



CUSTOMS AND EXCISE BILL 2013

(BILL NO. ... OF 2013)

THIS IS A DRAFT FOR PUBLIC CONSULTATION ONLY

DRAFT FOR PUBLIC CONSULTATION



CUSTOMS AND EXCISE BILL 2013

(BILL NO. ... OF 2013)

A

BILL

Entitled

AN ACT TO MAKE PROVISION WITH RESPECT TO CUSTOMS AND EXCISE, TO REGULATE THE IMPORTATION OF GOODS INTO, THE EXPORT OF GOODS FROM AND THE MANUFACTURE AND PRODUCTION OF EXCISABLE GOODS IN SOLOMON ISLANDS, TO PROVIDE FOR THE COLLECTION OF DUTIES OF CUSTOMS AND EXCISE, AND FOR RELATED PURPOSES

ENACTED by the National Parliament of Solomon Islands

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Customs and Excise Bill 2013

CHAPTER 1—PRELIMINARY

PART 1.1—PRELIMINARY

1. This Act may be cited as the Customs and Excise Act 2013. Citation

2. This Act binds the Crown, but does not make the Crown liable to a penalty, or to a prosecution for an offence. Act binds Crown

3. (1) Each provision of this Act commences on the day appointed by the Minister for the provision, by notice in the Gazette (the “commencement day” for the provision). Commencement and application
 - (2) Sections 21 and 22 apply in relation to the import of goods after the commencement day for Part 2.1.
 - (3) Section 26 applies in relation to the export of goods after the commencement day for Part 2.1.
 - (4) Section 94 applies to the manufacture or production of goods after the commencement day for Part 5.1.
 - (5) The other provisions of this Act, when they commence, apply in relation to goods whenever the goods were imported, exported, manufactured or produced.

4. In this Act, unless the context otherwise requires— Definitions
 - “act includes omission;
 - “administrative penalty” means a penalty imposed under section 320;
 - “advance arrivals report” means a report required by section 29;
 - “advance entry”, for goods, means an entry for home consumption for the goods lodged before the goods are imported;

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Note For the time when goods are imported see section 10.

“aircraft” means a machine that can derive support in the atmosphere from the reaction of the air, and includes a balloon, a seaplane, a spacecraft and a rocket, but not a hovercraft;

“approved computer system” means a computer system approved under section 388;

“approved form” means a form approved under section 9;

“authorised” means authorised under this Act;

“authorised person” means each of the following—

- (a) a police officer;
- (b) a person appointed under section 361(2);

“baggage” means goods carried by or for a traveller, including the captain and a crew member, on the same craft as the traveller, but not—

- (a) goods carried as cargo; or
- (b) ships’ or aircraft’s stores;

Note Goods that are consigned as cargo but accompany an on-board courier are not baggage.

“board of directors”, of a body corporate that is not a company, means the committee of management, council or other governing authority of the body;

“boarding station” means an area appointed as a boarding station under section 371;

“border law” means a written law (not this Act) so far as it relates to prohibiting or restricting the import or export of goods;

“border offence” means an offence against this Act or a border law;

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Note See also section 15 for the extended meaning of references to offences.

“bring on board” a craft includes load onto the craft;

“business” includes any of the following—

- (a) a profession, calling, occupation, trade or undertaking;
- (b) anything done by a person or body in the performance of the duties of an office, or in the exercise of a power, that the person or body has under or because of the Constitution or of a law (including the law of a foreign country);
- (c) anything done by—
 - (i) the Crown in any of its capacities; or
 - (ii) the Government; or
 - (ii) the government of a foreign country;
- (d) without limiting paragraphs (a), (b) or (c)—the proceedings of—
 - (i) the Parliament; or
 - (ii) a Provincial Council established under the Provincial Government Act 1996; or
 - (iii) a council established under the Local Government Act (Cap. 117); or
 - (iv) the legislature of a foreign country;

or a committee of any of them;

whether or not engaged in or carried on for profit and whether or not engaged in or carried on within Solomon Islands;

“captain”, of a craft, means the person in command of the craft (not a ship’s pilot);

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“cargo” means goods carried for reward by a carrier under an arrangement between the carrier and the owner or consignor of the goods;

“carrier” means the operator of a ship or an aircraft;

“Central Bank” means the Central Bank of Solomon Islands;

“cleared”—a person is cleared by Customs—

- (a) if the person is in a customs clearance area—if a Customs officer indicates that the person may leave the area; or
- (b) if the person is on a craft—if a Customs officer indicates that the person need not present himself or herself, or produce baggage, to a Customs officer after getting off the craft;

“clearing agents licence” means a licence issued under Part 8.2 authorising the holder to provide customs clearing services for reward;

“commencement day”, for a provision of this Act (not the regulations or rules), means the day appointed under section 3 as the commencement day for the provision;

“commercial amount or commercial quantity”, of particular goods, means an amount or quantity of the goods not less than the amount or quantity prescribed for the goods by regulations made for section 20(3);

“commercial document” means a document that—

- (a) is or forms part of, or at any time was or formed part of, the documents belonging to or kept by a business (including a business that has ceased); and
- (b) was made or recorded in the course of, or for the purposes of, the business;

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“Committee” means the committee continued in existence as the Revenue Exemptions Committee by section [*inset number*];

“Committee member” means a member of the Committee, and includes an alternate for a Committee member.

Note For alternates see section [*inset number*]

“company” means—

- (a) a body corporate registered or reregistered as a company under the Companies Act 2009; and
- (b) a body corporate incorporated in a foreign country (whether or not so registered);

“Comptroller” means the person for the time being holding office as, or acting in the office of, Comptroller under this Act;

Note Delegates of the Comptroller may also exercise the Comptroller’s powers—see section 366.

“computed value”, of goods, means the value determined under section 120 or 122 (as relevant) for the goods;

“computer system” includes software;

“condemned goods” means goods that, in accordance with section 267, are condemned goods;

“container” means a container within the meaning of the Customs Convention on Containers concluded at Geneva on 2 December 1972;

Note The text of this convention is available at http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=XI-A-15&chapter=11&lang=en#Participants.

“continuing authority” means a Customs authority of kind referred to in section 376(2);

“craft” means a ship, an aircraft or a spacecraft and includes a wreck of a craft;

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“crew member”, of a craft, means a person employed, engaged or acting in any capacity on board the craft on the business of the craft, but not—

- (a) the captain of the craft; or
- (b) for a ship—a pilot; or
- (c) a person who is only employed, engaged or acting temporarily on the craft when the craft is in port or at an airport;

“customs airport” means an airport appointed as a customs airport under section 371;

“Customs and Excise Review Panel” means the panel established by section 341;

“Customs authority” means an authority, consent or permission given by a Customs officer;

“customs clearance area” means an area set aside as a customs clearance area under section 373;

“customs clearing services” means any of the following services in relation to imported goods or goods for export—

- (a) preparing an entry or return for the goods or giving one to Customs;
- (b) preparing an application for a refund, remission or rebate in relation to the goods or giving one to Customs;
- (c) dealing with Customs in relation to such an entry, return or application;

“customs controlled area” means an area set aside under section 373;

“customs controlled goods” means goods that, under — section 61, are customs controlled goods;

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“customs duty” means an import duty or an export duty;

“Customs officer” means—

- (a) the Comptroller; and
- (b) each Deputy Comptroller; and
- (c) each public officer holding office as a Customs officer; and
- (d) each authorised person;

“customs place” means any of the following—

- (a) a customs port;
- (b) a customs airport;
- (c) a sufferance wharf;
- (d) a customs clearance area;
- (e) a boarding station;
- (f) a transit area;

“customs port” means a port appointed as a customs port under section 371;

“Customs ruling” means a ruling made under section 162;

“customs security” means a security referred to in Part 10.10;

“customs tariff” means the import tariff or the export tariff;

“customs wharf” means a wharf or area appointed as a customs wharf under section 371;

“customs value”, for goods, means the customs value of the goods determined in accordance with Part 6.2;

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“Deputy Comptroller” means a person for the time being holding office as, or acting in an office of, Deputy Comptroller under this Act;

Note See section 360(2).

“deductive value”, for goods, means the value determined in accordance with section 119 or 122 (as relevant) for the goods;

“defence of emergency” means the defence provided for in section 303;

“defence of mistake of fact” means a defence, whether expressly provided for in this Act or not, that the defendant lacked knowledge of, or had a mistaken belief about the existence of, a fact or circumstance;

“designated Customs officer”, when used in a provision of this Act, means a Customs officer designated by the Comptroller in writing for the provision;

Note “This Act” includes the regulations and the rules.

“director”, in relation to—

- (a) a company—has the meaning it has under the Companies Act 2009; and
- (b) a body corporate that is not a company—means a person who is a member of the board of directors of the body corporate;

Note See the definition of “board of directors” in this section.

“disqualified person” means a person who—

- (a) has been convicted or found guilty of any of the following offences—
 - (i) an offence against this Act;
 - (ii) an offence against another border law, being an offence relating to the import or export of goods;

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- (iii) an offence against another law, the maximum penalty for which is a pecuniary penalty of 50 penalty units (or its equivalent) or imprisonment for 12 months or more;
- (iv) an offence against a law of a foreign country that relates to customs or excise; or
- (b) is insolvent;

Note For “insolvent”, see section 12.

“document” includes the following—

- (a) a thing on which there is writing;
- (b) a map, plan, drawing or photograph;
- (c) a thing from which sounds, images or writing can be reproduced with or without the aid of a computer or some other device;
- (d) a part of a document;
- (e) a copy, reproduction or duplicate of a document or of a part of a document;

Note This definition covers computer disks.

“duty” means each of the following—

- (a) import duty;
- (b) export duty;
- (c) excise duty;
- (d) amounts imposed as penalty duty;

Note For duties see Part 6.1. For penalty duty see section 147.

“duty or recovery demand” means a demand under any of sections 72, 97(2), 103(2), 105(4)(b), 123 and 202(2)(a);

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- Notes Section 72 deals with missing crew members' possessions.
- Section 97(2) deals with missing excisable goods.
- Section 103(2) provides for missing excise controlled goods.
- Section 105(4)(b) provides for Customs to recover its cost of implementing certain directions about excise controlled goods.
- Section 123 provides for recovery of duty on goods misdescribed as the produce or manufacture of an MSG country.
- Section 202(2)(a) provides for sale of goods where there are arrears of warehouse charges.

“duty free shop licence” means a licence issued under Part 8.1 as a duty free shop licence;

- Note For what a duty free shop licence authorises see section 187(1)(c). See also Division 2 of Part 8.1.

“duty liability” means the amount of a liability for import duty, excise duty or export duty, but not a liability for penalty duty;

“duty related decision” means a decision by a Customs officer—

- (a) determining, for the purpose of assessing and collecting import duty, export duty, excise duty or goods tax—
 - (i) the tariff classification of goods; or
 - (ii) the origin of goods; or
 - (iii) the quantity of goods; or
 - (iv) the customs value of goods; or
- (b) determining an amount of penalty duty; or
- (c) to make a duty or recovery demand in relation to unpaid duty;

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“EEZ” means the exclusive economic zone of Solomon Islands described in section 6 of the Delimitation of Marine Waters Act (Cap. 95);

Note The EEZ extends to 200 miles from the limits of the territorial sea.

“excisable goods” means goods on which excise duty is imposed, and an excise duty is to be taken for this purpose to be imposed even if the rate of duty is expressed to be Free;

Note Excise duty is imposed by section 107.

“excise controlled goods” means goods that, under section 100, are excise controlled goods;

“excise duty” means a duty imposed under section 107(3);

“excise manufacturer’s licence” means a licence issued under Part 8.1 as an excise manufacturer’s licence;

Note For what an excise manufacturer’s licence authorises see section 187(1)(b).

“excise reporting period”, for excisable goods of a particular kind, means a period prescribed as an excise reporting period for goods of that kind;

“excise return” means a return required by section 95(1);

“excise tariff” means the provisions of regulations made for section 108 in relation to excise duty;

“export”, in relation to goods, means take the goods out of Solomon Islands;

Note For when goods are exported, see section 8.

“export duty” means a duty imposed by section 107(2);

“export tariff” means the provisions of regulations made for section 108 in relation to export duty;

“exporter”, in relation to goods, means—

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- (a) a person by or for whom the goods are exported; and
- (b) a person who is or becomes—
 - (i) the owner of; or
 - (ii) entitled to possession of; or
 - (iii) beneficially interested in;

the goods when, or at any time after, the goods are given to a carrier for export and before they are taken out of Solomon Islands;

but a carrier is not an exporter merely because it carries the goods for an exporter;

“external search”, of a person, means a search of the person’s body, and of the clothes that the person is wearing, but not an internal search;

“fall-back value”, of goods, means the value determined under section 121 or 122 (as relevant) for the goods;

“forfeited goods” means goods that, in accordance with section 260, are forfeited goods;

“frisk search”, of a person, means—

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

“goods” means movable property of any kind;

Note Under the Interpretation and General Provisions Act (Cap. 85) section 16(1), moveable property means property of every description except land (whether covered by water or not), any estate, right, interest or easement in or over any land and things attached to land

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or permanently fastened to anything attached to land.
Documents, animals, containers, craft, plants and
vehicles are included in this definition.

“goods tax” means tax imposed by the Goods Tax Act
(Cap. 122);

“Government craft” means a craft that is owned or operated
by the Government or an agency of the Government;

“Government warehouse” means a place designated by the
Comptroller under section 374 as a Government
warehouse;

“identical goods”, in relation to goods, means goods that are
identical goods to those goods, as described in
section 116;

“identity card” means a card issued by the Comptroller
under section 365;

“import”, in relation to goods, means bring the goods into
Solomon Islands;

Note For the time when goods are imported, see section 10.

“importer”, in relation to goods, means—

- (a) a person by or for whom the goods are
imported; and
- (b) a person who is or becomes—
 - (i) the owner of; or
 - (ii) entitled to possession of, or beneficially
interested in;

the goods at the time when the goods are
imported into Solomon Islands;

but a carrier is not an importer merely because it
carries the goods for an importer;

“import duty” means a duty imposed by section 107(1);

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“import tariff” means the provisions of regulations made for section 108 in relation to import duty;

“infringement notice” means a notice under section 309(1);

“infringement notice penalty” means the penalty referred to in section 309(2)(e);

“insolvent” is defined in section 12;

“installation” is defined in section 13;

“interfere”—goods are interfered with if—

- (a) they or the packages that they are in are opened; or
- (b) they are unpacked; or
- (c) their packing or the way they are packed is changed in any way; or
- (d) a seal, lock or other security device used for the goods is broken, tampered with or unlocked; or
- (e) the means used to identify them are changed in any way so that they are more difficult to identify; or
- (f) they are destroyed; or
- (g) their nature is altered in any way;

“internal search”, in relation to a person, means an examination of a body cavity of the person or of the interior of the person’s body, including by an X-ray or similar device;

“international journey” means a journey—

- (a) from a place outside Solomon Islands to Solomon Islands (including to a place in the territorial sea); or

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(b) from a place in Solomon Islands to a place outside Solomon Islands; or

(c) between places outside Solomon Islands;

“inwards duty free shop” means a duty free shop licensed under Part 8.1 as an inwards duty free shop;

Note For what a duty free shop licence authorises see section 187(2).

“judicial officer” means a Judge of the High Court or a Magistrate;

“legal personal representative”, for a person who has died or lacks legal capacity, means the person who, under law, has the power to administer the person’s estate;

“letter” has the meaning it has under the Solomon Islands Postal Corporation Act 1996;

Note Under that Act, a letter is any form of written communication that is directed to a particular person or address.

“licence”, for a place or an activity, means a licence under Part 8.1 for the place or activity;

Note These licenses are warehouse licences, excise manufacturers licences and duty free shop licences.

“licensed manufacturer” means a person that holds an excise manufacturer’s licence authorising the manufacture or production of excisable goods of a specified kind;

“licensed place” means a place licensed under Part 8.1 for a specified activity;

“medical practitioner” means a person registered as a medical practitioner under the Medical and Dental Practitioners Act (Cap. 102);

“move into home consumption” is defined in section 17(2);

“MSG Trade Agreement” means the Trade Agreement among the Melanesian Spearhead Group Countries done on 29 July 2004 between the Government of the

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Republic of the Fiji Islands, the Government of The Independent State of Papua New Guinea, the Government of Solomon Islands and the Government of the Republic of Vanuatu;

Note The text of the Agreement is available at [http://www.paclii.org/cgi-bin/disp.pl/pits/en/treaty_database/2004/17.html?query=Trade Agreement among the Melanesian Spearhead Group Countries](http://www.paclii.org/cgi-bin/disp.pl/pits/en/treaty_database/2004/17.html?query=Trade+Agreement+among+the+Melanesian+Spearhead+Group+Countries).

“MSG Trade Agreement country” means each of—

- (a) the Republic of Fiji; and
- (b) The Independent State of Papua New Guinea; and
- (c) the Republic of Vanuatu;

and any other country (except Solomon Islands) that accedes to the MSG Trade Agreement;

“occupier”, of a place, means each of the following—

- (a) the owner of the place;
- (b) the lessee or licensee of the place;
- (c) the person in charge, or apparently in charge, of operations at the place;

“officer”—see section 409;

Note Section 409 is relevant only to Part 13.6.

“operator” of—

- (a) a craft means—
 - (i) the owner of the craft; or
 - (ii) if a person other than the owner is, because of a charterparty or a similar agreement, responsible for the operation of the craft on a particular journey—the person so responsible;

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and, if the craft is a ship, includes the ship's agent in Solomon Islands; and

- (b) a place—means each and any of the following—
 - (i) the owner of the place;
 - (ii) the occupier of the place;
 - (iii) the person in charge, or apparently in charge, of operations at the place;

“outwards clearance” means clearance given under section 50;

“outwards duty free shop” means a duty free shop licensed under Part 8.1 as an outwards duty free shop;

Note For what a duty free shop licence authorises see section 187(2).

“outwards manifest information” means information specified or referred to in section 50(2)(b)(i);

“owner”, in relation to goods, means a person who has a legal or equitable interest in the goods, including an interest by way of security;

“penalty duty” means an amount imposed as penalty duty under section 147(2);

“person involved in the management of operations at a licensed place” means—

- (a) if the licensee is a body corporate—
 - (i) the licensee; and
 - (ii) each director of the body corporate; and
 - (iii) each person who has managerial responsibility for the operations at the place; and

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- (b) if the licensee is an individual—
 - (i) the licensee; and
 - (ii) each person who has managerial responsibility for the operations at the place;

“PIN” means a number allocated to a person under section 404;

“place” includes a place in or on a vehicle or a craft and, in relation to a licensed place or an application for a licence for a place, includes—

- (a) an area at the place, whether or not there is a building or a part of a building on the area; and
- (b) a building at the place; or
- (c) 1 or more parts of a building at the place, whether or not the parts adjoin;

“postal article” has the meaning it has under the Solomon Islands Postal Corporation Act 1996;

“prescribed” means prescribed by rules;

Note For rules see section 419. This Act specifies where matters must be prescribed by regulations under section 420.

“prohibited export”—goods are a prohibited export if a written law (including this Act) prohibits the export of the goods, including conditionally;

“prohibited import”—goods are a prohibited import if a written law (including this Act) prohibits the import of the goods, including conditionally;

“protected document” is defined in section 409;

Note Section 409 is relevant only to Part 13.6.

