

2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Customs Legislation Amendment
(Augmenting Offshore Powers and Other
Measures) Bill 2006**

No. , 2006

(Justice and Customs)

**A Bill for an Act to amend the law relating to
customs, and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	3
Schedule 1—Search powers on certain ships and aircraft		4
Part 1—Main amendments		4
<i>Customs Act 1901</i>		4
Part 2—Amendments contingent on the Law and Justice Legislation Amendment (Marking of Plastic Explosives) Act 2006		11
<i>Customs Act 1901</i>		11
Schedule 2—Agents and customs brokers		12
<i>Customs Act 1901</i>		12
Schedule 3—Recovery of duty		13
Part 1—Amendments		13
<i>Customs Act 1901</i>		13
<i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i>		17
Part 2—Application and transitional provisions		18
Schedule 4—Treatment of certain information given to Customs		19
<i>Customs Act 1901</i>		19

1 **A Bill for an Act to amend the law relating to**
2 **customs, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Customs Legislation Amendment*
6 *(Augmenting Offshore Powers and Other Measures) Act 2006*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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.	
2. Schedule 1, Part 1	The 28th day after the day on which this Act receives the Royal Assent.	
3. Schedule 1, Part 2	The later of: (a) immediately after the start of the 28th day after the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the <i>Law and Justice Legislation Amendment (Marking of Plastic Explosives) Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 2	The day after this Act receives the Royal Assent.	
5. Schedule 3, items 1 to 5	The 28th day after the day on which this Act receives the Royal Assent.	
6. Schedule 3, item 6	The later of: (a) immediately after the start of the 28th day after the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 5 to the <i>Customs Legislation Amendment (Border Compliance and Other Measures) Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
7. Schedule 3, items 7 and 8	The later of: (a) the start of the 28th day after the day on which this Act receives the Royal Assent; and	

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	(b) immediately after the commencement of Schedule 5 to the <i>Customs Legislation Amendment (Border Compliance and Other Measures) Act 2006</i> .	
	However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
8. Schedule 3, items 9 to 15	The 28th day after the day on which this Act receives the Royal Assent.	
9. Schedule 4	The 28th day after the day on which this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

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

3 Schedule(s)

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

1
2 **Schedule 1—Search powers on certain ships**
3 **and aircraft**

4 **Part 1—Main amendments**

5 *Customs Act 1901*

6 **1 Subsection 4(1) (definition of *Frisk search*)**

7 Repeal the definition, substitute:

8 *frisk search* means:

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

13 **2 Subsection 183UA(1) (definition of *frisk search*)**

14 Repeal the definition.

15 **3 After paragraph 185(2)(ca)**

16 Insert:

- 17 (cb) take possession of any goods (other than narcotic goods)
18 found on the ship or aircraft, and any documents produced
19 under paragraph (c) by a person found on the ship or aircraft,
20 if the officer has reasonable grounds to believe that the goods
21 or documents may afford evidence of the commission of a
22 relevant offence; and
23 (cc) if the officer takes possession of goods or documents under
24 paragraph (cb)—retain the goods or documents for such time
25 as the officer thinks necessary for the purposes of this Act,
26 Division 307 of the *Criminal Code*, or an Act prescribed
27 under a paragraph or subparagraph of subsection (7), as the
28 case may be; and

29 **4 At the end of subsection 185(2)**

30 Add:

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

1 **5 At the end of subsection 185(3AA)**

2 Add:

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

5 **6 At the end of section 185**

6 Add:

7 (7) For the purposes of paragraph (2)(cb), goods found on a ship or
8 aircraft, or documents produced by a person found on a ship or
9 aircraft, may afford evidence of the commission of a relevant
10 offence only if:

11 (a) in a case where the ship is in Australia—the goods or
12 documents may afford evidence of the commission of an
13 offence, either in or outside Australia, against this Act,
14 Division 307 of the *Criminal Code* or an Act prescribed by
15 the regulations consistently with UNCLOS; or

16 (b) in a case where the ship is outside Australia—the goods or
17 documents may afford evidence of the commission of an
18 offence:

19 (i) in Australia against this Act, Division 307 of the
20 *Criminal Code* or an Act prescribed by the regulations
21 consistently with UNCLOS; or

22 (ii) in Australia's exclusive economic zone against an Act
23 prescribed by the regulations consistently with
24 UNCLOS; or

25 (c) in a case where the aircraft is in Australia—the goods or
26 documents may afford evidence of the commission of an
27 offence, either in or outside Australia, against this Act or
28 Division 307 of the *Criminal Code*.

