition of *prohibited weapon*)

Repeal the definition.

7 Section 227D

Repeal the section, substitute:

227D Items to which this Part applies

This Part applies to any thing if:

- (a) it is on board a ship or an aircraft to which this Part applies; and
- (b) its importation is:
 - (i) prohibited absolutely by the *Customs (Prohibited Imports) Regulations 1956*; or
 - (ii) prohibited by those regulations unless a licence, permission, consent, approval or other document (however described) is granted or given, and such a licence, permission, consent, approval or other document has not been granted or given; and
- (c) either:
 - (i) it is, or should have been, specified in a report given by the operator under section 64AAA as part of the stores of the ship or aircraft; or
 - (ii) it is part of the personal effects of the crew of the ship or aircraft.

8 Subsection 227E(1)

Omit “prohibited weapon”, substitute “prohibited item”.

Note: The heading to section 227E is altered by omitting “**weapons**” and substituting “**items**”.

9 Paragraph 227E(2)(b)

Omit “weapon”, substitute “item”.

10 Subsection 227E(5)

Omit “prohibited weapon”, substitute “prohibited item”.

11 Paragraph 227E(5)(b)

Omit “weapon”, substitute “item”.

12 Subsection 227F(1)

Omit “weapon” (wherever occurring), substitute “item”.

Note: The heading to section 227F is altered by omitting “**weapons**” and substituting “**items**”.

13 Subsections 227F(2), (4), (5) and (6)

Omit “weapon”, substitute “item”.

14 Subsection 227F(7)

Omit “weapon” (wherever occurring), substitute “item”.

15 Subsection 227G(1)

Omit “weapon” (wherever occurring), substitute “item”.

Note: The heading to section 227G is altered by omitting “**weapons**” and substituting “**items**”.

Schedule 10—Powers of arrest

Part 1—Amendments

Customs Act 1901

1 Subsection 183UA(1)

Insert:

seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

2 Subdivision H of Division 1 of Part XII

Repeal the Subdivision, substitute:

Subdivision H—Arrest and related matters

210 Power of arrest without warrant

- (1) An officer of Customs or police may without warrant arrest a person if the officer believes on reasonable grounds that:
 - (a) the person has committed or is committing one or more of the following offences:
 - (i) an offence against subsection 33(1) or 33(5);
 - (ii) an offence against section 231 or 233;
 - (iii) an offence against subsection 233BAA(4) or (5), 233BAB(5) or (6), 233BABAB(1) or 233BABAC(1);
 - (iv) an offence against section 72.13 or Division 307 of the *Criminal Code*;
 - (v) an offence against section 308.2 of the *Criminal Code* where the substance involved in the offence is reasonably suspected of having been imported into Australia, or being intended for export from Australia, in contravention of this Act;
 - (vi) an offence against section 147.1, 147.2 or 149.1 of the *Criminal Code* in relation to an officer of Customs; and

- (b) proceedings by summons against the person would not achieve one or more of the following purposes:
 - (i) ensuring the appearance of the person before a court in respect of the offence;
 - (ii) preventing a repetition or continuation of the offence or the commission of another offence;
 - (iii) preventing the concealment, loss or destruction of evidence relating to the offence;
 - (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
 - (v) preventing the fabrication of evidence in respect of the offence;
 - (vi) preserving the safety or welfare of the person.
- (2) A person commits an offence if the person resists, obstructs or prevents the arrest of any person under this section.
Penalty: 10 penalty units.
- (3) If:
 - (a) a person has been arrested for an offence under subsection (1); and
 - (b) before the person is charged with the offence, the officer of Customs or police in charge of the investigation ceases to believe on reasonable grounds:
 - (i) that the person committed the offence; or
 - (ii) that holding the person in custody is necessary to achieve a purpose referred to in paragraph (1)(b);the person must be released.
- (4) An officer of Customs or police may without warrant arrest a person whom he or she believes on reasonable grounds has escaped from lawful custody to which the person is still liable under this Subdivision.

210A Use of force in making arrest

- (1) An officer of Customs or police must not, in the course of arresting a person under section 210, use more force, or subject the person to

greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the person after the arrest.

- (2) Without limiting the operation of subsection (1), an officer of Customs or police must not, in the course of arresting a person under section 210, do anything that is likely to cause the death of, or grievous bodily harm to, the person unless:
- (a) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or
 - (b) if the person is attempting to escape arrest by fleeing:
 - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and
 - (ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

210B Person to be informed of grounds of arrest

- (1) An officer of Customs or police who arrests a person under section 210 must inform the person, at the time of the arrest, of the offence for which the person is being arrested.
- (2) It is sufficient if the person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.
- (3) Subsection (1) does not apply to the arrest of the person if:
- (a) the person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or
 - (b) the person's actions make it impracticable for the officer to inform the person of the offence for which he or she is being arrested.

211 Power to conduct a frisk search of an arrested person

An officer of Customs or police who arrests a person under section 210, or who is present at such an arrest, may, if the officer

suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items:

- (a) conduct a frisk search of the person at or soon after the time of arrest; and
- (b) seize any seizable items found as a result of the search.