“protected importer”, in relation to a Customs ruling, means the person on whose application the ruling was made;

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“protected information” means information mentioned in section 409;

Note Section 409 is relevant only to Part 13.6.

“record keeping arrangement” means arrangements of a kind described in section 225;

“recording device” means a device that is capable of recording or transmitting—

- (a) images of people or things in a place or area; or
- (b) sounds in a place or area;

“registered user”, of an approved computer system, means a user registered under Division 2 of Part 13.5 for the system;

“related party”, of a person, means any of the following—

- (a) a spouse, child or parent of the person;
- (b) a company of which the person is a director or executive officer, and a subsidiary of such a company;
- (c) a company of which a spouse, child or parent of the person is a director or executive officer;
- (d) if the person, or a spouse, child or parent of the person—
 - (i) owns not less than 20% by number (or, if is smaller percentage is prescribed, the smaller percentage) of the shares of a company; or
 - (ii) can direct the exercise of votes attached to not less than 20% by number (or, if is smaller percentage is prescribed, the smaller percentage) of the shares of a company;

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whether the ownership or control is direct or indirect—the company;

- (e) if the person and another person are parties to a contract, arrangement or understanding, whether formal or informal, written or not and whether or not enforceable—
 - (i) to acquire, hold, sell or otherwise deal in securities in concert; or
 - (ii) to exercise voting rights in a specified person in concert;

the other party to the contract, arrangement or understanding;

and, for this definition, “child”, of a person, includes an ex-nuptial child of the person;

“release into home consumption” is defined in section 17(1);

“return” means a return required by this Act to be given to Customs;

“review authority” means—

- (a) for a reviewable decision that is a duty related decision—the Comptroller; and
- (b) for other reviewable decisions—the Customs and Excise Review Panel;

“reviewable decision” means any of this following—

- (a) a decision by a Customs officer under a provision of this or another Act that is declared by this or the other Act, or the regulations, to be a reviewable decision;
- (b) a decision by a Customs officer under a provision of the rules that is declared by this

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Act, the regulations or the rules to be a reviewable decision;

“rules” means rules made under section 419;

“scheduled international flight” means a flight—

- (a) performed as part of a scheduled international air service by the holder of a scheduled international air service licence or an open aviation market licence (and for this paragraph, scheduled international air service, scheduled international air service licence and open aviation market licence have the meanings given to those terms in the Civil Aviation Act 2008); or
- (b) declared in writing by the Comptroller to be a scheduled international flight;

“scheduled international flight stores” means stores that, in Solomon Islands, have been or are to be taken off an aircraft that was on, or had ended, a scheduled international flight;

“security measures”, in relation to a place, means measures about—

- (a) the physical security of the place; and
- (b) the way in which the operations at the place are carried out;

being measures to ensure the security of the place and of goods at the place;

“sell” includes exchange, and offer for sale or exchange;

“similar goods”, in relation to imported goods, means goods described in section 117(1);

“share”, in relation to a company, has the same meaning as in the Companies Act 2009;

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“ship” means—

- (a) a floating vessel or structure, whether or not it is used in navigation by water and however it is propelled; or
- (b) a hovercraft;

“ship’s agent”, for a ship, means a person appointed by the captain or operator of a ship to be the ship’s agent, whose appointment has been notified to Customs;

“ship’s or aircraft’s stores” means—

- (a) goods for—
 - (i) consumption or use by passengers or crew of a craft; or
 - (ii) use in the operation or maintenance of a craft; or
- (b) goods prescribed for the purposes of this definition;

“Solomon Islands craft” means—

- (a) a ship that is or is required to be registered or licensed under the Shipping Act 1998 (disregarding the reference in section 10(1) of that Act to the length of 10 m); and
- (b) an aircraft that is or is required to be registered as a Solomon Islands aircraft under section 60(1)(a) of the Civil Aviation Act 2008;

“spirits” means an alcoholic extraction of fermented liquor, whether made from food or from something else;

“still” means equipment for use in, or capable of use in, distilling or making spirits and includes a part of equipment of that kind;

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“stores” means the same as ship’s or aircraft’s stores;

“spouse” includes a de facto spouse;

“statutory body” means each of the following—

- (a) a body corporate established for a public purpose by a written law of Solomon Islands;
- (b) a State owned enterprise under the State Owned Enterprises Act 2007;

“submission” means a submission referred to in section 309(2)(g)(ii) or 320(2)(f)(ii);

“subsidiary”, of a body corporate—a body corporate (the first body corporate) is a subsidiary of another body corporate if, under the Companies Act 2009, the first body corporate is such a subsidiary and, for this definition, it is to be assumed that both bodies are companies;

“sufferance wharf” means a wharf or area appointed as a sufferance wharf under section 371;

“tariff classification” means—

- (a) for imported goods—the classification of the goods according to the import tariff; and
- (b) for goods for export—the classification of the goods according to the export tariff; and
- (c) for excisable goods—the classification of the goods according to the excise tariff;

“take off” a craft includes unload;

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“territorial seas” means the territorial seas of Solomon Islands, as defined in the Delimitation of Marine Waters Act (Cap. 95);

Note The territorial seas of Solomon Islands extend to 12 nm from the low-water line or the archipelagic baselines established under that Act.

“this Act” includes regulations and rules made under this Act;

“transaction value”, for goods, means the value determined under section 115, 116, 117 or 122 (as relevant) for the goods;

Note See also section 118.

“transit area” means an area set aside as a transit area under section 373;

“vehicle” does not include a craft;

“warehouse licence means a licence issued under Part 8.1 as a warehouse licence;

“wreck” has the meaning given to that term in the Shipping Act 1998.

Note Under that Act, wreck includes jetsam, flotsam, lagan and derelict found in or on the shores or bottom of the sea or any tidal water—see section 2 of that Act.

Identifying numbers

5. For this Act, an identifying number may be a combination of letters, numbers, a barcode, characters and symbols, or any of them.

Checking compliance with border laws

6. If a provision of this Act confers a power on a Customs officer that may be exercised in relation to a person or goods to facilitate checking compliance with a border law, the power may be exercised for any of the following purposes—

- (a) to identify a person or the goods;
- (b) to find out whether a border law is being or has been complied with in relation to the person or the goods;

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- (c) to determine the extent of the risk that a border law will not be complied with in relation to the person or the goods;
- (d) to ensure compliance with a border law;
- (e) to investigate the commission or possible commission of an offence against a border law.

7. For this Act, a document that is not an exact copy of another document but is identical to it in all material respects is taken to be a copy of the other document. Copies of documents

8. (1) The time when the owner of goods exports goods is the time when the owner— Time of export

- (a) delivers them to a carrier for export; or
- (b) gives them to the Solomon Islands Postal Corporation for transmission through the post to a place outside Solomon Islands.

(2) The time when a person who is a traveller on a craft about to leave Solomon Islands on an international journey exports goods is the time when he or she is permitted by an immigration officer to board the craft on which he or she is to leave Solomon Islands.

(3) The time when a carrier exports goods given to it for export is the time when—

- (a) the goods are loaded onto a craft for export; or
- (b) if outwards clearance for the craft has been applied for—when the clearance is given.

9. (1) If— Forms

- (a) this Act requires or provides for an entry, application, notice, report or return, or a similar document, to be provided to Customs; and

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- (b) the Comptroller has approved a form for the purpose;

the application, notice, report, return or document is not effective unless it is given to Customs in that form, properly completed in accordance with the instructions in the form.

(2) If the Comptroller has approved a form as mentioned in paragraph (1)(b), a Customs officer must provide the form to any person who asks and wants to lodge the entry, make the application or provide the notice, report or return or document to Customs.

(3) If—

- (a) the form actually used in a particular case is not an approved form; and
- (b) the differences between it and the approved form are minor;

a Customs officer must not reject the entry, application, notice, report, return or document on the basis that the approved form has not been used.

(4) The Comptroller may determine in writing that an application, notice, report or return, or a similar document, of a specified kind, for this Act is to be provided to Customs electronically, in the way and using a system designated in the determination. A determination has effect according to its terms.

Time of import

10. (1) The time when goods on a ship that is on a journey to Solomon Islands are imported is the time when the goods are taken off the ship anywhere in Solomon Islands or in the territorial sea.

(2) The time when goods on an aircraft that is on a journey to Solomon Islands are imported is the time when—

- (a) the aircraft lands anywhere in Solomon Islands or in the territorial sea; or

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- (b) the goods are taken off the aircraft anywhere in Solomon Islands or in the territorial sea.

11. For this Act, an answer to a question, or the contents of a document, tend to incriminate a person if the answer or contents tend to establish that the person—

When answers or documents tend to incriminate a person

- (a) has committed an offence against a law (including a law of a foreign country); or
- (b) is liable, in a proceeding in a court or tribunal, (not a prosecution for an offence) to a penalty under such a law.

12. (1) An individual is insolvent if—

Insolvency

- (a) a receiving order under the Bankruptcy Act (Cap. 3) is in force in respect of the individual; or
- (b) the individual has been declared bankrupt (however that is described) under the law of a foreign country and the bankruptcy has not been discharged in accordance with that law.

(2) A company is insolvent if—

- (a) a receiver has been appointed to some or all of its property and the receivership has not been terminated under the Companies (Insolvency and Receivership) Act 2009; or
- (b) a proposal under Division 1 of Part 2 of that Act has been made in relation to it and is still in force;
- (c) an application for the appointment of a liquidator for the company has been made to the court and has not been finally determined;
- (d) a resolution of shareholders of the company has been proposed for the appointment of a liquidator for it;

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- (e) a liquidator has been appointed and is acting as such in respect of it under that Act;

Note Proposals under Division 1 of Part 2 of the Companies (Insolvency and Receivership) Act 2009 are proposals for compromises with creditors.

- (3) A body corporate that is—
 - (a) not a company registered or reregistered under the Companies Act 2009; or
 - (b) incorporated in a foreign country (whether or not it is so registered);

is insolvent if it is not able to pay its debts as they become due in the normal course of business.

Installations

13. (1) A craft or structure is an installation at a particular time if, at that time—

- (a) it is anchored or otherwise attached to the Solomon Islands seabed, or the seabed under the territorial sea, for the operations or activities associated with or incidental to exploring, exploiting, conserving or managing the natural resources, whether living or non-living, of the seabed or the subsoil or the waters above the seabed, or for any other economic purpose; and
- (b) in the case of a craft—has been so anchored or attached for a continuous period of at least 14 days.

Note Something that was a craft ceases to be a craft while it is an installation as defined in this section.

- (2) In subsection (1)—

“attached” to the seabed means in physical contact with, or erected on, or connected by cable or other device to a part of the seabed.

- (3) A craft or structure that, at a particular time, is attached to a craft or structure that is an installation

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because of subsection (1) is also an installation at that time.

- (4) None of the following is an installation—
- (a) a navigational aid placed in the sea or on the seabed in accordance with law (including a law of a foreign country);
 - (b) a structure belonging to the naval, military or air forces of a foreign country;
 - (c) a submarine cable;
 - (d) anything prescribed by regulations for the purposes of this paragraph.

14. Notes in this Act are not part of this Act.

Notes

15. (1) A reference in this Act to an offence against this Act includes a reference to an offence against the regulations or the rules.

Extended meaning of “offence”

(2) A reference in this Act to an offence against another border law includes a reference to an offence against subsidiary legislation under the border law.

(3) A reference in this Act to an offence includes a reference to—

- (a) an attempt to commit the offence; and
- (b) an offence against section 21 of the Penal Code (Cap. 26) in relation to the offence; and
- (c) an offence of conspiracy in relation to the offence or being an accessory after the fact in relation to the offence.

Notes Section 21 of the Penal Code extends offence provisions to cover—

- persons who does or omits to do anything for the purpose of enabling or aiding another person to commit the offence;
- persons who aid or abet the commission of the offence;

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- persons who counsel or procure the commission of the offence.

For attempts see Part XXXIX of the Penal Code.

For conspiracies see Part XL of the Penal Code.

For accessories after the fact see Par XLI of the Penal Code.

Presenting persons and producing etc things to Customs

16. For this Act—

- (a) a person presents himself or herself to Customs only if the person physically presents himself or herself to a Customs officer; and
- (b) a thing is produced to Customs only if it is physically shown to a Customs officer.

Release of goods into, and moving goods into, home consumption

17. (1) Goods are released into home consumption only if Customs authorises the goods to be moved or dealt with free of the restrictions on movement, interference and possession imposed in relation to the goods by or under this Act.

- (2) Goods are moved into home consumption if they are moved or dealt with without regard to the restrictions on movement, interference or possession imposed in relation to the goods by or under this Act.

Reports to Customs

18. A reference in this Act to a matter being reported to Customs, or to information being given to Customs, (however expressed) is a reference to—

- (a) a report of the matter, or the information, being given to a Customs officer; or
- (b) if the report or information is to be given using an approved computer system—a report of the matter, or the information, being given to a Customs officer by that system.

Periods may be extended

19. If a period is fixed by or under this Act for a person other than Customs to do something (such as give a notice), Customs may, in writing and on application by the person who must do the thing, extend the period, and may do so after the period has ended.

DRAFT FOR PUBLIC CONSULTATION PURPOSES
CHAPTER 2—PROHIBITED IMPORTS AND EXPORTS

PART 2.1—PROHIBITED IMPORTS AND EXPORTS

20. (1) The regulations may prohibit the import or export of goods. A prohibition may be conditional. Regulations may prohibit imports and exports

(2) A condition may require that a consent, approval, licence or permission be given by a specified Minister or by some other specified person. The consent, approval, licence or permission may itself be conditional.

Note Other legislation, such as quarantine legislation, also regulates the import and export of goods.

(3) The regulations may, for particular goods, prescribe amounts or quantities of the goods to be commercial amounts or quantities.

21. (1) A person commits an offence if— Prohibited imports

- (a) the person imports goods; and
- (b) the goods are prohibited imports.

Penalty—

- (c) if the goods are drugs the amount or quantity of which is or is more than the commercial amount or commercial quantity—100 penalty units or 5 years imprisonment, or both; or
- (d) otherwise—20 penalty units.

(2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) It is a defence to a prosecution for an offence against subsection (1) that the defendant—

- (a) did not know or believe that he or she was importing the goods; and

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- (b) took all reasonably practicable steps to prevent interference with the baggage or container in which the goods were imported.

(4) In subsection (3), “container” is not restricted to a container as defined in section 4.

Prohibited imports—
knowledge or
recklessness

- 22.** (1) A person commits an offence if—
- (a) the person imports goods; and
 - (b) the goods are prohibited imports; and
 - (c) the person—
 - (i) knew that they were prohibited imports; or
 - (ii) was reckless as to whether they were prohibited imports.

Penalty—

- (d) if the amount or quantity of the goods imported is a commercial amount or commercial quantity—
 - (i) for a first offence—1,000 penalty units or imprisonment for 15 years, or both; or
 - (ii) for a second or later offence—2,000 penalty units or imprisonment for 20 years, or both; and
- (e) otherwise—
 - (i) for a first offence—200 penalty units or imprisonment for 5 years, or both; and
 - (ii) for a second or later offence—500 penalty units or imprisonment for 10 years, or both.

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Note If the court does not find a defendant guilty of a more serious offence against this section, it may find the defendant guilty of a less serious offence or an offence against section 21—see section 304.

(2) Strict liability applies to paragraph (1)(a).

Note For strict liability see section 300.

23. (1) A person commits an offence if—
- Possession of
prohibited
imports
- (a) the person has goods in his or her possession or under his or her control; and
- (b) the goods have been imported; and
- (c) the goods are prohibited imports.

Penalty—the same maximum penalty as applies to an offence against section 21.

(2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) It is a defence to a prosecution for an offence against subsection (1) that the defendant—

- (a) took all reasonably practicable steps to find out—
- (i) whether the goods had been imported; and
- (ii) if they had been imported—whether they are prohibited imports; and
- (b) having taken those steps, believed on reasonable grounds—
- (i) that the goods had not been imported; or
- (ii) that they are not prohibited imports.

(4) It is a defence to a prosecution for an offence against subsection (1) that the defendant—

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- (a) had possession or control of the goods on behalf of a person who had Customs authority to have possession or control of the goods; or
- (b) delivered the goods to Customs as soon as practicable after becoming aware that they are prohibited imports; or
- (c) had a reasonable but mistaken belief as to the nature of the goods or how they had been treated or dealt with and, if the goods had been as he or she believed, the goods would not be prohibited imports.

(5) In this section—

“possession” means actual possession.

Sale of
prohibited
imports

- 24.** (1) A person commits an offence if—
- (a) the person sells or otherwise deals in goods in Solomon Islands; and
 - (b) the goods have been imported; and
 - (c) the goods are prohibited imports.

Penalty—the same maximum penalty as applies to an offence against section 21.

(2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) It is a defence to a prosecution for an offence against subsection (1) that the defendant—

- (a) took all reasonably practicable steps to find out—
 - (i) whether the goods had been imported; and

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- (ii) if they had been imported—whether they are prohibited imports; and
- (b) having taken those steps, believed on reasonable grounds—
 - (i) that the goods had not been imported; or
 - (ii) that they are not prohibited imports.
- (4) It is a defence to a prosecution for an offence against subsection (1) that the defendant delivered the goods to a Customs officer as soon as practicable after becoming aware that they are prohibited imports.

(5) In this section—

“sell” includes offer or expose for sale.

- 25.** (1) A person commits an offence if—
- (a) the person exports goods; and
 - (b) the goods are prohibited exports.

Prohibited exports

Penalty—the same maximum penalty as applies to an offence against section 21.

(2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) It is a defence to a prosecution for an offence against subsection (1) that the defendant—
- (a) did not know or believe that he or she was exporting the goods; and
 - (b) took all reasonably practicable steps to prevent interference with the baggage or container in which the goods were exported.

- 26.** A person commits an offence if—
- (a) the person exports goods; and

Prohibited exports—
knowledge or
recklessness

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- (b) the goods are prohibited exports; and
- (c) the person knows that the goods were prohibited exports, or is reckless as to whether they are prohibited exports.

Penalty—the same maximum penalty as applies to an offence against section 22.

Note If the court does not find a defendant guilty of an offence against this section, it may find the defendant guilty of an offence against section 25—see section 304.

Constructing etc
craft to conceal
goods from
Customs

27. A person who constructs or modifies a craft with the intention of concealing from Customs goods that are or may be on the craft commits an offence.

Penalty—

- (a) for a first offence—100 penalty units or imprisonment for 5 years, or both;
- (b) for a second or later offence—200 penalty units or imprisonment for 7 years, or both.

Imports or
exports packed to
conceal them
from Customs

28. (1) A person commits an offence if—

- (a) the person imports or exports goods that are in a container or package; and
- (b) the goods are packed or placed in the container or package so as to conceal them from Customs.

Penalty—the same maximum penalty as applies to an offence against section 27.

(2) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant—
 - (i) did not know or believe that he or she was exporting the goods; and

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- (ii) took all reasonably practicable steps to prevent interference with the baggage or container in which the goods were exported; or
 - (b) the defendant reported the matter to Customs without delay and before the goods were examined by Customs.
- (3) In this section, “container” is not restricted to a container as defined in section 4.