29 **7 At the end of subsection 185A(2)**

30 Add:

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

33 **8 Subsections 185AA(1), (2) and (3)**

34 Repeal the subsections, substitute:

People found on ships and aircraft boarded under section 185

- 1
2 (1) A person may be searched for the purposes set out in
3 subsection (1A) if:
4 (a) the person is found on a ship or aircraft that has been boarded
5 under paragraph 185(2)(a); or
6 (b) the person has been placed on a ship or aircraft under
7 subsection 185(3AA).

- 8 (1A) If a person may be searched for the purposes set out in this
9 subsection, the person, the person's clothing and any property
10 under the immediate control of the person, may, without warrant,
11 be searched to find out whether the person is carrying, or there is
12 hidden on the person, in the clothing or in the property:
13 (a) a weapon or other thing capable of being used to inflict
14 bodily injury or to help the person escape; or
15 (b) a document, or other thing, that may afford evidence of the
16 commission of a relevant offence.

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

- 19 (1B) For the purposes of subsection (1A), a document, or other thing
20 carried or hidden on a person, in a person's clothing or in a
21 person's property, may afford evidence of the commission of a
22 relevant offence only if:
23 (a) in a case where the person is found on a ship in Australia—
24 the document or other thing may afford evidence of the
25 commission of an offence, either in or outside Australia,
26 against this Act, Division 307 of the *Criminal Code* or an Act
27 prescribed by the regulations consistently with UNCLOS; or
28 (b) in a case where the person is found on a ship outside
29 Australia—the document or other thing may afford evidence
30 of the commission of an offence:
31 (i) in Australia against this Act, Division 307 of the
32 *Criminal Code* or an Act prescribed by the regulations
33 consistently with UNCLOS; or
34 (ii) in Australia's exclusive economic zone against an Act
35 prescribed by the regulations consistently with
36 UNCLOS; or
37 (c) in a case where the person is found on an aircraft in
38 Australia—the document or other thing may afford evidence
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1 of the commission of an offence, either in or outside
2 Australia, against this Act or Division 307 of the *Criminal*
3 *Code*.

4 *People found on ships boarded under section 185A*

5 (2) A person may be searched for the purpose set out in
6 subsection (2A) if the person is found on a ship that has been
7 boarded under paragraph 185A(2)(a).

8 (2A) If a person may be searched for the purpose set out in this
9 subsection, the person, the person's clothing and any property
10 under the immediate control of the person, may, without warrant,
11 be searched to find out whether the person is carrying, or there is
12 hidden on the person, in the clothing or in the property a weapon or
13 other thing capable of being used to inflict bodily injury.

14 *Power to examine things found*

15 (3) If a search is conducted under this section, an officer may examine
16 any thing found in the course of the search (including, if the thing
17 is a document, by reading the document directly or with the use of
18 an electronic device).

19 (3A) In exercising the power to examine things, an officer may do, or
20 arrange for another officer or other person having the necessary
21 experience to do, whatever is reasonably necessary to permit the
22 examination of the things.

23 (3B) However, when examining a thing found in the course of a search,
24 an officer must not damage the thing by forcing it, or a part of it,
25 open unless:

26 (a) the person being searched has been given a reasonable
27 opportunity to open the thing or part; or

28 (b) it is not reasonably practicable to give the person such an
29 opportunity.

30 *Powers to take possession and retain things found*

31 (3C) If, in the course of a search for a purpose set out in subsection (1A)
32 or (2A), a weapon, document or other thing referred to in that
33 subsection is found, then:

Schedule 1 Search powers on certain ships and aircraft

Part 1 Main amendments

- 1 (a) in the case of a search conducted by an officer—an officer
2 may take possession of the weapon, document or thing; and
3 (b) in the case of a search conducted by a person who is not an
4 officer—the person must take possession of the weapon,
5 document or thing and give it to an officer; and
6 (c) an officer may retain the weapon, document or thing for such
7 time as the officer thinks necessary for the purposes of this
8 Act, Division 307 of the *Criminal Code*, or an Act prescribed
9 under a paragraph or subparagraph of subsection (1B), as the
10 case may be.