211A Power to conduct an ordinary search of an arrested person

An officer of Customs or police who arrests a person under section 210, or who is present at such an arrest, may, if the officer suspects on reasonable grounds that the person is carrying:

- (a) evidential material in relation to the offence for which the person is arrested or another offence; or
- (b) a seizable item;

conduct an ordinary search of the person at or soon after the time of arrest, and seize any such thing found as a result of the search.

212 How arrested person to be dealt with

An officer of Customs who arrests a person under section 210 must ensure that the person is either:

- (a) delivered into the custody of a police officer; or
- (b) taken before a magistrate or bail justice;

as soon as practicable to be dealt with according to law.

213 Requirement to provide name etc.

- (1) An officer of Customs or police may request a person arrested under section 210 to provide his or her name or address, or name and address, to the officer if the person's name or address is, or name and address are, unknown to the officer.
- (2) A person commits an offence if:
 - (a) an officer of Customs or police:
 - (i) has made a request of a person under subsection (1); and
 - (ii) has complied with any request that the person has made under paragraph (4)(b); and
 - (b) the person refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) An officer of Customs or police commits an offence if:
- (a) the officer makes a request of a person under subsection (1); and
 - (b) the person requests the officer to provide to the person:
 - (i) his or her name or the address of his or her place of duty; or
 - (ii) his or her name and that address; or
 - (iii) if he or she is not in uniform and it is practicable for the officer to provide the evidence—evidence that he or she is an officer; and
 - (c) the officer refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

Financial Transaction Reports Act 1988

3 Subsection 33A(4)

Omit “sections 212 and 213 of the *Customs Act 1901* apply”, substitute “section 212 of the *Customs Act 1901* applies”.

Part 2—Application provision

4 Application to arrests made before commencement of this Schedule

- (1) The amendments made by this Schedule do not affect the validity of an arrest made before the commencement of this Schedule.
- (2) Subject to subitem (3), the amendments made by this Schedule do not apply in relation to an arrest made before the commencement of this Schedule.
- (3) Subsections 210(3) and (4) of the *Customs Act 1901* as in force after the commencement of this Schedule apply in relation to a person arrested under section 210 of that Act before the commencement of this Schedule as if he or she had been arrested under that section after that commencement.

Schedule 11—Warrants

Customs Act 1901

1 Subsection 203G(5) (paragraph (a) of the definition of a copy of the warrant)

Omit “and the seal of the relevant court”.

Schedule 12—Commonwealth property in Customs places

Customs Act 1901

1 After section 33B

Insert:

33C Obstructing or interfering with Commonwealth property in a Customs place

- (1) A person commits an offence if:
 - (a) the person intentionally obstructs or interferes with the operation of a thing; and
 - (b) the thing belongs to the Commonwealth; and
 - (c) the thing is located in a Customs place.

Penalty: 60 penalty units.

- (2) Absolute liability applies to paragraph (1)(b).

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

- (3) In this section:

Customs place has the same meaning as in section 183UA.

2 Subparagraph 210(1)(a)(ii)

Omit “231”, substitute “33C, 231”.

Schedule 13—Power to moor

Customs Act 1901

1 Section 194

Repeal the section, substitute:

194 Ships on service may be moored in any place

- (1) The officer in charge of a ship employed in the service of the Customs may:
 - (a) moor, or haul up and moor, the ship to:
 - (i) any part of the coast or the shores, banks or beaches of any port, bay, harbour, lake or river; or
 - (ii) any man-made structure at or in any of the places mentioned in subparagraph (i); or
 - (iii) any man-made structure anywhere in the territorial sea of Australia, the contiguous zone of Australia, or the exclusive economic zone of Australia; and
 - (b) remain at the mooring as long as the officer considers necessary.
- (2) A person commits an offence if:
 - (a) the person is an owner, occupier or operator of any of the places mentioned in paragraph (1)(a); and
 - (b) the person does not provide the officer with all reasonable facilities and assistance that the person is reasonably capable of providing; and
 - (c) the person does not do so in circumstances where the officer is exercising, or attempting to exercise, his or her powers under this section.

Penalty: 30 penalty units.

Schedule 14—Facilitation of boarding

Customs Act 1901

1 After section 61

Insert:

61A Owner or operator of port etc. to facilitate boarding

- (1) An officer of Customs may request an owner or operator of a port or of a port facility to facilitate, by any reasonable means, the boarding of a ship that is in the port or port facility by any person who is authorised under this Act to board the ship.
- (2) The owner or operator commits an offence if the owner or operator fails to comply with the request.

Penalty: 30 penalty units.

- (3) In this section:

port facility means an area of land or water, or land and water, (including any buildings, installations or equipment in or on the area) used either wholly or partly in connection with the loading, unloading, docking or mooring of ships.