CHAPTER 3—BORDER CONTROL**PART 3.1—ADVANCE ARRIVALS AND ARRIVALS REPORTS FOR CRAFT ARRIVING IN SOLOMON ISLANDS**

29. (1) If—

Advance
arrivals report

- (a) a ship is on a journey to Solomon Islands; and
- (b) the ship enters a port in Solomon Islands or the territorial seas during the journey;

each of the captain of the ship, the operator of the ship and the ship’s agent commits an offence unless a report in the approved form had been given to Customs—

- (c) at least 96 hours before the ship entered the port; or
- (d) if another period is prescribed in a particular case—before the start of that period before the craft entered the port.

Penalty—50 penalty units.

(2) If—

- (a) an aircraft is on a journey to Solomon Islands; and

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- (b) the aircraft lands at a place in Solomon Islands or the territorial seas during the journey;

the operator of the aircraft commits an offence unless a report in the approved form had been given to Customs—

- (c) at least 2 hours before the aircraft landed; or
- (d) if another period is prescribed in a particular case—before the start of that period before the aircraft landed.

Penalty—50 penalty units.

Notes A period in any of paragraphs (1)(c), (d) and (2)(c), (d) may be extended—see section 19.

The defendant bears the onus of establishing that the report was made and must do so on the balance of probabilities—see section 307.

- (3) Strict liability applies to subsections (1) and (2).

Note For strict liability see section 300.

- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) that a Customs officer had dispensed with the need to give the report.

Arrivals reports

- 30.** (1) If—

- (a) the craft is on a journey to Solomon Islands; and
- (b) the craft arrives at a port or airport in Solomon Islands;

then, unless a report of the arrival of the craft is given to Customs within 1 hour after it arrives, the operator and the captain of the craft each commits an offence.

Penalty—50 penalty units.

Notes Paragraph (b) is not limited to arriving at a customs port or customs airport.

The defendant bears the onus of establishing that the report was made and must do so on the balance of probabilities—see section 307.

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The period of 1 hour may be extended—see section 19.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) It is a defence to a prosecution for an offence against subsection (1) that a Customs officer had dispensed with the need to give the report.

31. following—

- (1) A Customs officer may question any of the

Customs
powers—
advance arrivals
and arrivals
reports

- (a) the operator of a craft;
- (b) the captain of a craft;
- (c) the person who made an advance arrival report or an arrivals report in respect of a craft;
- (d) for a ship—the ship’s agent;

about any matter to do with an advance arrival report or an arrivals report in respect of the craft.

Note Customs questions must generally be answered—see section 233.

- (2) A Customs officer may give a direction to any of the persons mentioned in subsection (1) to produce a specified document to a Customs officer if it appears to the Customs officer that the document contains information relevant to about any matter to do with an advance arrival report or an arrivals report in respect of the craft.

Note A person given a Customs direction must comply with it—see section 238.

**PART 3.2—CRAFT ARRIVING IN SOLOMON ISLANDS AND
ON INTERNATIONAL JOURNEYS ETC**

- 32.** (1) This section applies to a craft that is in the EEZ.
- (2) A Customs officer may do either of the following—
- (a) question any person on the craft;

Customs
powers—craft in
the EEZ

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- (b) give a direction to any person on the craft to produce a specified document to a Customs officer;

to find out any of the following—

- (c) the identity of the craft including, in the case of a ship, its port of registry;
- (d) any voyage or flight number;
- (e) the place where the journey started;
- (f) each place where the craft has stopped or landed, or where it is intended that the craft stop or land, during the journey;
- (g) the course or route followed or to be followed during the journey;
- (h) the dates and times, or estimated dates and times, of arrival at each place where the craft has stopped or landed, or where it is intended that the craft stop or land, during the journey;
- (i) the prescribed particulars about the persons and goods on the craft during the journey.

Notes This section extends to the captain and crew, and travellers on the craft.

Customs questions must generally be answered—see section 233.

A person given a Customs direction must comply with it—see section 238.

Customs
powers—craft in
the EEZ—border
offences

33. (1) This section applies to a craft that is in the EEZ, but only if a Customs officer suspects on reasonable grounds that—

- (a) a border offence has been, is being or is about to be committed with respect to the craft, or with respect to goods on the craft; or
- (b) the craft is, or goods on the craft are, being used, or are intended to be used, to commit a border offence; or

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- (c) a person on the craft has committed, is committing or is about to commit a border offence.

(2) A Customs officer may do any of the following for any of the purposes set out in subsection (3)—

- (a) question any person on the craft;
- (b) give a direction to any person on the craft to produce a specified document to a Customs officer;
- (c) search the craft;
- (d) examine any goods found during such a search.

Notes Customs questions must generally be answered—see section 233.

A person given a Customs direction must comply with it—see section 238.

For searching and examining generally see Parts 10.4, 10.5.

(3) The purposes are—

- (a) to investigate the commission or potential commission of the border offence or some other border offence; and
- (b) to preserve evidence of the border offence or some other border offence; and
- (c) to prevent the border offence or some other border offence from being committed or continued.

34. (1) This section applies in relation to—

- (a) a craft that is anywhere in Solomon Islands or in the territorial seas; or
- (b) a Solomon Islands craft, wherever it is.

Customs powers—craft in Solomon Islands or territorial seas

(2) A Customs officer may do any of the following—

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- (a) question any person on the craft;
- (b) question the operator of the craft;
- (c) for a ship—question the ship’s agent;
- (d) give a direction to any person on the craft to produce a specified document to Customs;
- (e) give a direction to the operator of the craft to produce a specified document to Customs;
- (f) for a ship—give a direction to the ship’s agent to produce a specified document to Customs;
- (g) search the craft;
- (h) search any person on the craft;
- (h) examine any goods found on the craft, or on a person on the craft.

Notes These powers may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

Customs questions must generally be answered—see section 233.

A person given a Customs direction must comply with it—see section 238.

For searching and examining generally see Parts 10.4, 10.5.

For personal searches see Part 10.11.

Customs powers—
detaining craft in
Solomon Islands
or territorial seas

35. (1) A Customs officer may detain a craft that is anywhere in Solomon Islands or in the territorial seas if that officer or some other Customs officer suspects on reasonable grounds that—

- (a) a border offence has been or is being committed with respect to the craft; or
- (b) a person on the craft has committed, is committing or is about to commit a border offence.

(2) The craft may be detained so that a Customs officer can exercise a power to search the craft, to examine anything

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on the craft, to secure a part of the craft, to secure anything on the craft or to detain or seize anything on the craft.

(3) If a craft is detained under subsection (1), a Customs officer must serve on the captain, without delay after the craft is detained, a notice—

- (a) identifying the craft; and
- (b) stating that it is being detained; and
- (c) stating the effect of subsections (4), (5) and (6).

For a ship, the notice need not be given if the period of detention is less than 1 hour.

(4) A craft must not be detained for more than 48 hours unless it is authorised by warrant issued by a judicial officer. The judicial officer is not to issue such a warrant unless satisfied that—

- (a) at the time when the craft was detained, a Customs officer had the suspicion mentioned in subsection (1); and
- (b) at the time the warrant is issued, there are reasonable grounds for the suspicion; and
- (c) the search and examination for which the craft is being detained have not been finished but that measures are being taken to finish them without delay.

(5) The warrant is to set out the period for which further detention is authorised, which must not be longer than the period that the judicial officer considers is reasonable to complete the search and examination.

Note For warrants see Part 10.14.

(6) Subsections (4) and (5) do not prevent the issue of a further warrant.

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(7) A Customs officer may take a craft that is to be detained, or cause it to be taken, to a customs port, a customs airport or some other place for detention. The time spent while the craft is being taken there is not counted in the 48 hours mentioned in subsection (4).

(8) A person on a craft that is being detained under this section at a place in Solomon Islands is not, for that reason alone, to be taken, for the purposes of a law relating to immigration, to have entered Solomon Islands.

Craft on journeys to Solomon Islands to come directly to customs wharves, etc or customs airports

- 36.** (1) The captain of a craft commits an offence if—
- (a) the craft is on a journey to Solomon Islands; and
 - (b) the craft stops or hovers at a place anywhere in the territorial sea or anywhere in Solomon Islands; and
 - (c) the place is not a customs wharf or a customs airport.

Penalty—50 penalty units.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) It is a defence to a prosecution for an offence against subsection (1) that the craft stopped or hovered at the place—

- (a) in the ordinary course of navigation; or
- (b) because of stress of weather or other emergency; or
- (c) with Customs authority.

Reporting stopping, hovering etc

- 37.** (1) The captain of a craft commits an offence if—
- (a) the craft is on a journey to Solomon Islands;

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- (b) the craft stops or hovers anywhere in the territorial sea or anywhere in Solomon Islands; and
- (c) the place where it stops is not a customs wharf or a customs airport; and

unless the matter is reported to Customs without delay.

Penalty—50 penalty units.

Note The defendant bears the onus of establishing that the report was made and must do so on the balance of probabilities—see section 307.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the craft stopped or hovered—
 - (i) in the ordinary course of navigation; or
 - (ii) because of stress of weather or other emergency; or
 - (iii) with Customs authority ; or
- (b) a Customs officer had dispensed with the need to give the report.

38. (1) A Customs officer may give a direction to the captain of a ship that has arrived in Solomon Islands on a journey to Solomon Islands—

Customs powers—directions about movement of craft arriving in Solomon Islands

- (a) if the ship is at a customs port—to moor the ship at a boarding station or another specified place in the port; or
- (b) if the ship is not at a customs port—to stop the ship at a specified place.

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(2) A Customs officer may give a direction to the captain of an aircraft that has arrived in Solomon Islands on a journey to Solomon Islands—

- (a) if the aircraft is at a customs airport—to stop the aircraft at a specified place in the airport; or
- (b) if the aircraft is not at a customs airport—to stop the aircraft at specified place.

Note A person given a Customs direction must comply with it—see section 238.

(3) The captain of a ship or aircraft commits an offence if—

- (a) the ship or aircraft is at a boarding station or a place in accordance with a direction under this section; and
- (b) the ship or aircraft is moved from there without Customs authority.

Penalty—50 penalty units.

Note The defendant bears the onus of establishing Customs authority and must do so on the balance of probabilities—see section 307.

(4) Strict liability applies to subsection (3).

Note For strict liability see section 300.

(5) It is a defence to a prosecution for an offence against subsection (3) that the craft was moved because of stress of weather or other emergency.

Craft not to approach craft on international journeys etc

39. (1) If a craft in a customs port or a customs airport approaches, without Customs authority, a craft that is on or has completed an international journey, the captain of the first craft commits an offence.

Penalty—20 penalty units.

Note The defendant bears the onus of establishing Customs authority and must do so on the balance of probabilities—see section 307.

(2) Strict liability applies to subsection (1).

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Note For strict liability see section 300.

(3) A Customs officer may give a direction to a craft in a customs port or a customs airport about the craft's movement or position—

- (a) to ensure that there is no interference with a craft in the port or airport that is on or has completed an international journey (in this section, the “international craft”); or
- (b) to facilitate Customs exercising powers or performing functions in relation to the international craft.

Note A person given a Customs direction must comply with it—see section 238.

(4) Without limiting subsection (3), the direction may be to stop the craft.

40. (1) A Customs officer may board a craft to exercise a power under this Act in relation to the craft.

Customs powers—boarding craft to exercise powers under this Act

(2) Reasonable force may be used to board the craft.

(3) The captain of a craft commits an offence if—

- (a) a Customs officer indicates to the captain that a Customs officer is to board the craft to exercise a power under this Act in relation to the craft or goods on the craft; and
- (b) the captain fails to do whatever is reasonably within his or her power to help Customs officers to board the craft.

Penalty—50 penalty units.

(4) The captain of a craft commits an offence if—

- (a) a Customs officer indicates to the captain that a Customs officer is to board the craft to exercise a power under this Act in relation to the craft or goods on the craft; and

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- (b) the captain fails to do whatever is reasonably within his or her power to help the officer to board the craft; and
- (c) the captain knew that, or was reckless as to whether, the failure would obstruct or hinder a Customs officer from exercising the power.

Penalty— 20 penalty units, or imprisonment for 12 months, or both.

Note Sections (3)(b) and (4)(b) could include, for example, in the case of a ship, stopping the ship and, in the case of an aircraft, landing the aircraft.

(5) A craft is not detained merely because it is stopped or landed to help a Customs officer to board the craft.

(6) If—

- (a) a Customs officer gives the captain of a craft a direction to stop the craft (or, in the case of an aircraft, land it) for boarding to exercise a power under this Act in relation to the craft; and
- (b) the direction was given by an appropriate and internationally recognised means of communication; and
- (c) the craft does not stop or land as directed;

a Government craft may chase the craft.

(7) The chase may be continued uninterrupted into the high seas and the powers that Customs officers had in relation to the craft when the direction was given continue to apply.

Note Under the Convention on the High Seas, hot pursuit must be uninterrupted and may not be continued into the territorial sea of another country.

(8) After the chase has started, the captain of the Government craft may use reasonable force to make the craft stop or land and to board it. A direction given by the Comptroller not to use force is to be complied with.

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- (9) Reasonable force does not exclude—
- (a) in the case of a ship—firing on the ship if a gun is first fired as a warning; or
 - (b) in the case of an aircraft—firing a gun as a warning, but the lives of persons on the craft and the safety of the aircraft are not to be endangered.

41. (1) The captain and the operator of a craft that is Solomon Islands each commits an offence if—

Facilities to be provided on craft

- (a) a Customs officer asks the captain to provide, for the use of Customs on the craft, such facilities (including office space, office furniture, lighting and access to means of communication) as are reasonable to enable a Customs officer to perform his or her duties or functions, or to exercise his or her powers, under this Act; and
- (b) the facilities are not provided in accordance with the request.

Penalty—20 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the facilities were not provided because of the actions of some other person; and
- (b) the defendant took all reasonable measures to ensure compliance with the request.

PART 3.3—PERSONS ARRIVING IN OR LEAVING SOLOMON ISLANDS

42. (1) A person commits an offence if the person —

- (a) is travelling on a craft while it is on an international journey; and

Incoming travellers must present themselves to Customs

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- (b) gets off the craft at a place in Solomon Islands; and
- (c) does not go directly to a customs clearance area, or to some other place as directed by a Customs officer, and there present himself or herself, and produce all the goods that the person had in his or her possession on arrival, or acquired from an inwards duty free shop, to Customs.

Penalty—100 penalty units, or imprisonment for 2 years, or both.

Note For presenting persons and things to Customs see section 16.

(2) A person (in this section, the “guardian”) commits an offence if—

- (a) the guardian is a parent or guardian of, or is otherwise responsible for, another person (in this section, the “child”) who is travelling with the parent on a craft that—
 - (i) is on an international journey; or
 - (ii) has just finished an international journey; and
- (b) the child—
 - (i) has not turned 14; or
 - (ii) because of the child’s age or mental state, is not capable in law of committing an offence; and
- (c) the child gets off the craft at a place in Solomon Islands; and
- (d) the child does not go directly to a customs clearance area, or to some other place as directed by a Customs officer, and there present

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himself or herself, and produce all the goods that the child had in his or her possession on arrival, or acquired from an inwards duty free shop, to Customs.

Penalty—100 penalty units, or imprisonment for 2 years, or both.

Note For presenting persons and producing things to Customs see section 16.

(3) Strict liability applies to subsections (1) and (2).

Note For strict liability see section 300.

(4) It is a defence to a prosecution for an offence against subsection (1) that the person had been cleared by Customs while on the craft.

(5) It is a defence to a prosecution for an offence against subsection (2) that—

- (a) the child had been cleared by Customs while on the craft; or
- (b) the defendant had taken all reasonable steps to ensure that the child went to a customs clearance area or other place as mentioned in paragraph (2)(d).

Note The defendant bears the onus of establishing that he or she, or the child, had been cleared etc, and must do so on the balance of probabilities—see section 307.

(6) A defence of emergency is not available for an offence against subsection (1) or (2) unless the defendant complied with that subsection without delay after the immediate danger of death or serious injury to a person, or the loss of, or serious damage to, a craft had ceased.

Note For the defence of emergency see section 303.

- 43.** (1) A person commits an offence if the person—
- (a) is in a customs clearance area or other place as required by section 42(1); and
- Leaving customs clearance areas etc if not cleared by Customs

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- (b) leaves the area or place to enter Solomon Islands;

unless the person has been cleared by Customs.

Penalty—50 penalty units, or imprisonment for 12 months, or both.

Note The defendant bears the onus of establishing that he or she had been cleared, and must do so on the balance of probabilities—see section 307.

(2) A person (in this section, the “guardian”) commits an offence if—

- (a) the guardian is in a customs clearance area or other place as required by section 42(1); and
- (b) the guardian is a parent or guardian of, or is otherwise responsible for, another person (in this section, the “child”) who also in the area or place; and
- (c) the child—
 - (i) has not turned 14; or
 - (ii) because of the child’s age or mental state, is not capable in law of committing an offence; and
- (d) the child leaves the area or place to enter Solomon Islands;

unless the child has been cleared by Customs.

Penalty—50 penalty units, or imprisonment for 12 months, or both.

Note The defendant bears the onus of establishing that the child had been cleared, and must do so on the balance of probabilities—see section 307.

(3) It is a defence to a prosecution for an offence against subsection (2) that the defendant had taken all reasonable

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steps to prevent the child leaving the customs clearance area or other place.

44. To avoid doubt, being cleared by Customs is not relevant to the question whether a person has or may have a right to enter Solomon Islands under a law related to immigration. Customs clearance not relevant to immigration law

45. (1) A person commits an offence if— Departing travellers must present themselves to Customs

- (a) the person gets on a craft that is anywhere in Solomon Islands or in the territorial sea; and
- (b) the craft is on or about to start an international journey;

unless, before getting on the craft, the person—

- (c) presented himself or herself to Customs, at a customs clearance area or some other place as directed by a Customs officer, as about to get on the craft; and
- (d) produced to Customs, at the area or place, all the goods that the person took onto the craft.

Penalty—50 penalty units, or imprisonment for 12 months, or both.

Notes The defendant bears the onus of establishing the matters in paragraphs (c) and (d) and must do so on the balance of probabilities—see section 307.

For presenting persons and things to Customs see section 16.

(2) A person (in this section, the “guardian”) commits an offence if—

- (a) the person is a parent of, or otherwise responsible for, another person (in this subsection, the “child”); and
- (b) the child—
 - (i) has not turned 14; or

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- (ii) because of the child's age or mental state, is not capable in law of committing an offence; and
- (c) the child gets on a craft that is anywhere in Solomon Islands or in the territorial sea; and
- (d) the craft is on or about to start an international journey; and

unless, before getting on the craft, the child—

- (e) presented himself or herself to Customs, at a customs clearance area or some other place as directed by a Customs officer, as about to get on the craft; and
- (f) produced to Customs, at the area or place, all the goods that the child took onto the craft.

Penalty—50 penalty units, or imprisonment for 12 months, or both.

Notes The defendant bears the onus of establishing the matters in paragraphs (e) and (f) and must do so on the balance of probabilities— see section 307.

For presenting persons and things to Customs see section 16.