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

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

15 **9 Subsection 185AA(6)**

16 Repeal the subsection, substitute:

17 *Protection if officers etc. act in good faith*

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

22 **10 After subsection 185AA(7)**

23 Insert:

24 *Evidence may be used in prosecutions etc.*

- 25 (7A) To avoid doubt, if, when exercising powers under this section, an
26 officer or other person who conducts a search under this section
27 obtains evidence of the commission of an offence against a law of
28 the Commonwealth, a State or a Territory, then that evidence may
29 be used, or given to another body for use, in:

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

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

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

3 **11 Subsection 185AA(8)**

4 Repeal the subsection, substitute:

5 *Definitions*

6 (8) In this section:

7 *officer* means any of the following:

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

10 **12 At the end of section 185AA**

11 Add:

12 *References to person found on a ship or aircraft*

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

16 **13 Subsection 219L(1B)**

17 Repeal the subsection.

18 **14 Subsection 219L(1C)**

19 Repeal the subsection.

20 **15 Subsection 219L(2)**

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

22 **16 Before subsection 219M(1)**

23 Insert:

- 24 (1A) If a person is detained under section 219L, an officer of Customs
25 may:
26 (a) carry out a frisk search of the person to determine whether
27 the person is unlawfully carrying prohibited goods; and
28 (b) recover any prohibited goods found in the course of the frisk
29 search.

1 **17 Subsection 219M(4)**

2 Repeal the subsection.

3 **18 Section 219NA**

4 Repeal the section.

5 **19 Paragraph 219ZE(1)(ca)**

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

7 **20 Paragraph 219ZE(1)(cb)**

8 Repeal the paragraph.

9 **21 Application**

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

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**Part 2—Amendments contingent on the Law and
Justice Legislation Amendment (Marking of
Plastic Explosives) Act 2006**

Customs Act 1901

22 Paragraph 185(2)(cc)

Before “Division 307”, insert “section 72.13 or”.

23 Paragraph 185(7)(a)

Before “Division 307”, insert “section 72.13 or”.

24 Subparagraph 185(7)(b)(i)

Before “Division 307”, insert “section 72.13 or”.

25 Paragraph 185(7)(c)

Before “Division 307”, insert “section 72.13 or”.

26 Paragraph 185AA(1B)(a)

Before “Division 307”, insert “section 72.13 or”.

27 Subparagraph 185AA(1B)(b)(i)

Before “Division 307”, insert “section 72.13 or”.

28 Paragraph 185AA(1B)(c)

Before “Division 307”, insert “section 72.13 or”.

29 Paragraph 185AA(3C)(c)

Before “Division 307”, insert “section 72.13 or”.

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Schedule 2—Agents and customs brokers

Customs Act 1901

1 Subsection 183CD(1)

Omit “(1)” (first occurring).

2 Subsection 183CD(1)

Omit “Subject to this section, a”, substitute “A”.

3 Paragraph 183CD(1)(f)

Repeal the paragraph.

4 Paragraph 183CD(1)(h)

Omit “customs broker; and”, substitute “customs broker.”.

5 Paragraph 183CD(1)(j)

Repeal the paragraph.

6 Subsections 183CD(2), (3) and (4)

Repeal the subsections.

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2 **Schedule 3—Recovery of duty**

3 **Part 1—Amendments**

4 *Customs Act 1901*

5 **1 Section 153**

6 Repeal the section.

7 **2 Subsection 161L(2)**

8 Omit all the words after paragraph (b), substitute:

9 section 165 applies in relation to any demand by the CEO for the
10 payment of the amount of duty that is unpaid or the amount of
11 refund that was overpaid.