Schedule 15—Entering places other than ports or airports

Customs Act 1901

1 Subsection 58(1)

Omit “suffer his or her ship or aircraft to enter any”, substitute “bring his or her ship or aircraft to a”.

Schedule 16—Right of access for patrols

Customs Act 1901

1 Section 193

Repeal the section, substitute:

193 Officers may enter and remain upon coasts etc.

- (1) An officer of Customs may, for the purpose of performing the officer's duties and functions as an officer, and a person assisting an officer of Customs may, for the purpose of assisting the officer to perform those duties and functions, enter and remain upon any part of the following:
- (a) the coast, including but not limited to:
 - (i) the shores, banks and beaches of the coast; and
 - (ii) any man-made structure in or on the coast;
 - (b) a port, bay or harbour, including but not limited to:
 - (i) the shores, banks and beaches of the port, bay or harbour; and
 - (ii) any man-made structure in or on the port, bay or harbour;
 - (c) an airport (including an airport that has not been appointed under section 15) or airstrip;
 - (d) a lake or river, including but not limited to:
 - (i) the shores, banks and beaches of the lake or river; and
 - (ii) any man-made structure in or on the lake or river;
 - (e) for the purpose of entering and remaining upon a place mentioned in paragraph (a), (b), (c), or (d)—an area of land or water that is adjacent to that place.
- For this purpose, reasonable means, including reasonable force, may be used by the officer or the person assisting the officer.
- (2) A person commits an offence if:
- (a) the person is an owner, occupier or operator of any of the places mentioned in subsection (1); and

- (b) the person is present at the place mentioned in subsection (1) at the time the officer, or the person assisting an officer, is exercising, or attempting to exercise, his or her powers under this section; and
- (c) the person does not provide the officer, or the person assisting the officer, with all reasonable facilities and assistance, including a means of access to the place, that the person is reasonably capable of providing.

Penalty: 30 penalty units.

Schedule 17—Search and seizure warrants

Customs Act 1901

1 Paragraph 198(4)(b)

After “material”, insert “or seizable items”.

2 Subparagraph 199(1)(e)(i)

After “material”, insert “or seizable items”.

3 Subparagraph 199(1)(e)(ii)

After “material”, insert “or items”.

4 Paragraph 203(6)(b)

Omit “or any special forfeited goods”, substitute “, special forfeited goods or seizable items”.

5 At the end of subsection 203(6)

Add:

; and (c) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has in his or her possession any relevant evidential material.

6 At the end of section 203

Add:

(10) In this section:

relevant evidential material means evidential material in relation to an offence by reason of the commission of which goods are believed to be:

- (a) forfeited goods of the kind referred to in paragraph (5)(a); or
- (b) special forfeited goods.

7 Subparagraph 203A(1)(e)(i)

Omit “or special forfeited goods”, substitute “, special forfeited goods or seizable items”.

8 Subparagraph 203A(1)(e)(ii)

After “goods”, insert “or items”.

9 At the end of subsection 203A(1)

Add:

; and (f) if the warrant so allows:

- (i) to conduct an ordinary search or a frisk search of a person who is at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has in his or her possession any relevant evidential material; and
- (ii) to seize any relevant evidential material found in the course of that search.

10 At the end of section 203A

Add:

(7) In this section:

relevant evidential material means evidential material in relation to an offence by reason of the commission of which goods are believed to be:

- (a) goods that are the subject of the warrant; or
- (b) special forfeited goods.

11 After section 203H

Insert:

203HA Requirement to provide name or address etc.

Request to provide name or address etc.

(1) If:

- (a) a search warrant or seizure warrant in relation to premises is being executed; and

(b) the designated warrant officer believes on reasonable grounds that a person who is at or near the premises may be able to assist the officer in the execution of the warrant;
the officer may request the person to provide his or her name or address, or name and address, to the officer.

Offence—person’s refusal or failure to comply with request etc.

- (2) A person commits an offence if:
- (a) a designated warrant officer:
 - (i) has made a request of the person under subsection (1); and
 - (ii) has informed the person of the reason for the request; and
 - (iii) has complied with any request that the person has made under paragraph (4)(b); and
 - (b) the person refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Offence—designated warrant officer’s refusal or failure to comply with request etc.

- (4) A designated warrant officer commits an offence if:
- (a) the officer makes a request of a person under subsection (1); and
 - (b) the person requests the officer to provide to the person:
 - (i) his or her name or the address of his or her place of duty; or
 - (ii) his or her name and that address; or
 - (iii) if the officer is not in uniform and it is practicable for the officer to provide the evidence—evidence that he or she is an officer; and
 - (c) the officer refuses or fails to comply with the request, or gives a name or address that is false in a material particular.

Penalty: 5 penalty units.

Definition

(5) In this section:

designated warrant officer, in relation to a search warrant or seizure warrant, means:

- (a) the executing officer; or
- (b) a person who is an authorised person and who is assisting in the execution of the warrant.

[*Minister's second reading speech made in—
House of Representatives on 3 December 2008
Senate on 10 March 2009*]