(3) Strict liability applies to subsections (1) and (2).

Note For strict liability see section 300.

(4) It is a defence to a prosecution for an offence against subsection (1) that Customs had dispensed with the need for the person to present himself or herself, and present goods, as mentioned in paragraph (1)(c).

(5) It is a defence to a prosecution for an offence against subsection (2) that—

- (a) Customs had dispensed with the need for the child to present himself or herself, and present goods, as mentioned in paragraphs (2)(e) and (f); or

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- (b) the defendant had taken all reasonable steps to ensure that the child complied with paragraphs (2)(e) and (f).

46. (1) Sections 42 and 45 do not apply to a person who gets off a craft on an international journey and— Transit
travellers

- (a) goes directly to, and boards, a craft that is on or about to start a journey from Solomon Islands;
or
- (b) goes directly to a customs clearance area or a customs controlled area and does not leave the area except to go directly to, and to board such a craft.

Note This means that these people do have to present themselves and their carry-on baggage to Customs for clearance.

(2) If it appears to a Customs officer that a person—

- (a) has got off a craft that—
 - (i) is on an international journey; or
 - (ii) is about to start an international journey;
or
 - (iii) has just finished an international journey;
and
- (b) at a place in Solomon Islands, is about to get on another craft that is on or about to start an international journey; and
- (c) will not present himself or herself to Customs before getting on the other craft;

then, to ensure that the person is isolated from other travellers, a Customs officer may give the person a direction to go to a transit area or another specified place.

Note A person given a Customs direction must comply with it—see section 238.

Customs
powers—
customs
clearance areas
etc

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47. (1) A Customs officer may do any of the following in relation to a person in a customs clearance area or other place mentioned in section 42(1)(c) or (2)(d)—

- (a) question the person;
- (b) give a direction to the person to produce to a Customs officer a specified document;
- (c) give a direction to the person to produce to a Customs officer any baggage taken off or to be taken on the craft by the person;
- (d) examine and test any baggage or other goods that the person has in his or her possession or produced in compliance with the direction.

Notes These powers may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

Customs questions must generally be answered—see section 233.

A person given a Customs direction must comply with it—see section 238.

For searching and examining generally see Parts 10.4, 10.5.

(2) A Customs officer may search a person in a customs clearance area or other place mentioned in section 42(1)(c) or (2)(d) if the person has just got off a craft that is or has just ended an international voyage, or is about to get on a craft that is on or is about to start an international voyage.

(3) A Customs officer may search a person in a customs clearance area or other place mentioned in section 42(1)(c) or (2)(d) but who is not mentioned in subsection (2) if the officer or another Customs officer suspects that the person has customs controlled goods or excise controlled goods in his or her possession.

Note For personal searches see Part 10.11.

Missing
travellers and
stowaways to be
reported to
Customs

- 48.** (1) The captain of a craft commits an offence if—
- (a) the craft is on an international journey; and
 - (b) the captain becomes aware that—

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- (i) a person who was to get on the craft from a customs clearance area or from a transit area has not done so; or
- (ii) some other person on the craft did not present himself or herself to Customs before getting on the craft; and
- (c) the matter is not reported to Customs without delay.

Penalty—50 penalty units.

Note For presenting persons and producing things to Customs see section 16.

- (2) Strict liability applies to paragraphs (1)(a) and (c).

Note For strict liability see section 300.

PART 3.4—CRAFT LEAVING SOLOMON ISLANDS

- 49.** (1) The captain of a craft commits an offence if—
- (a) the craft leaves a place in Solomon Islands on an international journey; and
 - (b) Customs had not granted outwards clearance for the craft for the journey.
- Outwards clearance required before craft can leave Solomon Islands

Penalty—200 penalty units.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- 50.** (1) A Customs officer may, on application by the captain or operator of a craft, give outward clearance for the craft for a specified journey from Solomon Islands.
- Applications for outwards clearance

- (2) The application is to include—
 - (a) the prescribed information in respect of the craft and its journey; and
 - (b) for a ship—either—

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- (i) for each container, and each item of non-containerised cargo, intended to be on the ship when it leaves the port—the information specified in subsection (3) (“outwards manifest information”); or
 - (ii) a statement that there are no such containers or cargo; and
- (c) for an aircraft—
- (i) for cargo intended to be on the aircraft when it leaves the airport—the prescribed information; or
 - (ii) a statement that there is no such cargo.
- (3) The information for a container and for an item of non-containerised cargo is—
- (a) the container number or an identifying mark or number, whichever is relevant; and
 - (b) the port where it is to be unloaded; and
 - (c) the other prescribed information.

Withdrawing
and correcting
applications

- 51.** (1) An applicant for outwards clearance for a craft may—
- (a) withdraw the application; or
 - (b) correct any of the information in the application.
- (2) The withdrawal or correction is not effective unless notified to Customs before the craft leaves the port or airport to which the outwards clearance is intended to relate.
- (3) A withdrawal or correction does not affect the operation of provisions of this Act about the person’s liability for a false or misleading statement in the application.

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Notes Section (3) refers in particular to sections 172, 173 and 413.

See section 55(2) for Customs powers to revoke an outwards clearance if information is corrected.

- 52.** (1) This section applies to a person who—
- (a) applied for outwards clearance for a craft, or corrects information in an application for outwards clearance for a craft; or
 - (b) is the captain or operator of a craft on which cargo is intended to leave Solomon Islands.
- (2) The person commits an offence if the person —
- (a) becomes aware that any of the information specified in the application is incomplete or inaccurate; and
 - (b) fails to report the matter to Customs without delay.

Errors in outwards clearance applications to be reported

Penalty—20 penalty units.

- (3) Strict liability applies to paragraph (2)(b).

Note For strict liability see section 300.

- (4) It is a defence to a prosecution for an offence against subsection (1) that—
- (a) if the defendant is not the operator of the craft—the defendant reported the matter to the operator without delay; or
 - (b) the matter had already been reported to Customs.

- 53.** (1) As soon as practicable after an application for outwards clearance for a craft for a journey is made, a Customs officer is to decide whether to give or not to give the clearance.

Decisions on applications

- (2) An outwards clearance for a craft for a journey is not to be given unless a Customs officer is satisfied that all

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border laws have been complied with in relation to the craft and goods on the craft.

(3) If the application for outwards clearance was made using an approved computer system, the clearance must be given using that system.

Note Even though Customs gives an outwards clearance, Customs may give a direction that goods be unloaded from the craft.

Limitation on conditions on outwards clearance

54. An outwards clearance for a craft is not to be subject to any conditions to be complied with after the craft leaves a port or airport to which the clearance relates.

When outwards clearances cease to have effect

55. (1) An outwards clearance for a craft ceases to have effect when any of the following happen before the craft leaves the port or airport to which the clearance relates—

- (a) the clearance is revoked;
- (b) the application for it is withdrawn;
- (c) all the outwards manifest information given in the application is withdrawn.

(2) Customs may revoke an outwards clearance for a craft at any time before the craft leaves the port or airport to which the clearance relates if—

- (a) information in the application, is corrected; or
- (b) Customs suspects on reasonable grounds that—
 - (i) information in the application is incorrect, incomplete, false or misleading; or
 - (ii) a border law has not been complied with in relation to the craft or goods on the craft.

Cargo not on manifest not to be loaded or unloaded after application for outwards clearance

56. (1) If—

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- (a) an application for an outwards clearance has been made for a craft; and
- (b) either—
 - (i) a container or an item of non-containerised cargo that is not listed in the outwards manifest information in the application, including in the application as corrected, is loaded on the craft; or
 - (ii) a container or an item of non-containerised cargo is unloaded from the craft;

without Customs authority; the captain of the craft and the operator of the craft each commits an offence.

Penalty—50 penalty units.

Note The defendant bears the onus of establishing Customs authority and must do so on the balance of probabilities—see section 307.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the container or item was unloaded to trim the craft for stability or managing fuel consumption; and
- (b) the unloading was reported to Customs without delay and before the craft left the port or airport.

- (4) It is a defence to a prosecution for an offence against subsection (1) that the defendant believed on reasonable grounds that there was Customs authority for the loading or unloading.

Missing or surplus containers and items of non-containerised cargo

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- 57.** (1) The operator of a craft commits an offence if—
- (a) an outwards clearance has been given for the craft; and
 - (b) the captain of the craft or the operator, when asked to do so by a Customs officer before the craft leaves the port or airport, fails to produce a container or an item of non-containerised cargo described in the outwards manifest information for the craft; and
 - (c) the captain or the operator, when asked to do so by a Customs officer does not give a satisfactory explanation of the failure.

Penalty—50 penalty units.

- (2) The operator of a craft commits an offence if—
- (a) an application for an outwards clearance has been made for the craft; and
 - (b) a container or an item of non-containerised cargo that is not described in the outwards manifest information contained in the application, including in the application as corrected, is on the craft; and
 - (c) the captain or the operator, when asked to do so by a Customs officer, does not give a satisfactory explanation of the presence on the craft of the container or item.

Penalty—50 penalty units.

- (3) Strict liability applies to subsections (1) and (2).

Notes For strict liability see section 300.

A Customs officer may search any cargo to be loaded on a craft for export.

Customs powers—outward clearances etc

- 58.** (1) If a person applies for outwards clearance for a craft, a Customs officer may question any of the following—

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- (a) the person;
- (b) a person who corrected information in an application for outwards clearance;
- (c) the captain or operator of the craft;
- (d) if the craft is a ship—the ship’s agent.

Notes Customs questions must generally be answered—see section 233.

This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

- (2) A Customs officer may give a direction to a person mentioned in subsection (1) to produce a specified document in relation to the craft or to goods on the craft.

Notes A person given a Customs direction must comply with it—see section 238.

This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

- (3) A Customs officer may exercise these powers before or after the application is made, or the clearance given.

PART 3.5—CRUISING PERMITS

- 59.** (1) A Customs officer may, on application by the operator of a ship, issue a cruising permit for the ship, which is, unless it expressly provides otherwise, a Customs authority for the ship to move freely in the areas of Solomon Islands specified in the permit. Cruising permits

Notes The general provisions concerning Customs authorities (see Part 13.3) also apply to cruising permits.

The craft will still need to obtain outwards clearance under Part 3.4 on leaving Solomon Islands.

- (2) A cruising permit may be for a specified time or in relation to a specified area.

- 60.** (1) A Customs officer may question any of the following—

Customs powers—cruising permits

- (a) an applicant for a cruising permit;

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- (b) the owner or operator of a ship to which an application for a cruising permit, or a cruising permit, relates;
- (c) any person on board a ship to which an application for a cruising permit, or a cruising permit, relates.

Note Customs questions must generally be answered—see section 233.

- (2) A Customs officer may do any of the following—
 - (a) give any person mentioned in subsection (1) a direction to produce specified goods (including documents) to Customs;
 - (b) search any ship to which to which an application for a cruising permit, or a cruising permit, relates;
 - (c) search any person on board such a ship;
 - (d) examine any goods on board such a ship or on such a search;
 - (e) secure the ship, any part of the ship or any goods on the ship.

Notes A person given a Customs direction must comply with it—see section 238.

For searching and examining generally see Parts 10.4 and 10.5.

For personal searches see Part 10.11.

For securing see Part 10.6.

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CHAPTER 4—CUSTOMS CONTROLLED GOODS

PART 4.1—CUSTOMS CONTROLLED GOODS GENERALLY

61. (1) Subject to this section, goods imported on a craft become customs controlled goods when they are taken off the craft anywhere in Solomon Islands.

When imported goods are customs controlled goods

Note Subsection (1) covers all goods, including cargo, baggage and stores that come to Solomon Islands on a craft. It also covers goods that are transferred from one craft to another at sea, including to a domestic craft.

(2) Subject to this section, goods (not a craft) imported otherwise than on a craft become customs controlled goods when they arrive anywhere in Solomon Islands.

Note Subsection (2) covers, for example, goods that get to Solomon Islands by being towed or after being jettisoned or washed off a craft.

(3) If a craft on an international voyage is wrecked in Solomon Islands or in the territorial sea, the craft, and all goods on board the craft, become customs controlled goods when the craft is wrecked.

Note Generally speaking, craft that arrive under their own power or under sail are not customs controlled goods unless subsections (4) to (7) apply.

(4) If a Customs officer believes on reasonable grounds that a craft that—

- (a) is or was on a journey to Solomon Islands from a foreign country (not on another craft); and
- (b) arrived in Solomon Islands, or at a port or airport in Solomon Islands, in the course of that journey;

has been imported into Solomon Islands, that officer or some other Customs officer may serve a notice that states that if, at the end of 30 days after the notice is served, the craft has not left Solomon Islands, the craft will be taken for this Act to have been imported and therefore to be customs controlled goods.

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(5) The notice is to be served on a person who appears to a Customs officer to be the captain or operator of the craft, or by securely fixing the notice to some conspicuous part of the craft.

(6) If—

- (a) a notice has been served under subsection (4); and
- (b) a Customs officer becomes satisfied that the craft has not been, and is not to be, imported;

a Customs officer must revoke the notice. The craft is from that time taken never to have been imported and never to have been customs controlled goods, but this subsection does not affect any exercise, before revocation, of a power under this Act in relation to the craft.

(7) If, at the end of 30 days after the notice is served, the craft has not left Solomon Islands and the territorial seas and the notice is not revoked—

- (a) the craft is taken for all purposes to have been imported at the end of the 30 days; and
- (b) the craft becomes customs controlled goods at the end of the 30 days.

When goods for
export become
customs
controlled goods

62. (1) Goods for export become customs controlled goods when they are taken to a licensed place for export.

(2) Without limiting subsection (1), travellers' baggage and personal effects become customs controlled goods when they are taken to a customs clearance area, or some other place as directed by a Customs officer, before the traveller gets on the craft.

When goods
cease to be
customs
controlled goods

63. (1) Goods cease to be customs controlled goods at the earliest of the following times—

- (a) for goods that are—

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- (i) entered for home consumption; or
 - (ii) goods to which an authority to release into home consumption without being entered for home consumption applies;
- when Customs authorises the release of the goods into home consumption;
- (b) for goods that are the subject of a continuing authority to release into home consumption without being entered for home consumption—when they are moved into home consumption in accordance with that authority;
 - (c) when they are exported;
 - (d) when they are used in the manufacture of excisable goods in accordance with a Customs authority;
 - (e) when they are forfeited.
- (2) For paragraph (1)(c), goods are not to be taken to have been exported merely because the craft they are on leaves Solomon Islands.

Notes For when goods are exported see section 8.

For forfeiture see Part 10.8.

The effect of subsection (2) is, for example, that, if a craft carrying customs controlled goods leaves Solomon Islands and returns with the goods still on board, the goods remain customs controlled goods.

- 64.** (1) A person commits an offence if—
- (a) customs controlled goods are in a place; and
 - (b) the person moves the goods from the place without Customs authority.
- Customs controlled goods not to be moved or interfered with

If the place is a licensed place, the licensee also commits an offence.

Penalty—50 penalty units or 2 years imprisonment, or both.

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- (2) Subsection (1) does not apply in relation to—
- (a) baggage that is taken off by a craft by a person who travelled on the craft on the journey; or
 - (b) baggage that is unloaded from a craft that is or has just completed an international journey and is either—
 - (i) immediately moved directly to, and is loaded on, a craft that is on or about to start an international journey; or
 - (ii) immediately moved directly to a customs clearance area or a customs controlled area and does not leave the area except to be moved directly to, and loaded on, a craft that is on or about to start an international journey.
- (3) Strict liability applies to—
- (a) paragraph (1)(a); and
 - (b) the element of an offence against subsection (1), that the goods were moved.

Note For strict liability see section 300.

- (4) A person who interferes with customs controlled goods without Customs authority commits an offence. If the place where the goods are when the interference occurs is a licensed place, the licensee also commits an offence.

Penalty—50 penalty units or 2 years imprisonment, or both.

Notes For example, a Customs authority to interfere with Customs controlled goods may be given to permit the importer of the goods to take samples of the goods to prepare an entry for the goods.

The defendant bears the onus of establishing Customs authority mentioned in paragraph (1)(b) and subsection (4), and must do so on the balance of probabilities—see section 307.

- (5) Strict liability applies to the element of an offence against subsection (4), that the goods were interfered with.

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Note For strict liability see section 300.

- (6) A person commits an offence if—
- (a) customs controlled goods are in a place; and
 - (b) the person moves the goods from the place without Customs authority; and
 - (c) the person knows that there was not, or was reckless as to whether there was, Customs authority for the interference.

Penalty—100 penalty units or 5 years imprisonment, or both.

- (7) Strict liability applies to—
- (a) paragraph (6)(a); and
 - (b) the element of an offence against subsection (6), that the goods were moved.

Note For strict liability see section 300.

- (8) A person commits an offence if—
- (a) the person interferes with customs controlled goods without Customs authority; and
 - (b) the person knows that there was not, or was reckless as to whether there was, Customs authority for the interference.

Penalty—100 penalty units or 5 years imprisonment, or both.

- (9) Strict liability applies to the element of an offence in subsection (8), that the goods were interfered with.

Note For strict liability see section 300.

- (10) It is a defence to a prosecution for an offence against subsection (1), (4), (6) or (8) that—

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Movement of
and interference
with customs
controlled goods
to be reported

- (a) if the goods were on board a craft—the movement or interference was in the course of, and for the purpose of, the ordinary operation of the craft; or
 - (b) if the goods concerned are baggage—the baggage belonged to the defendant.
- 65.** (1) The captain of a craft commits an offence if—
- (a) customs controlled goods on the craft are moved or interfered with contrary to section 64; and
 - (b) the matter is not reported to Customs as soon as practicable after the captain becomes aware of the matter.

Penalty—50 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) that the movement or interference was in the course of, and for the purpose of, the ordinary operation of the craft.

- (3) The licensee of a place commits an offence if—
- (a) customs controlled goods in the place are moved or interfered with contrary to section 64; and
 - (b) the matter is not reported to Customs as soon as practicable after the licensee becomes aware of the matter.

Penalty—50 penalty units.

Note Failure to report can be a basis for suspension or cancellation of licence.

(4) It is a defence to a prosecution for an offence against subsection (1) or (3) that the matter had already been reported to Customs.

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66. (1) A person who has Customs authority to have possession of customs controlled goods commits an offence if he or she fails to make and keep records as required by this section and the rules.

Record keeping requirements

Penalty—100 penalty units.

(2) The records that must be kept are commercial documents that—

- (a) contain information relevant to the accuracy or completeness of information given to Customs in or in connection with an entry or a return relating to the goods; and
- (b) come into the person's possession or under his or her control (either before or after the entry was lodged, or the return given to Customs)

Note Examples of documents to be kept under this section include documents that contain information about any of the following—

- the delivery of the goods to some other person or the movement of the goods into home consumption;
- the sale, use or other disposal of the goods.

(3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) The records must be kept for at least 7 years after the goods to which they relate left the person's possession.

(4) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant was complying with a record keeping arrangement relevant to the Customs authority concerned; or
- (b) a Customs officer dispensed with the requirement to keep the document.

Note For record keeping arrangements see section 225 and Part 9.1 generally.