12 **3 Division 3 of Part VIII (heading)**

13 Repeal the heading, substitute:

14 **Division 3—Payment and recovery of deposits, refunds,**
15 **unpaid duty etc.**

16 **4 Section 165**

17 Repeal the section, substitute:

18 **165 Recovery of unpaid duty etc.**

19 (1) An amount of duty that is due and payable in respect of goods:

20 (a) is a debt due to the Commonwealth; and

21 (b) is payable by the owner of the goods.

22 (2) An amount of drawback, refund or rebate of duty that is overpaid
23 to a person:

24 (a) is a debt due to the Commonwealth; and

25 (b) is payable by the person.

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Demand for payment

- (3) The CEO may make, in writing, a demand for payment of an amount that is a debt due to the Commonwealth under subsection (1) or (2).
- (4) A demand, under subsection (3), for payment of an amount must specify the amount and include an explanation of how it has been calculated.
- (5) A demand, under subsection (3), for payment of an amount must be made within 4 years from:
 - (a) if the amount is a debt due to the Commonwealth under subsection (1)—the time the amount was to be paid by under this Act; or
 - (b) if the amount is a debt due to the Commonwealth under subsection (2)—the time the amount was paid;unless the CEO is satisfied that the debt arose as the result of fraud or evasion.

Recovery in court

- (6) An amount that is a debt due to the Commonwealth under subsection (1) or (2) may be sued for and recovered in a court of competent jurisdiction by proceedings in the name of the Collector if:
 - (a) the CEO has made a demand for payment of the amount in accordance with this section; or
 - (b) the CEO is satisfied that the debt arose as the result of fraud or evasion.

165A Refunds etc. may be applied against unpaid duty

- (1) If:
 - (a) an amount of duty is payable by a person in respect of goods that have been delivered into home consumption; and
 - (b) the person would be entitled to an amount of drawback, refund or rebate of duty in respect of the goods if the amount of duty payable were paid;then:
 - (c) the CEO may apply the amount of the drawback, refund or rebate against the amount of duty payable; and

- 1 (d) the person is taken to have paid, in respect of the goods, an
2 amount of duty equal to the amount of drawback, refund or
3 rebate applied; and
4 (e) the amount of drawback, refund or rebate applied is taken to
5 have been paid to the person.
- 6 (2) If the CEO applies an amount of drawback, refund or rebate
7 against an amount of duty payable, the CEO must give the person
8 who would have been entitled to receive the amount of drawback,
9 refund or rebate written notice of:
10 (a) the amount of drawback, refund or rebate applied; and
11 (b) if the amount of drawback, refund or rebate applied is less
12 than the amount of duty payable—the amount of duty that is
13 still payable by the person.

14 **5 Subsections 167(3) and (3A)**

15 Repeal the subsections, substitute:

- 16 (3) For the purposes of this section, a payment is taken to be made
17 under protest if, and only if:
18 (a) the owner of the goods or the agent of the owner gives
19 Customs notice in accordance with subsection (3A), by
20 document or electronically, that the payment is made under
21 protest; and
22 (b) Customs receives the notice no later than 7 days after the day
23 the payment is made.
- 24 (3A) A notice given by an owner or agent under subsection (3) must:
25 (a) contain the words *paid under protest*; and
26 (b) identify the import declaration that covers the goods to which
27 the protest relates; and
28 (c) if the protest does not relate to all the goods covered by the
29 import declaration—describe the goods to which the protest
30 relates; and
31 (d) include a statement of the grounds on which the protest is
32 made; and
33 (e) be signed by the owner or the agent of the owner.