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Payment of duty
when customs
controlled goods
are missing etc

67. If a person with Customs authority to have possession of customs controlled goods, when asked to do so by a Customs officer, does not—

- (a) produce the goods to a Customs officer; or
- (b) give a satisfactory explanation for not being able to produce them;

a Customs officer may, by written notice given to the person, demand payment of a specified amount, being the amount that would have been payable as import duty or goods tax, or both, on the goods.

Note A decision to serve a notice, and a decision as to the amount of duty, are duty related decisions and are reviewable by the Comptroller.

Customs
powers—
customs
controlled goods
generally

68. (1) A Custom officer may question any of the following about any matter to do with customs controlled goods—

- (a) a person who is in the vicinity of a craft that is on, has just ended or is about to begin an international journey;
- (b) the occupier of a customs wharf or a customs airport;
- (c) a person who is in a customs place, a customs clearance area, a customs controlled area, a transit area or a transit baggage area;
- (d) the occupier of, or any person who is in, a licensed warehouse;
- (e) a person authorised to have possession of, or to move, customs controlled goods;
- (f) a person in actual possession of customs controlled goods;
- (e) any person who, it appears to a Customs officer, is a person mentioned in paragraph (a) to (f).

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Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

Customs questions must generally be answered—see section 233.

(2) A Customs officer may give a direction to any of the persons mentioned in subsection (1) to produce a specified document to Customs that relates or may relate to a matter about which a Customs officer may question the person under subsection (1).

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

(3) A Customs officer may give any of the following directions to a person who has actual possession of, or who has Customs authority to have possession of or to move, customs controlled goods at a place—

- (a) a direction to move, or not to move, the goods within the place; or
- (b) a direction about the storage of the goods, within the place; or
- (c) a direction to move the goods to a licensed warehouse; or
- (d) a direction to facilitate the examination of the goods by Customs.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

(4) If a direction under subsection (3) is not complied with—

- (a) a Customs officer may do what is necessary to give effect to the direction, or arrange for it to be done; and
- (b) a Customs officer may, by written notice given to the person to whom the direction was given,

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demand payment of a specified amount, being the amount equal to the cost reasonably incurred by the Government in giving effect to the direction or arranging for it to be given effect.

(5) A direction under subsection (3) that is inconsistent with an authority to move customs controlled goods, unless earlier revoked, ceases to be in force at the end of 5 days after it is given or, if a shorter period is specified in the direction, at the end of that shorter period.

(6) Subsection (5) does not apply to a direction given in relation to goods that have been entered for home consumption and for which an authority to release into home consumption has been given.

(7) If a Customs officer suspects on reasonable grounds that there are customs controlled goods on or in a vehicle outside a Customs place, that officer or some other Customs officer may search the vehicle to find out whether there are customs controlled goods on or in the vehicle.

Note For searching generally see Part 10.4.

(8) A Customs officer may examine any of the following—

- (a) customs controlled goods;
- (b) equipment, whether or not a fixture, that is used or apparently used in moving or storing customs controlled goods;
- (c) goods that apparently are—
 - (i) customs controlled goods; or
 - (ii) equipment mentioned in paragraph (b);
- (d) a place, craft or vehicle in which there are customs controlled goods or equipment of a kind referred to in paragraph (b);

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- (e) any goods at a place that is used or apparently used for the storage of customs controlled goods.

Note This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

- (9) A Customs officer may enter and search any place mentioned in paragraph (8)(d) or (e) to find goods mentioned in the relevant paragraph.

Note For entry, searching and examining generally see Parts 10.4 and 10.5.

PART 4.2—PASSENGERS’ AND CREW’S BAGGAGE AND EFFECTS

Note Passengers’ and crew’s baggage and effects are customs controlled goods until they are released for home consumption or exported (sections 61 and 62). This means that they cannot be moved or interfered with without Customs authority (sections 64(1) and (3)).

- 69.** (1) The operator of a craft that is or has just completed an international journey commits an offence if baggage taken off the craft is not moved directly and immediately to—
- (a) moved directly and immediately to the nearest customs clearance area; or
- (b) directly and immediately loaded on a craft that is on or about to start an international journey.
- Baggage must moved to customs clearance areas, or loaded for export, when taken off craft on or that just ended an international journey

Penalty—50 penalty units.

- (2) If the operator of the craft had engaged another person to take baggage off the craft, the other person also commits an offence.

- (3) Strict liability applies to subsections (1) and (2).

Note For strict liability see section 300.

- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) that a Customs officer—

- (a) had directed that the baggage not be moved; or

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(b) had authorised or directed the baggage to be moved to some other place.

(5) The defence in paragraph (4)(a) is not available unless it is established that the baggage was not moved.

(6) The defence in paragraph (4)(b) is not available unless it is established that the baggage was moved to the other place.

Crew's
possessions
report must be
given to
Customs on
arrival

- 70.** (1) The captain of a ship commits an offence if—
- (a) the ship arrives at the first port in Solomon Islands in the course of an international journey; and
 - (b) a report in the approved form is not given to Customs before the time specified in subsection (2).

Penalty—50 penalty units.

- (2) The time is the earliest of the following—
- (a) 24 hours after the arrival of the ship at the first port in Solomon Islands;
 - (b) the departure of the ship from that port;
 - (c) the time when any of those possessions are taken off the ship.
- (3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(4) It is a defence to a prosecution for an offence against subsection (1) that a Customs officer had dispensed with the need to give the information.

Note A Customs officer may give a direction to the captain of a craft to provide information or a report about the captain's, and crew members', possessions. A person given a Customs direction must comply with it—see section 238.

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- 71.** (1) A person commits an offence if the person—
- (a) is the captain or operator, or a crew member, of a ship; and
 - (b) gave a crew possessions report, or gave information in accordance with this section, to Customs; and
 - (c) becomes aware, before the ship leaves the territorial sea after having left the last port in Solomon Islands on an international journey, that the report or information is incomplete or inaccurate; and
 - (d) fails to report the matter to Customs without delay.

Errors in crew's
possessions
report to be
corrected

Penalty—20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) that—
- (a) if the defendant is a crew member—the defendant reported the matter to the captain or operator without delay; or
 - (b) in any case—the matter had already been reported to Customs.

- 72.** (1) If—
- (a) a ship is in Solomon Islands on a journey to or from Solomon Islands; and
 - (b) the captain's or a crew member's possessions that must be reported under section 70 were on the ship at a time during that journey when the ship was in Solomon Islands; and
 - (c) the captain of the ship, when asked to do so by a Customs officer, does not—

Duty or
recovery
demands—
missing
captain's or
crew's
possessions

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- (i) produce the possessions to Customs; or
- (ii) give a satisfactory explanation for not being able to produce them;

a Customs officer may, by written notice given to the captain or operator of the craft, demand payment of a specified amount, being the amount of import duty imposed on the possessions.

Note A decision to serve a notice, and a decision as to the amount of duty, are duty related decisions and are reviewable by the Comptroller.

Customs
powers—
baggage

73. (1) A Customs officer may question any of the persons described in subsection (2) on any matter concerning—

- (a) baggage on a craft that is on, has just ended or is about to start an international journey; or
- (b) possessions of the captain or a crew member of such a craft.

(2) The persons are—

- (a) a person who is in the vicinity of the craft; and
- (b) a person who was travelling on the craft on the journey and has got off the craft in Solomon Islands or the territorial sea; and
- (c) the occupier of, or a person who is at, a customs wharf or a customs airport.

Note This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

Note Customs questions must generally be answered—see section 233.

(3) If—

- (a) baggage is to be loaded onto a craft; and
- (b) the craft—
 - (i) is on an international journey; or

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- (ii) is about to start an international journey at a place in Solomon Islands or in the territorial sea;

a Customs officer may give a direction to any of the following to produce the baggage to Customs at a customs clearance area or at some other specified place—

- (c) the operator of the craft; or
- (d) a person at a customs wharf or a customs airport who has possession of baggage.

Note A person given a Customs direction must comply with it—see section 238.

(4) If baggage—

- (a) has been unloaded, at a place in Solomon Islands, from a craft that is on or has just finished an international journey (in this subsection, the “first craft”); and
- (b) is to be loaded, at a place in Solomon Islands, onto another craft that is on or about to start an international journey without being taken to a customs clearance area for presentation to Customs;

then, to ensure that the baggage is isolated from other persons and goods, a Customs officer may give a direction to—

- (c) a person in possession of the baggage; or
- (d) the operator of the first craft; or
- (e) a person engaged by the operator of the first craft to unload it;

to move the baggage, as directed, to a transit baggage area and that it not be moved from there except to be loaded on the other craft.

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Note A person given a Customs direction must comply with it—see section 238.

Customs powers—
captain's and
crew's
possessions

74. following—

- (1) A Customs officer may question any of the
- (a) the captain or a crew member of a ship referred to in this Part;
 - (b) a person who records information as required by this Part in relation to a ship referred to in this Part;
 - (c) a person who gives Customs information as required by this Part in relation to a ship;

to check either of the following—

- (d) what possessions of the captain or of the crew members were on the ship when it arrived at the first port in Solomon Islands in the course of the international journey;
- (e) what possessions of the captain or of the crew members were on the ship at any time while it was in Solomon Islands or in the territorial sea.

Note Customs questions must generally be answered—see section 233.

(2) Subsection (1) does not affect the operation of any other provision of this Act.

(5) A Customs officer may examine any of the following—

- (a) baggage at or near a place that is being used for getting on or off, or for bringing baggage on or taking them off, craft on international journeys;
- (b) any baggage at a customs wharf or a customs airport.

Note This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

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PART 4.3—SHIPS' AND AIRCRAFT'S STORES

75. (1) If—
- (a) a craft—
- (i) is on, or has ended, an international journey; or
- (ii) is about to leave its last port or airport in Solomon Islands on an international journey;
- (b) at a place in Solomon Islands or in the territorial seas, a person loads stores on or unloads stores from the craft without Customs authority;

Stores not to be loaded or unloaded without Customs authority

the person, and the captain of the craft, each commit an offence.

Penalty—50 penalty units.

Note The defendant bears the onus of establishing that the record was made, and must do so on the balance of probabilities—see section 307.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) This section does not apply in relation to scheduled international flight stores.

76. (1) If—
- (a) an aircraft—
- (i) is on, or has ended, an international journey; or
- (ii) is about to leave its last airport in Solomon Islands on an international journey; and

Scheduled international flight stores not to be loaded or unloaded without authority

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- (b) at a place in Solomon Islands or in the territorial seas, scheduled international flight stores are loaded on or unloaded from the aircraft without Customs authority;

the operator of an aircraft commits an offence.

Penalty—50 penalty units.

Note The defendant bears the onus of establishing that the record was made, and must do so on the balance of probabilities—see section 307.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

Report of stores and certain other goods on craft to be given to Customs on arrival

77. (1) The captain of a craft commits an offence if—
- (a) the craft is on an international journey and arrives at the first port, or lands at the first airport, in Solomon Islands in the course of the journey; and
 - (b) a report about stores and prescribed goods on the craft when it arrived or landed, in the approved form, is not given to Customs as required by subsection (2).

Penalty—50 penalty units.

- (2) The report must be given as soon as practicable after the craft arrives at the port or lands at the airport.

- (3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (4) It is a defence to a prosecution for an offence against subsection (1) that a Customs officer had dispensed with the need to give the report.

- (5) A person who—
 - (a) gave a report to Customs under subsection (1) or this subsection; or

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(b) is the captain or operator of the craft concerned;

commits an offence if he or she—

- (c) becomes aware that the information is incomplete or inaccurate; and
- (d) fails to give Customs a corrected report without delay.

Penalty—50 penalty units.

(6) It is a defence to a prosecution for an offence against subsection (5) that—

- (a) if the defendant is not the captain or the operator of the craft—the defendant reported the matter to the captain or to the operator without delay; or
- (b) the correction had already been given to a Customs officer.

(7) This section does not apply to scheduled international flight stores.

Note A Customs officer may give a direction to the captain of a craft to provide information or a report about stores. A person given a Customs direction must comply with it—see section 238.

78.
following—

(1) A Customs officer may question any of the

Customs
powers—stores
and other goods

- (a) the captain of a craft referred to in this Part;
- (b) a person who gives a report as required by this Part;
- (c) a person who records information as required by this Part;

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on any matter to do with stores and other goods referred to in this Part.

Notes Customs questions must generally be answered—see section 233.

This power may also be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

(2) This section does not affect the operation of any other provision of this Act.

(3) A Customs officer may examine any ship's or aircraft's stores for craft referred to in this Part.

PART 4.4—THE MAIL

Note Imported mail is customs controlled goods, and mail for export is also customs controlled goods—see section 61.

Customs powers—mail

79. To avoid doubt, it is declared that Customs officers and authorised persons may exercise powers conferred on them by this Act despite any other law relating to postal services (including the Penal Code and sections 33 and 34 of the Solomon Islands Postal Corporation Act 1996).

Rules—postal articles that are customs controlled goods

80. (1) The rules may make provision in relation to dealing with postal articles that are customs controlled goods.

(2) The Comptroller may not make rules for subsection (1) unless he or she has consulted the Solomon Islands Postal Corporation.

Duty to report prohibited items in the mail

81. An employee or contractor of the Solomon Islands Postal Corporation commits an offence if he or she—

- (a) suspects that a postal article in the possession of the Corporation consists of or contains prohibited imports or prohibited exports; and
- (b) fails to report the matter without delay in accordance with the rules.

Penalty—20 penalty units.

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PART 4.5—UNLOADING ETC IMPORTED CARGO

Note Imported cargo is customs controlled goods until it is released for home consumption or exported (section 61). This means that it cannot be moved or interfered with without Customs authority (sections 64(1) and (3)).

82. (1) This Part does not apply in relation to a craft that is on a journey between places in Solomon Islands or in the territorial sea if all the cargo on the craft was loaded on the craft in Solomon Islands or in the territorial sea while the craft was so travelling. Application of this Part

(2) This Part does not apply in relation to prescribed baggage, prescribed stores or prescribed goods.

83. (1) A person who—

- (a) is the occupier of a place at a customs wharf; and
- (b) carries on a business at the place of unloading ships that are or have been on international journeys;

Persons authorised to unload cargo

is authorised to unload, at that place, ships that are or have been on international journeys.

(2) A person who—

- (a) is the occupier of a place at a customs airport; and
- (b) carries on a business at the place of unloading aircraft that are or have been on international journeys;

is authorised to unload at that place aircraft that are or have been on international journeys.

Note Generally speaking, it is an offence to interfere with or move customs controlled goods without Customs authority (see section 64). This section gives the wharf or airport operator authority to unload cargo.

Cargo unloaded
to be reported

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- 84.** (1) If—
- (a) at a port or airport, goods are unloaded from a craft that is on or has just completed an overseas journey; and
 - (b) within 1 hour after the unloading is completed, a report in the approved form about the cargo is not given to a Customs officer;

the person authorised to unload the goods commits an offence.

Penalty—50 penalty units.

Note For persons authorised to unload see section 83.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) It is a defence to a prosecution for an offence against subsection (1) that a Customs officer had dispensed in writing with the need for the report.

Discrepancies
between advance
arrivals reports
and cargo
unloaded to be
reported

- 85.** (1) If—
- (a) at a port or airport, goods are unloaded from a craft that is on or has just completed an overseas journey; and
 - (b) either—
 - (i) goods identified in the advance arrivals report given in relation to the craft as to be unloaded at the port or airport are not in fact unloaded there; or
 - (ii) the goods unloaded include goods that are not identified in the advance arrivals report given in relation to the craft as to be unloaded at the port or airport; and
 - (b) within 1 hour after the unloading is completed, a report in the approved form that the unloading

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has been completed is not given to a Customs officer;

the person authorised to unload the goods commits an offence.

Penalty—50 penalty units.

Notes For advance arrivals reports see section 29.

For persons authorised to unload cargo from a craft see section 83.

(2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) It is a defence to a prosecution for an offence against subsection (1) that a Customs officer had dispensed in writing with the need for the report.

86. (1) If—

- (a) a container that has been unloaded from a craft that was on or had just completed an overseas journey is unpacked (whether at a customs port or airport, a licensed warehouse or any other place); and
- (b) within 1 hour after the unloading is completed, a report in the approved form about the contents of the container is not given to a Customs officer;

Containers' contents to be reported when unpacked

the person authorised to unpack the container commits an offence.

Penalty—50 penalty units.

(2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) It is a defence to a prosecution for an offence against subsection (1) that a Customs officer had dispensed in writing with the need for the report.

Discrepancies between advance reports and contents of containers unpacked to be reported

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- 87.** (1) If—
- (a) a container that has been unloaded from a craft that was on or had just completed an overseas journey is unpacked (whether at a customs port or airport, a licensed warehouse or any other place); and
 - (b) the contents of the container when unpacked do not match the description of the contents in the advance arrivals report given in relation to the craft; and
 - (c) the matter is not reported to a Customs officer, in the approved form, within 1 hour after the unpacking is completed;

the person authorised to unpack the container commits an offence.

Penalty—50 penalty units.

Notes For advance arrivals reports see section 29.

Generally, the airport or wharf operator will be authorised to unpack containers at the wharf or airport. Generally, the operator of a licensed warehouse will be authorised to unpack containers at the warehouse). Specific Customs authority will be needed to unpack containers in other circumstances.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) It is a defence to a prosecution for an offence against subsection (1) that a Customs officer had dispensed in writing with the need for the report.

Record keeping requirements

- 88.** (1) A person who has Customs authority to—
- (a) unload cargo from a craft that is on or has just completed an overseas journey; or
 - (b) unpack a container unloaded from such a craft; or

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- (c) have possession of customs controlled goods;

commits an offence if he or she fails to keep records as required by this section.

Penalty—100 penalty units.

- (2) The records that must be kept are commercial documents that—

- (a) contain information relevant to the accuracy or completeness of information given to Customs in or in connection with an advance report or an entry or a return relating to goods unloaded from the craft or unpacked from the container; and
- (b) come into the person's possession or under his or her control (either before or after the entry was lodged, or the return given to Customs).

- (3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (4) The records must be kept for at least 7 years after the goods to which they relate left the person's possession.

- (5) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant was complying with a record keeping arrangement applicable to the record concerned; or
- (b) a Customs officer had dispensed with the requirement to keep the document.

Note For record keeping arrangements see section 225 and Part 9.1 generally.

- 89.** (1) A Customs officer may question—

Customs powers

- (a) a person who gives or is required to give information to Customs for this Part; or

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- (b) the captain or operator of the craft in relation to which information was given or required to be given for this Part.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.
Customs questions must generally be answered—see section 233.

- (2) A Customs officer may give a direction to a person mentioned in subsection (1) to produce a specified document to Customs.

Note A person given a Customs direction must comply with it—see section 238.

- (3) A Customs officer may examine any cargo that is or appears to a Customs officer to be cargo that is goods.

Note For examinations generally see Part 10.5.

PART 4.6—CARGO FOR EXPORT

Note Cargo for export is customs controlled goods until it is exported (section 62). This means that it cannot be moved or interfered with without Customs authority (sections 64(1) and (3)).

Cargo not to be loaded for export without authority

- 90.** (1) The captain of a craft commits an offence if—
- (a) the craft is on or about to start an international journey; and
- (b) cargo is loaded onto the craft without Customs authority.

Penalty—100 penalty units.

- (2) The captain of a craft commits an offence if—
- (a) the craft is on or about to start an international journey; and
- (b) cargo is loaded onto the craft; and
- (c) the loading had not been authorised by a Customs officer; and

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- (d) the captain of the craft—
 - (i) knew that the loading had not been authorised by a Customs officer; or
 - (ii) was reckless as to whether the loading had been so authorised.

Penalty—250 penalty units.

Note The defendant bears the onus of establishing Customs authority and must do so on the balance of probabilities—see section 307.

- (3) Strict liability applies to subsection (1) and to paragraphs (2)(a) and (b).

Note For strict liability see section 300.

- 91.** (1) If cargo that has not been entered for export is exported, the owner of the cargo commits an offence.

Cargo not to be exported unless entered for export

Penalty—20 penalty units.

- (2) In addition to subsection (1), if all the export duty payable on the cargo is not paid before export, the exporter commits an offence.

Penalty—3 x the total amount of the export duty.

- 92.** (1) An exporter of goods commits an offence if he or she fails to keep records as required by this section.

Record keeping requirements

Penalty—100 penalty units.

- (2) The records that must be kept are commercial documents that—
 - (a) contain information relevant to the accuracy or completeness of information given to a Customs officer in or in connection with an entry or return relating to the goods; and
 - (b) come into the person's possession or under his or her control (either before or after an entry

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was lodged, or the return given to a Customs officer).

- (3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (4) The records must be kept for at least 7 years after the goods to which they relate left the person's possession.

- (5) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant was complying with a record keeping arrangement applicable to the record concerned; or
- (b) a Customs officer had dispensed with the requirement to keep the document.

Note For record keeping arrangements see section 225 and Part 9.1 generally.

Customs
powers—
exports

93. following—

- (1) A Customs officer may question any of the

- (a) any person on or in the vicinity of a craft onto which goods for export have been or are being loaded;
- (b) the operator of such a craft;
- (c) a person who loaded, is loading or is about to load goods for export onto a craft;

about any matter to do with cargo for export loaded or to be loaded onto the craft

- (2) A Customs officer may question an exporter of goods as cargo about any matter to do with the goods.

Note Customs questions must generally be answered—see section 233.

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(3) A Customs officer may give a direction to a person mentioned in subsection (1) or (2) to produce a specified document to Customs that relates to the cargo concerned.

Notes A person given a Customs direction must comply with it—see section 238.

This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

(4) A Customs officer may exercise powers under this section even if the cargo has been exported.

CHAPTER 5—THE EXCISE**PART 5.1—MANUFACTURING AND PRODUCING EXCISABLE GOODS**

94. (1) A person commits an offence if the person manufactures or produces excisable goods otherwise than in accordance with an excise manufacturer's licence.

Manufacturing or producing excisable goods without a licence prohibited

Penalty—250 penalty units or imprisonment for 15 years, or both.

Note The defendant bears the onus of establishing compliance with a licence and must do so on the balance of probabilities—see section 307.

(2) A person commits an offence if the person makes, sets up, sells or acquires a still, or has a still in his or her possession or custody or under his or her control.

Penalty—100 penalty units or imprisonment for 10 years, or both.

(3) A person commits an offence if the person cultivates a tobacco plant otherwise than in accordance with an excise manufacturer's licence.

Penalty—100 penalty units or imprisonment for 10 years, or both.

(4) Strict liability applies to subsections (1), (2), (3) and (4).

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Note For strict liability see section 300.

- 95.** (1) A person commits an offence if—
- (a) the person holds an excise manufacturer's licence authorising the manufacture or production of excisable goods of a particular kind; and
- (b) during a prescribed period for goods of that kind, the person manufactures or produces excisable goods of that kind; and
- (c) a return in the approved form about the goods is not given to Customs within the prescribed period starting at the end of the excise reporting period.
- Periodic returns for excisable goods manufactured or produced

Penalty—100 penalty units.

Note The period in paragraph (c) may be extended—see section 19.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) It is a defence to a prosecution for an offence against subsection (1) that a Customs officer had dispensed with the need to give the return.

- 96.** A person who engages in conduct with the intention of preventing Customs from correctly ascertaining the quantity or nature of excisable goods that have been manufactured or produced commits an offence.
- Disguising quantity of excisable goods manufactured or produced

Penalty—250 penalty units or imprisonment for 15 years, or both.

Note This section extends to, for example, manufacturers who divert the excisable goods they manufacture so that no duty is paid on them.

- 97.** (1) This section applies if—
- (a) it appears to a Customs officer that, having regard to the nature and quantity of goods used
- Duty demand for deficiency in excisable goods

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or supplied to a licensed manufacturer, the quantity of excisable goods of a kind specified in the licence manufactured or produced by the manufacturer in an excise reporting period should have been a particular quantity (in this section, the “standard quantity”); and

- (b) the quantity of excisable goods of that kind actually manufactured or produced by the manufacturer in the excise reporting period is less than the standard quantity; and
- (c) the manufacturer, when requested to do so by a Customs officer, does not give a satisfactory explanation for the difference.

(2) A Customs officer may, by written notice to the licensed manufacturer, demand payment of a specified amount, being the amount that would have been payable as excise duty on the difference in the quantities.

Note The decision to demand the amount, and the calculation of the amount, are duty related decisions and reviewable by the Comptroller.

(3) The notice must specify how the amount is calculated.

(4) In working out the amount, the rate of the duty is to be the rate in force on when the day the request to account for the difference was made.

98. A person who manufactures or produces excisable goods commits an offence if he or she fails to make and keep records as required by this section.

Record keeping requirements

Penalty—100 penalty units.

- (2) The records that must be kept are—
 - (a) the records required by the rules to be made and kept; and

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- (b) documents that a record keeping agreement between the Comptroller and the person require the person to make or keep; and
- (c) other commercial documents that—
 - (i) contain information relevant to the accuracy or completeness of information given to Customs in or in connection with an entry or a return relating to the goods; and
 - (ii) come into the person's possession or under his or her control (either before or after the entry was lodged, or the return given to Customs).

Note Examples of documents to be kept under this section include documents that contain information about any of the following—

- the delivery of the goods to some other person or the movement of the goods into home consumption;
- the sale, use or other disposal of the goods.

(3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(4) The records must be kept for at least 7 years after the goods to which they relate left the person's possession.

(5) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant was complying with a record keeping arrangement applicable to the record concerned; or
- (b) a Customs officer dispensed with the requirement to keep the document.

Note For record keeping arrangements see section 225 and Part 9.1 generally.

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99. (1) A Customs officer may question a licensed manufacturer about any matter to do with the manufacture or production of excisable goods by the manufacturer.

Customs powers—
manufacture and
production of
excisable goods

- (2) If it appears to a Customs officer that—
- (a) a person (in this section, the “supplier”) has supplied goods to a licensed manufacturer; and
 - (b) the supply was in the course of the supplier's business; and
 - (c) the goods have been or are to be used in or in connection with the manufacture or production of excisable goods;

a Customs officer may question the supplier about any matter to do with the supply.

Notes Customs questions must generally be answered—see section 233.

Subsection (2) applies to suppliers of the raw materials used to manufacture excisable goods, such as sugar and grain, as well as to suppliers of goods, such as labels, cans and bottles that are not ingredients of excisable goods.

(3) A Customs officer may give a direction to a licensed manufacturer produce to a Customs officer a document relevant to the manufacture or production of excisable goods by the manufacturer.

(4) A Customs officer may give a supplier mentioned in subsection (2) a direction to produce to a Customs officer a document concerning a supply mentioned in that subsection.

Note A person given a Customs direction must comply with it—see section 238.

(5) A Customs office may enter and search any place occupied or used, in the course of a business, by a supplier mentioned in subsection (2) for a document concerning a supply mentioned in that subsection. However, a Customs office may not enter such a place unless—

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- (a) the occupier of the place has consented to the entry; or
 - (b) the entry and search are authorised by warrant issued by a judicial officer.
- (6) A judicial officer must not issue a warrant for paragraph (5)(b) unless satisfied that a Customs officer suspects on reasonable grounds that such a document is in the place.

Notes For searches generally see Part 10.4.

For warrants generally see Part 10.14.

PART 5.2—EXCISE CONTROLLED GOODS

When goods are
excise
controlled goods

100. Goods are excise controlled goods from the time they become excisable goods until the earliest of the following times—

- (a) for goods—
 - (i) that are entered for home consumption; or
 - (ii) are of a kind for which an authority, except a continuing authority, to release into home consumption has been given without being entered for home consumption;

when Customs authorises the release of the goods into home consumption;

- (b) for goods that are the subject of a continuing authority to release the goods into home consumption without being entered for home consumption—when the goods are moved into home consumption in accordance with that authority;
- (c) when they are exported;
- (d) when they are forfeited.

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Note For forfeiture see Part 10.8.

(2) For paragraph (1)(c), goods are not to be taken to have been exported merely because the craft they are on leaves Solomon Islands.

Notes For the time when goods are exported see section 8.

The effect of subsection (2) is, for example, that, if a craft carrying excise controlled goods leaves Solomon Islands and returns with the goods still on board, the goods remain excise controlled goods.

- 101.** (1) A person commits an offence if—
- (a) excise controlled goods are in a place with Customs authority; and
- (b) the person moves the goods from the place without Customs authority.
- Excise controlled goods not to be moved or interfered with

If the place is a licensed place, the licensee also commits an offence.

Penalty—50 penalty units or 2 years imprisonment, or both.

- (2) Strict liability applies to—
- (a) paragraph (1)(a); and
- (b) the element of an offence against subsection (1), that the goods were moved.

Note For strict liability see section 300.

(3) A person who interferes with excise controlled goods without Customs authority commits an offence. If the place where the goods are when the interference occurs is a licensed place, the licensee also commits an offence.

Penalty—50 penalty units or 2 years imprisonment, or both.

Notes For example, Customs authority to interfere with excise controlled goods may be given to permit the manufacturer to take samples of the goods to prepare an entry for the goods.

The defendant bears the onus of establishing Customs authority mentioned in paragraph (1)(b) and subsection (3), and must do so on the balance of probabilities—see section 307.

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(4) Strict liability applies to the element of an offence subsection (3), that the goods were interfered with.

Note For strict liability see section 300.

(5) A person commits an offence if—

- (a) excise controlled goods are in a place with Customs authority; and
- (b) the person moves the goods from the place without Customs authority; and
- (c) the person knows that there was not, or was reckless as to whether there was, Customs authority for the movement.

Penalty—100 penalty units or 5 years imprisonment, or both.

(6) Strict liability applies to—

- (a) paragraph (5)(a); and
- (b) the element of an offence against subsection (5), that the goods were moved.

Note For strict liability see section 300.

(7) A person commits an offence if—

- (a) the person interferes with excise controlled goods without Customs authority; and
- (b) the person knows that there was not, or was reckless whether there was, Customs authority for the interference.

Penalty—100 penalty units or 5 years imprisonment, or both.

(8) Strict liability applies to the element of an offence in subsection (7), that the goods were interfered with.

Note For strict liability see section 300.

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- 102.** (1) A person commits an offence if the person—
- (a) becomes aware that goods have been destroyed, damaged or interfered with; and
- (b) knows that the goods are excise controlled goods; and
- (c) fails to report the matter to Customs without delay.

Interference
with excise
controlled goods
to be reported

Penalty—50 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) if the defendant is an employee of a person who has Customs authority to have possession of the goods—the defendant reported the matter to his or her employer without delay; or
- (b) the matter had already been reported to Customs.

- 103.** (1) This section applies in relation to a person who—
- (a) is a licensed manufacturer of excisable goods of a particular kind and manufactures or produces goods of that kind; or
- (b) is authorised to have possession of excise controlled goods at a particular place and receives excise controlled goods at that place; or
- (c) is authorised to move excise controlled goods from a particular place and moves excise controlled goods from that place.

Duty demand for
deficiency in
excise controlled
goods

(2) If the person—

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- (a) when given a request to do so by a Customs officer, does not produce the goods to a Customs officer; and
- (b) does not establish, to the satisfaction of a Customs officer—
 - (i) that the goods were destroyed; and
 - (ii) that the goods were exported; and
 - (iii) that the goods left the person's possession in accordance with this Act;

a Customs officer may, by written notice to the person, demand payment of a specified amount, being the amount that would have been payable as excise duty on the goods.

Note The decision to demand the amount, and the calculation of the amount, are duty related decisions and so reviewable by the Comptroller.

- (3) The notice must state the nature and quantity of the goods and specify how the amount is calculated.

Record keeping requirements

104. (1) A person who has Customs authority to have possession of excise controlled goods commits an offence if he or she fails to keep records as required by this section.

Penalty—100 penalty units.

- (2) The records that must be kept are commercial documents that—
 - (a) contain information relevant to the accuracy or completeness of information given to Customs in or in connection with an entry or a return relating to excisable goods; and
 - (b) come into the person's possession or under his or her control (either before or after the entry was lodged, or the return given to Customs).

Note Examples of documents to be kept under this section include documents that contain information about any of the following—

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- other goods used in the manufacture or production of the goods;
- the process of manufacture or production;
- the quantity of goods manufactured or produced;
- loss or wastage of the goods, or of other goods used in the manufacture or production of the goods, during or after manufacture or production;
- storage of the goods, whether during or after manufacture or production;
- the delivery of the goods to some other person or the movement of the goods into home consumption;
- the sale, use or other disposal of the goods.

(3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(4) The records must be kept for at least 7 years after the goods to which they relate left the person's possession.

(5) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant was complying with a record keeping arrangement applicable to the record concerned; or
- (b) a Customs officer dispensed with the requirement to keep the document.

Note For record keeping arrangements see section 225 and Part 9.1 generally.

105. (1) A Customs officer may question any of the following about any matter to do with excisable goods or the manufacture or production of excisable goods—

Customs powers—excise controlled goods

- (a) a licensed manufacturer;
- (b) the occupier of, or any person who is in, a place specified in a licensed manufacturer's licence as a place where excisable goods may be manufactured or produced;
- (c) a person authorised to have possession of, or to move, excise controlled goods;

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- (d) a person in actual possession of excise controlled goods;
- (e) any person who, it appears to a Customs officer, is a person mentioned in paragraph (a), (b), (c) or (d).

Note Customs questions must generally be answered—see section 233.

(2) A Customs officer may give a direction to a person mentioned in subsection (1) to produce to a Customs officer a specified document that relates or may relate to the manufacture or production of excisable goods.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

(3) A Customs officer may give any of the following directions to a person who has actual possession of, or who has Customs authority to have possession of or to move, excise controlled goods at a place—

- (a) a direction to move, or not to move, the goods within the place; or
- (b) a direction about the storage of the goods, within the place; or
- (c) a direction to move the goods to a licensed warehouse; or
- (d) a direction to facilitate the examination of the goods by Customs.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

(4) Subsection (3) does not apply to a direction given in relation to goods that have been entered for home consumption and for which an authority to release into home consumption has been given.

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(5) If a direction under this section is not complied with—

- (a) a Customs officer may do what is necessary to give effect to the direction, or arrange for it to be done; and
- (b) a Customs officer may, by written notice given to the person to whom the direction was given, demand payment of a specified amount, being the amount equal to the cost reasonably incurred by the Government in giving effect to the direction or arranging for it to be given effect.

(6) A direction under this section that is inconsistent with an authority to move excise controlled goods, unless earlier revoked, ceases to be in force at the end of 5 days after it is given or, if a shorter period is specified in the direction, at the end of that shorter period.

(7) If a Customs officer suspects on reasonable grounds that there are excise controlled goods on or in a vehicle outside a Customs place, that officer or some other Customs officer may search the vehicle to find out whether there are customs controlled goods on or in the vehicle.

Note For searching generally see Part 10.4.

(8) A Customs officer may examine any of the following—

- (a) excise controlled goods;
- (b) equipment (including stills, vehicles and pipes), whether or not a fixture, that is used or apparently used in manufacturing, producing, moving or storing of excisable goods;
- (c) goods that apparently are—
 - (i) excise controlled goods; or

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- (ii) equipment of a kind mentioned in paragraph (b);
- (d) a place, craft or vehicle in which there are excise controlled goods or equipment of a kind referred to in paragraph (b);
- (e) any goods at a place that is used or apparently used for the manufacture, production or storage of excisable goods.

Note This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

(9) A Customs officer may enter and search any place mentioned in paragraph (3)(d) or (e) to find goods mentioned in the relevant paragraph.

Note For entry, searching and examining generally see Parts 10.4, 10.5.

CHAPTER 6—DUTIES**PART 6.1—IMPORT, EXPORT AND EXCISE DUTIES**

Ownership of goods—persons named in entries

106. In proceedings for the recovery of duty, the court is to presume, unless the contrary is established, that a person named in an entry as the owner of the goods was the owner at the date of the entry and thereafter.

Imposition of duties

107. (1) Duty is imposed on the import of goods, at the rates and in the circumstances, set out in the import tariff.

(2) Duty is imposed on the export of goods, at the rates and in the circumstances, set out in the export tariff.

(3) Duty is imposed on the manufacture or production of goods in Solomon Islands, at the rates and in the circumstances, set out in the excise tariff.

The tariffs

108. (1) The import tariff, export tariff and excise tariff at the date of commencement of this Act are the respective tariffs set out in the

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First Schedule to the Customs and Excise Act (Cap.121) as in force immediately before the commencement of this Act.

- (2) The regulations may modify a tariff.
- (3) Without limiting subsection (2), a modification of a tariff may do any of the following—
 - (a) add a new item or heading to the tariff;
 - (b) omit an item or heading of the tariff;
 - (c) amend an item or heading of the tariff;
 - (d) amend a rate of duty for an item of the tariff, including by making the item “Free”;
 - (d) prescribe different rates of duty for different cases;
 - (e) prescribe exemptions and concessions;
 - (f) repeal the tariff and substitute a new tariff.
- (4) If regulations under this section in relation to a tariff are annulled, then, despite section 24 of the Interpretation and General Provisions Act (Cap. 85), the provisions of the tariff as in force immediately before the regulations took effect are revived.

Note Section 24 of the Interpretation and General Provisions Act (Cap. 85) provides that, generally, the repeal of a piece of legislation does not revive any previous legislation.

109. (1) Import duty is to be calculated using the rate of duty in force on the day determined as follows—

Date as at which
rate of duty
applies

- (a) if an authority (not a continuing authority) to release the goods into home consumption without an entry for home consumption was given—the day when the authority was given;
- (b) if—

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- (i) paragraph (a) does not apply; and
- (ii) there is a continuing authority to release the goods into home consumption without an entry for home consumption;
 - the day when the goods are moved into home consumption;
- (c) if—
 - (i) neither paragraph (a) or (b) applies; and
 - (ii) the goods were entered for home consumption under an advance entry;
 - the day when the goods were imported;
- (d) if the goods were the subject of a return by a duty free shop operator—the earlier of—
 - (i) the day when the return was given to Customs; and
 - (ii) the last day prescribed by the rules for giving the return to Customs;
- (e) if the goods were sold or disposed of under this Act or under the Shipping Act 1998—the day when the goods were so sold or disposed of;
- (f) if the goods are the subject of a duty or recovery demand—the day when the demand was made;
- (g) if none of paragraphs (a) to (f) apply—the day when the goods were entered for home consumption.