34 **6 Subsection 167(3)**

35 Omit “For”, substitute “Subject to subsection (3B), for”.

1 **7 Before subsection 167(4)**

2 Insert:

- 3 (3B) If, under section 71DGA, an accredited client pays an amount of
4 accredited client monthly duty estimate in respect of goods, then
5 for the purposes of this section, the amount of duty that would be
6 payable in respect of the goods if the amount of accredited client
7 monthly duty estimate were not paid is taken to be paid under
8 protest by the accredited client if, and only if:
- 9 (a) the accredited client or the agent of the accredited client
10 gives Customs notice in accordance with subsection (3C), by
11 document or electronically, that the payment is made under
12 protest; and
 - 13 (b) Customs receives the notice no later than 7 days after the
14 accredited client payment day on which the amount of duty
15 would be payable on the goods under subsection 71DGB(1)
16 if the amount of accredited client monthly duty estimate were
17 not paid.
- 18 (3C) A notice given by an accredited client or agent under
19 subsection (3B) must:
- 20 (a) contain the words *paid under protest*; and
 - 21 (b) identify the periodic declaration that covers the goods to
22 which the protest relates; and
 - 23 (c) if the protest does not relate to all the goods covered by the
24 periodic declaration—describe the goods to which the protest
25 relates; and
 - 26 (d) include a statement of the grounds on which the protest is
27 made; and
 - 28 (e) be signed by the accredited client or the agent of the
29 accredited client.

30 **8 After subsection 167(4)**

31 Insert:

- 32 (4A) No action lies for the recovery of any sum paid to Customs under
33 section 71DGA as an amount of accredited client monthly duty
34 estimate in respect of goods, unless:
- 35 (a) the amount of duty that would be payable in respect of the
36 goods if the amount of accredited client monthly duty

- 1 estimate were not paid has been taken under subsection (3B)
2 to have been paid under protest; and
3 (b) the action is commenced within the following times:
4 (i) if the sum is paid as an estimate of duty payable under
5 any Customs Tariff—within 6 months after the
6 accredited client payment day on which the amount of
7 duty would be payable on the goods under subsection
8 71DGB(1) if the amount of accredited client monthly
9 duty estimate were not paid; or
10 (ii) if the sum is paid as an estimate of duty payable under a
11 Customs Tariff or Customs Tariff alteration proposed in
12 the Parliament—within 6 months after the Act, by
13 which the Customs Tariff or Customs Tariff alteration
14 proposed in the Parliament is made law, is assented to.

15 **9 At the end of section 167**

16 Add:

17 (6) In this section:

18 *import declaration* includes an import entry, within the meaning of
19 the unamended Customs Act, that was made under that Act.

20 *unamended Customs Act* has the meaning given by section 4 of
21 the *Customs Legislation Amendment (Application of International*
22 *Trade Modernisation and Other Measures) Act 2004*.

23 **10 Paragraph 273GA(1)(ja)**

24 Repeal the paragraph, substitute:

25 (ja) a decision of the CEO under subsection 165(3) to make a
26 demand for payment of an amount of drawback, refund or
27 rebate of duty that was overpaid;

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

30 **11 Item 45 of Schedule 3**

31 Repeal the item.

1

2 **Part 2—Application and transitional provisions**

3 **12 Transitional—item 1**

4 The repeal of section 153 of the *Customs Act 1901* made by item 1 of
5 this Schedule does not affect any proceedings brought under that section
6 before the commencement of this item.

7 **13 Transitional—item 4**

8 (1) This item applies to a demand made under section 165 of the old law.

9 (2) Section 165 of the new law has effect, on and after the commencement
10 time, as if the demand were a demand made under, and in accordance
11 with, that section.

12 (3) In this item:

13 *commencement time* means the time at which item 4 of this Schedule
14 commences.

15 *new law* means the *Customs Act 1901* as amended by item 4 of this
16 Schedule.

17 *old law* means the *Customs Act 1901* as in force before the
18 commencement time.

19 **14 Application—items 5 and 9**

20 The amendments made by items 5 and 9 of this Schedule apply in
21 relation to payments made on or after the commencement of those
22 items.

23 **15 Application—items 6 to 8**

24 The amendments made by items 6 to 8 of this Schedule apply in relation
25 to payments made on or after the commencement of those items.

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Schedule 4—Treatment of certain information given to Customs

Customs Act 1901

1 After subsection 234(2BB)

Insert:

(2BC) For the purposes of paragraph (1)(d), information provided to Customs under section 71 in the circumstances mentioned in section 71AAAB is taken to be a statement made to the CEO.

2 Subsection 234(2C)

Omit “or (2BB)”, substitute “, (2BB) or (2BC)”.

3 Application

The amendments made by this Schedule apply in relation to information provided to Customs on or after the commencement of this Schedule.