Notes For paragraph (c)—for when goods are imported see section 10.

For sale see Part 10.9 and the Shipping Act 1998 section 187.

- (2) For paragraph (1)(c)—

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- (a) a ship is taken to arrive at a port when it enters the limits of the port; and
 - (b) an aircraft is taken to arrive at an airport when it lands at the airport.
- (3) Excise duty is to be calculated using the rate of duty in force on the day determined as follows—
- (a) if the goods were sold or disposed of under this Act—the day when the goods were so sold or disposed of;
 - (b) if the goods are the subject of a duty or recovery demand—the day when the demand was made;
 - (c) if neither paragraph (a) or (b) applies—the day when the goods were entered for home consumption;
 - (d) if an authority (not a continuing authority) to release the goods into home consumption without an entry for home consumption was given—the day when the authority was given;
 - (e) if—
 - (i) paragraphs (c) and (d) do not apply; and
 - (ii) there is a continuing authority to release the goods into home consumption without an entry for home consumption;the day when the goods are moved into home consumption;
- Note For sale see Part 10.9.
- (4) If goods are entered for home consumption more than once, the entries after the first are disregarded in determining the rate of duty.

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(5) Export duty is to be calculated using the rate of duty in force on the day the goods were exported.

Note For when goods are exported see section 8.

Currency conversions

110. (1) If, to calculate import duty, it is necessary to convert an amount from one currency (in this section, the “source currency”) to Solomon Islands currency, the conversion is to be done using the conversion rate published by the Central Bank for the day on which the goods were exported from the country of export, being the rate for converting amounts in the source currency into Solomon Islands currency.

(2) If the Central Bank has not published a conversion rate for a particular currency, the conversion is to be done using the conversion rate notified to Customs by the Central Bank for converting amounts in the source currency into Solomon Islands currency as at that day.

Variation of “duty paid” contracts

111. (1) If—

- (a) the effect of an agreement for the sale of goods, however it is expressed, is that one party will indemnify the other against a liability for duties of customs or of excise, by whatever name imposed, payable on the goods; and
- (b) the price of the goods under the agreement has been worked out on the basis of a particular amount of duty; and
- (c) the amount of duty properly payable is different;

then, unless the agreement otherwise expressly provides, the price is, by force of this section, varied accordingly.

(2) This section applies to an agreement only if the proper law of the agreement is Solomon Islands law.

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PART 6.2—VALUING GOODS FOR DUTY PURPOSES

112. (1) An object of this Part is to make provision consistent with Article VII of the General Agreement on Tariffs and Trade to determine the value of imported goods for the purposes of imposing import duty.

Object of this Part

(2) In interpreting this Part, a construction that promotes that object is preferred to a construction that does not promote that object.

113. (1) The regulations may prescribe the method of determining the customs value of specified goods for the purposes of calculating specified duties.

Regulations may prescribe valuation methods for particular goods

(2) In relation to those goods, regulations made for subsection (1) apply instead of the provisions of this Part.

114. (1) For calculating import duty for imported goods, the value of the goods is the customs value of the goods, determined by a designated Customs officer in accordance with this Part.

Customs value of imported goods

(2) The customs value of goods is—

- (a) the transaction value of the goods determined in accordance with section 115; or
- (b) if a designated Customs officer determines that the transaction value of the goods cannot be determined in accordance with section 115— the transaction value of identical goods determined in accordance with section 116; or
- (c) if a designated Customs officer determines that—
 - (i) the transaction value of the goods cannot be determined in accordance with section 115; and
 - (ii) the transaction value of identical goods cannot be determined in accordance with section 116;

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the transaction value of similar goods determined in accordance with section 117; or

- (d) if a designated Customs officer determines that—
- (i) the transaction value of the goods cannot be determined in accordance with section 115; and
 - (ii) the transaction value of identical goods cannot be determined in accordance with section 116; and
 - (iii) the transaction value of similar goods cannot be determined in accordance with section 117;

the deductive value of the goods determined in accordance with section 119; and

- (e) if a designated Customs officer determines that—
- (i) the transaction value of the goods cannot be determined in accordance with section 115; and
 - (ii) the transaction value of identical goods cannot be determined in accordance with section 116; and
 - (iii) the transaction value of similar goods cannot be determined in accordance with section 117; and
 - (iv) the deductive value of the goods cannot be determined in accordance with section 119; and

the computed value of the goods determined in accordance with section 120; or

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- (f) if a designated Customs officer determines that—
- (i) the transaction value of the goods cannot be determined in accordance with section 115; and
 - (ii) the transaction value of identical goods cannot be determined in accordance with section 116; and
 - (iii) the transaction value of similar goods cannot be determined in accordance with section 117; and
 - (iv) the deductive value of the goods cannot be determined in accordance with section 119; and
 - (v) the computed value of the goods cannot be determined in accordance with section 120;

the fall-back value of those goods, determined in accordance with section 121.

(3) A designated Customs officer may, on application by an importer, in respect of particular imported goods, determine that the order of consideration of the methods in sections 116 and 117 is to be reversed.

(4) An application under subsection (3) must be made with the relevant entry.

(5) A designated Customs officer is not to determine that a particular kind of value of imported goods cannot be determined unless the officer is satisfied that there is not enough reliable information available to him or her to determine that value.

(6) If a designated Customs officer determines that a particular kind of value of imported goods cannot be determined, the officer—

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- (a) must notify the person who lodged the relevant entry of that fact; and
- (b) may give the person a direction to provide further relevant information to Customs.

Note A person given a Customs direction must comply with it—see section 238.

Transaction
value of imported
goods

115. (1) The transaction value of imported goods is the price actually paid or payable for the goods at the time they are sold for export to Solomon Islands, adjusted by the amounts specified in subsections (2) and (3).

(2) Increase the price actually paid or payable for the goods by the sum of the following amounts paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods to the extent that the amount is not already included in the price—

- (a) commission and brokerage in relation to the imported goods other than fees paid or payable by the buyer to the buyer's agent for the service of representing the buyer overseas in respect of the purchase of the goods;
- (b) packing costs, including labour and material costs;
- (c) the cost of containers that are treated as being as one with the imported goods;
- (d) royalties and licence fees, including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to Solomon Islands, other than for the right to reproduce the goods in Solomon Islands;
- (e) the cost of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods until

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- the goods have left the country of export if such costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or for the benefit of the seller as a condition of the transaction;
- (f) the value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller;
 - (g) the costs or charges related to the purchase of the finance for the imported goods; and
 - (h) the value of any of the following goods and services supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, apportioned to the goods in a reasonable manner and in accordance with generally accepted accounting principles—
 - (i) materials, components, parts, and other goods incorporated in the production of the imported goods;
 - (ii) tools, dies, moulds; and other goods utilised in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods; and
 - (iv) engineering work, development work, art work, or design work, plans or sketches undertaken outside Solomon Islands and necessary for the production of the goods.
- (3) Decrease the price actually paid or payable for the imported goods by the sum of the following amounts to the

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extent that the amount is otherwise included in the price paid or payable for the goods and separately identified in the price—

- (a) expenditure incurred in the construction, erection, assembling or maintenance of, or technical assistance provided in respect of the goods after importation;
- (b) the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of the goods after importation, and the cost of any insurance relating to such transportation;
- (c) customs duties and other taxes payable in Solomon Islands by reason of the importation or sale of the goods; and
- (d) costs or charges related to the purchase of the finance for the imported goods and paid or payable to the supplier.

Transaction
value of
identical goods

116. (1) For this Part, goods are identical goods in relation to imported goods if a designated Customs officer is satisfied that the goods—

- (a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods; and
- (b) were produced in the same country as the imported goods; and
- (c) were produced by or on behalf of the producer of the imported goods; and
- (d) are not goods in relation to which—
 - (i) art work, design work, development work, engineering work has been undertaken, or substantially undertaken, in Solomon Islands; or

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- (ii) models, plans or sketches prepared, or substantially have been prepared, in Solomon Islands;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(2) If the designated Customs officer, after reasonable inquiry, is not aware of any goods that may be treated under subsection (1) as identical goods in relation to the imported goods, the officer may disregard the requirement in paragraph (1)(c).

(3) The transaction value of goods that are identical goods in respect of imported goods is the transaction value of the identical goods in respect of a sale of those goods for export to Solomon Islands if—

- (a) the transaction value of the identical goods is the customs value of those goods; and
- (b) the identical goods were exported to Solomon Islands at the same or substantially the same time as the imported goods being valued and were sold to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and in the same or substantially the same quantities as the goods being valued.

(4) If the customs value of imported goods cannot be determined under subsection (3) because identical goods were not sold as described in paragraph (3)(b), the customs value of those goods may be determined by reference to the transaction value of identical goods in respect of a sale of those goods for export to Solomon Islands if the identical goods were sold under any of the following conditions—

- (a) to a buyer at the same or substantially the same trade level as the buyer of the imported goods being valued but in quantities different from the

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quantities in which the imported goods were sold;

- (b) to a buyer at a trade level different from that of the buyer of the imported goods being valued but in the same or substantially the same quantities as the quantities in which those imported goods were sold;
 - (c) to a buyer at a trade level different from that of the buyer of the goods being valued and in quantities different from the quantities in which those goods were sold.
- (5) For this section, the transaction value of identical goods is to be adjusted to take account of—
- (a) commercially significant differences in the cost of transportation and insurance of; and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the identical goods until the goods have left the country of export and those costs, charges and expenses in respect of the imported goods being valued that are attributable to differences in distances and modes of transport; and
 - (b) where subsection (4) applies, differences in the trade levels of the buyers of the identical goods and the goods being valued or the quantities in which the identical goods and the goods being valued were sold or both, as the case may be.
- (6) Without limiting the circumstances in which there is not enough information to determine the transaction value of identical goods, if there is not enough information to determine an amount under subsection (5), the transaction value of the identical goods cannot be determined.
- (7) If, in relation to imported goods, there are 2 or more transaction values of identical goods that meet all the

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requirements of this section, the customs value of the imported goods is to be determined on the basis of the lowest of those transaction values.

117. (1) For this Part, goods are similar goods, in relation to imported goods if a designated Customs officer is satisfied that the goods— Transaction
value of similar
goods

- (a) closely resemble the imported goods in respect of component materials and parts and in respect of physical characteristics; and
- (b) are functionally and commercially interchangeable with the imported goods having regard to the quality and reputation (including any relevant trade marks) of each lot of goods; and
- (c) were produced in the same country as the imported goods; and
- (d) were produced by or on behalf of the producer of the imported goods;
- (e) are not goods in relation to which—
 - (i) art work, design work, development work or engineering work has been undertaken, or substantially undertaken, in Solomon Islands; or
 - (ii) models, plans or sketches have been prepared, or substantially prepared, in Solomon Islands;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(2) The transaction value of goods that are similar goods to imported goods is the transaction value of the similar goods in respect of a sale of those goods for export to Solomon Islands if—

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- (a) the transaction value of the similar goods is the customs value of those goods; and
 - (b) the similar goods were exported to Solomon Islands at the same or substantially the same time as the imported goods being valued and were sold to a buyer at the same or substantially the same trade level as the buyer of the goods being valued, and in the same or substantially the same quantities as the goods being valued.
- (3) Sections 116(4) to (7) apply to this section as if each reference in those provisions to identical goods were a reference to similar goods.

When transaction
value not to be
used

118. The transaction value of imported goods cannot be used to determine the customs value of imported goods if any of the following circumstances apply—

- (a) there are restrictions on the disposition of the imported goods other than—
 - (i) restrictions imposed or required by or under a written law of Solomon Islands; or
 - (ii) restrictions that limit the geographical area in which the goods may be resold; or
 - (iii) restrictions that do not substantially affect the value of the imported goods;
- (b) the sale of the imported goods is subject to some condition or consideration in respect of which a value cannot be determined;
- (c) part of the proceeds of any disposal, use or resale of the goods by the purchaser accrues, directly or indirectly, to the vendor, unless an appropriate adjustment can be made;

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- (d) the buyer and seller of the goods are related parties at the time the goods are sold for export unless—
 - (i) a designated Customs officer is satisfied that the relationship did not influence the price paid or payable for the goods; or
 - (ii) the importer demonstrates to the satisfaction of a designated Customs officer that the transaction value of the goods closely approximates the transaction value, deductive value or computed value of identical goods or similar goods sold at comparable trade and quantity levels to unrelated buyers in Solomon Islands at or about the same time as the sale of the imported goods.

119. (1) If—

Deductive value
of imported
goods

- (a) the imported goods, or identical goods or similar goods to the imported goods, are sold in Solomon Islands in the condition in which they were imported at or about the time of importation; and
- (b) a designated Customs officer is satisfied—
 - (i) that the purchaser and the importer are not related parties; and
 - (ii) in relation to the imported goods, the purchaser did not supply, free of charge or at a reduced cost, for use in connection with the production and sale for export of the imported goods, the goods, material and services referred to in section 115(2)(h);

the deductive value of the imported goods is the price per unit of the imported goods, or the identical or similar goods,

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at which the greatest number of the goods are sold, reduced on a per unit basis by—

- (c) the amount of any commission; and
 - (d) an amount for profit and general expenses, including all costs of marketing the goods based on sales in Solomon Islands of goods of the same class or kind as the goods sold; and
 - (e) reasonable costs, charges, and expenses that are incurred in respect of the transportation and insurance of the goods within Solomon Islands, to the extent that those costs and charges have not already been deducted under paragraph (d); and
 - (f) customs duties or other taxes payable in Solomon Islands because of the import or sale of the goods.
- (2) If—
- (a) the imported goods, or the identical goods or similar goods, are not sold in Solomon Islands at or about the time of import but are sold in the condition in which they were imported within 90 days after the time of import; and
 - (b) a designated Customs officer is satisfied as mentioned in paragraph (1)(b);

the deductive value is determined by reference to the later sale.

- (3) If—
- (a) the imported goods, or the identical goods or similar goods, are not sold in the condition in which they were imported in Solomon Islands at or about the time of import or within 90 days after the time of importation; and

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- (b) the imported goods, after being assembled, packaged, or further processed, are sold within 90 days after the time of import; and
- (c) a designated Customs officer is satisfied as mentioned in paragraph (1)(b); and
- (d) the importer so requests at any time before the goods are entered for home consumption;

the deductive value of the imported goods may be calculated by reference to that sale after reduction, on a per unit basis, for the value added attributable to the assembly, packaging or further processing of the goods in Solomon Islands.

(4) Subsection (3) does not apply unless a designated Customs officer is satisfied that there is enough information available to Customs to determine the amount of the value added attributable to the assembly, packaging or further processing of the goods in Solomon Islands.

120. The computed value of imported goods is so much of the sum of the following amounts as a designated Customs officer considers should be apportioned to the production of those goods—

Computed value
of imported
goods

- (a) the cost or value of materials used in producing the goods;
- (b) the cost of manufacture or processing to produce the goods;
- (c) the cost of containers that are treated as being as one with the imported goods;
- (d) the cost of transport and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transport of, the imported goods until the goods have left the country of export if such costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or for the benefit of the seller as a condition of the transaction;

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- (e) the value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller;
- (f) the value of any goods, material and services referred to in section 116(2)(h);
- (g) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, being goods made by producers in the country of export and are the exporter's goods.

Fall-back value
of imported
goods

121. The fall-back value of imported goods is the value that a designated Customs officer determines, having regard to the other methods of valuation under this Part, applied in the order in they would ordinarily be applied, and such other matters as the designated Customs officer considers relevant, but not having regard to any of the following matters—

- (a) the selling price in Solomon Islands of the goods produced in Solomon Islands;
- (b) any system that provides for the acceptance for valuation purposes of the higher of 2 values;
- (c) the price of the goods on the domestic market of the country from which the imported goods were exported;
- (d) the cost of production of the goods, other than the computed value of identical goods or similar goods;
- (e) the price of the goods sold for export to a country other than Solomon Islands and not imported into Solomon Islands;
- (f) any system that provides for minimum values for Customs purposes;
- (g) arbitrary or fictitious values.

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122. (1) For calculating export duty for goods for export, the value of the goods is the customs value of the goods, determined by a designated Customs officer—

Customs value
of goods for
export

- (a) for Solomon round logs and other goods prescribed in the regulations for section 113—
in accordance with the regulations; and
 - (b) for other goods—in accordance with this Part.
- (2) The customs value of goods for export is—
- (a) the transaction value of the goods, which is the price actually paid or payable for the goods at the time they are sold for export from Solomon Islands, adjusted by the amounts specified in sections 115(2) and (3); or
 - (b) if a designated Customs officer determines that the transaction value of the goods cannot be determined in accordance with paragraph (a)—
the transaction value of identical goods to the goods for export, determined in accordance with section 116, changing what needs to be changed; or
 - (c) if a designated Customs officer determines that—
 - (i) the transaction value of the goods cannot be determined in accordance with paragraph (a); and
 - (ii) the transaction value of identical goods cannot be determined in accordance with paragraph (b);

the transaction value of similar goods to the goods for export, determined in accordance with section 117, changing what needs to be changed; or

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- (d) if a designated Customs officer determines that—
- (i) the transaction value of the goods cannot be determined in accordance with paragraph (a); and
 - (ii) the transaction value of identical goods cannot be determined in accordance with paragraph (b); and
 - (iii) the transaction value of similar goods cannot be determined in accordance with paragraph (c);

the deductive value of the goods, determined in accordance with section 119, changing what needs to be changed; or

- (e) if a designated Customs officer determines that—
- (i) the transaction value of the goods cannot be determined in accordance with paragraph (a); and
 - (ii) the transaction value of identical goods cannot be determined in accordance with paragraph (b); and
 - (iii) the transaction value of similar goods cannot be determined in accordance with paragraph (c); and
 - (iv) the deductive value of the goods cannot be determined in accordance with paragraph (d);

the computed value of the goods for export, determined in accordance with section 120, changing what needs to be changed.

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- (f) if a designated Customs officer determines that—
- (i) the transaction value of the goods cannot be determined in accordance with paragraph (a); and
 - (ii) the transaction value of identical goods cannot be determined in accordance with paragraph (b); and
 - (iii) the transaction value of similar goods cannot be determined in accordance with paragraph (c); and
 - (iv) the deductive value of the goods cannot be determined in accordance with paragraph (d); and
 - (v) the computed value of the goods cannot be determined in accordance with paragraph (e);

the fall-back value of the goods, determined in accordance with section 121, changing what needs to be changed.

(3) A designated Customs officer may, on application by an importer, in respect of particular goods for export, determine that the order of consideration of the methods referred to in paragraphs (2)(c) and (d) is to be reversed.

(4) An application under subsection (3) must be made with the relevant entry.

(5) The transaction value of goods for export cannot be used to determine their customs value in any of the circumstances set out in section 118, changing what needs to be changed.

(6) A designated Customs officer is not to determine that a particular kind of value of goods for export cannot be determined unless the officer is satisfied that there is not

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enough reliable information available to him or her to determine that value.

(7) A designated Customs officer must, upon written request, advise the importer or exporter, in writing, of the method used to determine the customs value of the imported goods or the goods for export.

(8) If a designated Customs officer determines that a particular kind of value of goods for export cannot be determined, the officer—

- (a) must notify the person who lodged the relevant entry of that determination; and
- (b) may give the person a direction to provide further relevant information to Customs.

Note A person given a Customs direction must comply with it—see section 238.

**PART 6.3—IMPORTED GOODS THAT ARE THE PRODUCE
OR MANUFACTURE OF AN MSG TRADE AGREEMENT
COUNTRY**

Imported goods that are the produce or manufacture of an MSG Trade Agreement country

123. (1) For the purpose of this Act and of a customs tariff, goods are the produce or manufacture of an MSG Trade Agreement country if they are to be accepted as originating in that country under Annex III of the MSG Trade Agreement.

Note Concessional rates of duty are imposed for some goods that are the produce or manufacture of MSG Trade Agreement countries.

- (2) If—
- (a) goods are entered for home consumption as the produce or manufacture of an MSG Trade Agreement country; and
 - (b) the goods are moved into home consumption; and
 - (c) at any time within 12 months after the goods are moved into home consumption, it appears to

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a Customs officer that the goods are not the produce or manufacture of an MSG Trade Agreement country;

a Customs officer may, by written notice given to the owner of the goods, demand payment of a specified amount, being the difference between the amount, if any, of the duty paid on the goods and the amount that would be payable as duty if the goods are not the produce or manufacture of an MSG Trade Agreement country.

(3) The notice must be served within 12 months after the goods are moved into home consumption.

(4) In a proceeding for the recovery of the amount demanded, the burden of establishing that the imported goods are the produce or manufacture of an MSG Trade Agreement country lies on the owner.

PART 6.4—EXEMPTIONS FROM DUTY*Division 1—Exemptions and concessions*

124. (1) The regulations may prescribe exemptions and concessions in relation to duty (including subject to conditions).

Exemptions and
concessions

(2) Subject to the Foreign Investment Act 2005, if an incentive granted under the Investment Act (Cap. 142) that is in force on the commencement day for this Division includes an exemption or concession in respect of customs duty, the exemption or concession applies according to its terms.

(3) The Minister may, by written determination and on the recommendation of the Committee—

- (a) on application by an importer, grant an exemption to the importer from some or all of liability to import duty imposed in respect of specified imported goods; and

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- (b) on application by an exporter, grant an exemption to the exporter from some or all of liability to export duty imposed in respect of specified exported goods.
- (4) Subsections (2) and (3) do not extend to penalty duty.

Division 2—Revenue Exemptions Committee

This Division will continue in existence the Exemptions Committee established by the Customs and Excise Act (Cap. 121) and provide for discretionary exemptions largely along the lines of the provisions of that Act

PART 6.5—COLLECTING DUTY

When liability
for duty arises

137. (1) Liability for import duty on goods arises at the time when the goods are imported.

Note For the time when goods are imported see section 10.

(2) Liability for export duty on goods arises at the time when the goods are given to a carrier for export. In the case of goods exported by mail, the liability arises when the goods are given to the Solomon Islands Postal Corporation for transmission by mail.

(3) Liability for excise duty on goods arises at the time when the goods are manufactured or produced.

When duty
payable

138. Duty is payable on the day when a Customs officer demands the duty from a person liable to pay the duty.

Note If the person cannot be found after reasonable inquiry, the goods are forfeited goods—see section 260.

Import duty—
who is liable to
pay

139. (1) Import duty on imported goods is recoverable from any of the following—

- (a) the importer of the goods;
- (b) any person who was the owner of the goods when or after they were imported but before an authority to release the goods into home consumption was given;

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- (c) any person who—
 - (i) became the owner of the goods (no matter when he or she became the owner); and
 - (ii) at the time that he or she became the owner, knew that some or all of the import duty on the goods had not been paid.

(2) If a duty or recovery demand has been served in respect of imported goods that cannot be accounted for, the import duty specified in the demand is recoverable from the person on whom the demand was served.

140. (1) Excise duty on excisable goods is recoverable from any of the following—

Excise duty—
who is liable to
pay

- (a) the person who was the owner of the goods when they were manufactured or produced;
- (b) any person who was the owner of the goods before a Customs authority to move them into home consumption was given;
- (c) any person who—
 - (i) became the owner of the goods (no matter when he or she became the owner); and
 - (ii) at the time that he or she became the owner, knew that some or all of the excise duty on the goods had not been paid.

(2) If a duty or recovery demand has been served in respect of excisable goods that cannot be accounted for, the excise duty specified in the notice is recoverable from the person on whom the notice was served.

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Export duty—
who is liable to
pay

141. Export duty on goods is recoverable from any of the following—

- (a) any person who was the owner of the goods when or after they were exported;
- (b) the exporter (not the carrier).

Offence where
conditions of
exemption or
concession not
complied with

142. (1) If—

- (a) goods are released for home consumption; and
- (b) the amount of duty payable in respect of the goods was calculated on the basis that some condition, restriction or requirement applies and is to be observed after the goods are moved into home consumption; and
- (c) after release, the condition, restriction or requirement is not in fact complied with;

the owner of the goods at the time when the entry was lodged was given commits an offence.

Penalty—3 X the amount that would have been the amount of duty calculated without reference to the condition, restriction or requirement.

(2) If—

- (a) a Customs officer gives authority to export goods; and
- (b) the amount of duty payable in respect of the export of the goods was calculated on the basis that some condition, restriction or requirement applies and is to be observed after the goods are exported; and
- (c) after export, the condition, restriction or requirement is not in fact complied with;

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the owner of the goods at the time when the entry was lodged commits an offence.

Penalty—3 x the amount that would have been the amount of duty calculated without reference to the condition, restriction or requirement.

- 143.** A provision of an Act that purports— Statutory bodies' liability to duty
- (a) to exempt a statutory body from a liability to taxation, either generally or in particular; or
 - (b) to exempt a person from a liability to pay tax on goods for use by a statutory body ;

does not apply in relation to import duty, export duty or excise duty (however they are described in the Act) unless the exemption is express.

- 144.** (1) This section applies in respect of— Penalty duty
- (a) amounts payable as import duty after a reassessment of duty;
 - (b) export duty;
 - (c) excise duty.
- (2) If duty remains unpaid after 7 days after the time when it became due for payment, there is payable to Customs, by way of penalty, the amount calculated at—
- (a) for the first month or part of a month after the duty became due for payment—the rate of 2% of the amount unpaid as at the start of that month; and
 - (b) for each month thereafter during which some or all of the amount of duty and penalty duty remains unpaid—the rate of 2% of the amount unpaid as at the start of that month.

Note For when duty becomes due for payment see section 138.

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(3) The amount of penalty duty is payable by the person liable to pay the duty.

Offsets against
duty

145. If the Comptroller so determines, amounts payable as refunds or remission of duty to a particular importer, exporter or producer or manufacturer of excisable goods may be set off against duty payable by the importer, exporter or producer or manufacturer.

PART 6.6—REFUNDS AND REMISSIONS OF DUTY***Division 1—Entitlements to refunds and remissions***

Overpayments

146. (1) Subject to this section, if the amount paid as import duty, export duty or excise duty on goods is more than the amount properly payable, a refund of duty paid on the goods is to be given.

Note Section 155 identifies the person entitled to the refund.

(2) The amount to be refunded is the amount of the overpayment.

(3) The period for applying for the refund is 4 months after the duty was paid.

Note The period in subsection (3) may not be extended—see section 156(3).

Goods not
delivered

147. (1) Subject to this section, a refund of import duty paid on goods is to be given if—

- (a) a consignee of the goods makes the payment;
and
- (b) a Customs officer is satisfied that the goods were not delivered to the consignee as required by the agreement relating to the importation.

Note Section 155 identifies the person entitled to the refund.

(2) The amount to be refunded is the amount paid as import duty.

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(3) The period for applying for the refund is 4 months after the duty was paid.

Note The period in subsection (3) may not be extended—see section 156(3).

148. (1) Subject to this section, a refund of import duty paid on goods is to be given if the goods—

Deteriorated, lost or destroyed goods

- (a) had deteriorated, or are damaged or destroyed, before they ceased to be customs controlled goods; or
- (b) were lost or stolen before they cease to be customs controlled goods but are satisfactorily accounted for.

(2) Subject to this section, a refund of excise duty paid on goods is to be given if the goods—

- (a) are destroyed before they cease to be excise controlled goods; or
- (b) are lost or stolen before they cease to be excise controlled goods but are satisfactorily accounted for.

Note Section 156 identifies the person entitled to the refund.

(3) The amount to be refunded is—

- (a) for goods that have been stolen, lost or destroyed (whether or not at a Customs officer's request)—the amount paid as the relevant duty; and
- (b) for other imported goods or goods for export—the difference between the amount paid as duty and the amount that would have been the amount of the duty if the customs value of the goods had been calculated taking the damage or deterioration into account; and
- (c) for other excisable goods—the difference between the amount paid as excise duty and the

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amount that would have been the amount of the excise duty if the amount of excise duty had been calculated taking the damage or deterioration into account.

(4) If a Customs officer has requested the applicant for the refund to destroy the goods, or deal with them in another specified way, the refund is not to be given unless the request has been complied with, at no cost to the Government.

(5) In subsection (4)—

“cost” includes the cost incurred by Customs in relation to a Customs officer supervising compliance with the request.

(6) The period for applying for the refund amount is 4 months after—

- (a) for an application in relation to goods that have been stolen, lost or destroyed—the date on which the applicant first became aware that they had been stolen, lost or destroyed; or
- (b) the goods, or the packages in which the goods were or were thought to have been packed, were moved into home consumption.

Note The periods in subsection (6) may not be extended—see section 156(3).

Goods
withdrawn from
sale

149. (1) Subject to this section, a refund of excise duty paid on goods is to be given if the goods are—

- (a) withdrawn from sale or distribution in Solomon Islands to comply with a written law; and
- (b) are returned to the manufacturer or producer.

Note Section 155 identifies the person entitled to the refund.

(2) The amount to be refunded is the amount paid as excise duty.

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(3) If a Customs officer has requested the applicant for the refund to destroy the goods, or deal with them in another specified way, a refund or remission is not to be made under this section unless the request has been complied with, at no cost to the Government.

(4) In subsection (3)—

“cost” includes the cost incurred by Customs in relation to a Customs officer supervising compliance with the direction.

(5) The period for applying for the refund is 4 months after the goods were returned to the manufacturer or producer.

Note The period in subsection (5) may not be extended—see section 156(3).

150. (1) Subject to this section, a refund of import duty or excise duty paid on goods is to be given if—

Goods sold for use by another government etc.

- (a) the goods are sold to a person for the person’s official use; and
- (b) the person is a person in respect of whom, under the regulations, an exemption from import duty would apply if the person had imported the goods; and
- (c) either—
 - (i) the price at which they were sold did not include an amount in respect of import or excise duty (as relevant); or
 - (ii) the price at which they were sold included an amount in respect of import or excise duty (as relevant) and the same amount has been refunded or credited to the purchaser.

Note Section 155 identifies the person entitled to the refund.

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(2) The amount to be refunded is the amount of the duty payment or duty liability.

(3) The period for applying for the refund is 4 months after the duty was paid.

Note The period in subsection (3) may not be extended—see section 156(3).

Remissions of duty

151. If a person would be entitled to a refund of duty under this Part but for the fact that he or she had not actually paid the duty, the duty is to be remitted.

Division 2—Obtaining refunds and remissions

Who is entitled to a refund

152. A refund of duty under this Part is payable to the person who paid the duty.

Applications for refunds

153. (1) A refund of duty is not to be given without an application by or on behalf of the person entitled to the refund.

(2) A Customs officer may request an applicant to provide information, or to produce a document or goods, to facilitate checking whether the applicant is entitled to the refund and, if so, its amount. A Customs officer need not further consider the application until the request is complied with.

(3) Despite section 19, a period for applying for a refund amount under this Part cannot be extended.

Decisions on applications

154. (1) On an application for a refund, a Customs officer is to decide whether to give a refund to the applicant and, if so, how much.

(2) A Customs officer is to give notice of the decision to the applicant.

(3) If a Customs officer has not given notice to the applicant of the decision on an application—

(a) within 30 days after the application was received by Customs; or

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- (b) if a Customs officer has given the applicant a request under section 156(2)—within 30 days after the request is fully complied with;

the application is to be taken to have been refused.

Note The applicant may then apply for a review of the Customs officer's decision on the application.

- (4) A decision under this section—
- (a) to refuse an application for a refund; or
- (b) to refund less than the amount applied for;

is a reviewable decision.

Note This is a duty related decision, and is reviewable by the Comptroller.

155. A refund is not to be given if the amount of the refund is less than \$200 or, if another amount is prescribed, that other amount.

Minimum refund amount

156. (1) If a person has received a refund under this Part that was not payable, a Customs officer may, by written notice given to the person, demand payment of a specified amount, being—

Refunds and remissions made in error to be repaid

- (a) the amount of the refund; and
- (b) interest on that amount, calculated in accordance with the regulations.

(2) If a person's liability for duty was remitted under this Part but the duty was in fact payable, a Customs officer may, by written notice given to the person, withdraw the remission.

Division 3—Record-keeping, Customs powers and ancillary provisions

157. (1) A person who applies for a refund under this Part commits an offence if he or she fails to make or keep records as required by this section.

Record keeping requirements

Penalty—100 penalty units.

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(2) The records that must be kept are commercial documents that —

- (a) contain information relevant to the accuracy or completeness of information given to Customs in or in connection with the application; and
- (b) come into the person's possession or under his or her control (either before or after the entry was lodged, or the return given to Customs).

Note The documents to be kept include documents that contain information about or relevant to any of the following—

- the description of the goods;
- the quantity or volume of the goods;
- the calculation of the customs value of the goods;
- whether duty had been paid in respect of the goods and if so, how much;
- if relevant to the ground of the application - the circumstances in which the goods were acquired, used or disposed of.

(3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(4) The records must be kept for at least 7 years after the goods to which they relate left the person's possession.

(5) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant was complying with a record keeping arrangement applicable to the record concerned; or
- (b) a Customs officer dispensed with the requirement to keep the document.

Note For record keeping arrangements see section 225 and Part 9.1 generally.

Customs powers—refunds **158.** (1) A Customs officer may question any of the following on any matter to do with an application for a refund of duty on goods—

- (a) the applicant for the refund;

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- (b) a person who had the goods in his or her possession at any time while they were customs or excise controlled goods.

Note Customs questions must generally be answered—see section 233.

- (2) A Customs officer may give a direction to a person mentioned in subsection (1) to produce a specified document in relation to an application for a refund of duty under this Part.

Note A person given a Customs direction must comply with it—see section 238.

Note This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 236.

- (3) A Customs officer may exercise these powers before or after the application is made.

PART 6.7—CUSTOMS RULINGS ON DUTY MATTERS

159. (1) A designated Customs officer may, on application, make a ruling (a “Customs ruling”) in relation to particular imported goods. Customs rulings

- (2) A Customs ruling declares 1 or more of the following—

- (a) what the tariff classification of the goods is;
- (b) what the origin of the goods is;
- (c) the rate of import duty that applies to the goods;
- (d) whether a particular provision of this Act that relates to duty applies in respect of the goods and, if so, how it applies.

160. (1) An application for a Customs ruling must be made in the approved form, and before the goods to which the ruling is to relate are entered. Applications for
Customs rulings

- (2) Customs must allocate each application for a Customs ruling a unique number.

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(3) A designated Customs officer may request an applicant to provide further information, documents or goods relevant to the determination of the application. A designated Customs officer does not have to consider the application further until the information is provided.

Samples of goods

161. (1) An application for a Customs ruling must be accompanied by a sample of the goods concerned unless a designated Customs officer notifies the applicant that it is not necessary to provide a sample.

(2) A Customs officer may examine any sample of goods provided under subsection (1).

Note For examining generally see Part 10.5.

Making Customs rulings

162. (1) If an application for a Customs ruling is made, a designated Customs officer must make a determination—

- (a) making a Customs ruling in relation to the subject matter of the application; or
- (b) declining to make a Customs ruling.

Note A determination is a duty related decision and so reviewable by the Comptroller.

(2) Subject to section 163(3), the determination must be made as soon as practicable after the application is made.

(3) A Customs ruling is subject to any conditions specified in the ruling.

(4) Customs must give the applicant a copy of the determination.

Amending and revoking Customs rulings

163. (1) A designated Customs officer may at any time, by notice to the protected importer, amend a Customs ruling issued to the importer to correct an error in the ruling.

Note A decision to vary or revoke a ruling is a duty related decision and so reviewable by the Comptroller.

(2) A designated Customs officer may at any time, by notice to the protected importer, revoke a Customs ruling.

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Notes A decision to vary or revoke a ruling is a duty related decision and so reviewable by the Comptroller.

Examples of reasons that a Customs ruling might be varied or revoked are that a court or tribunal decision indicates directly or by implication that the ruling does not accurately state the law, or that Customs has formed the view that the ruling is wrong

(3) An amendment to or a revocation of a Customs ruling does not affect the operation of the ruling in relation to imported goods entered for home consumption before the amendment or revocation.

164. A Customs ruling applies to a particular case if the material facts on which the ruling was made are the same as the material facts in the case. When a Customs ruling applies

165. (1) A Customs ruling applies from the day when the applicant applied for it. Application of Customs rulings

(2) If a Customs ruling is amended, the amendment has effect from the day when the notice under section 166(1) is given to the protected importer.

(3) If the provisions of this Act relevant to a Customs ruling are amended, the ruling ceases to apply.

166. (1) This section applies if— Effect of Customs rulings

- (a) a person is a protected importer; and
- (b) the person pays, in respect of goods that he or she imports, an amount of import duty calculated in accordance with a Customs ruling; and
- (c) the Customs ruling applies in the case; and
- (d) any conditions to which the ruling is subject have been complied with; and
- (e) the amount of duty paid is less than the amount of duty that would have been properly payable apart from the ruling.

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- (2) If this section applies—
- (a) the amount of duty outstanding is not recoverable from the person; and
 - (b) the person is not liable to pay a penalty in respect of the amount of duty outstanding.

Effect of
applications for
Customs rulings

- 167.** (1) If—
- (a) a person has applied for a ruling in relation to a matter; and
 - (b) within 30 days after the application but before the ruling is given, the person enters for home consumption goods to which the ruling would, if given in the terms sought by the person, relate; and
 - (c) the entry includes a statement about a matter that is made in good faith and would be accurate if the ruling were given in the terms sought by the person; and
 - (d) the entry specifies the number allocated to the application under section 163(2); and
 - (e) if the ruling were given in the terms sought by the applicant, it would be an applicable ruling;

the person is not liable to a penalty on the basis that the statement in paragraph (c) was false or misleading.

Customs
powers—rulings

- 168.** (1) A Customs officer may question a protected importer for a ruling about any matter to do with the application for the ruling or the ruling.

Note Customs questions must generally be answered—see section 233.

- (2) A Customs officer may give a direction to protected importer to produce to a Customs officer a specified document that relates or may relate to the application for the

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ruling concerned, the ruling or the goods the subject of the ruling.

Note A person given a Customs direction must comply with it—see section 238.

PART 6.8—OFFENCES RELATING TO DUTY

169. (1) A person commits an offence if the person gives Customs information relevant to —

Giving false or misleading information about duty to Customs

- (a) the calculation of—
 - (i) import duty on imported goods (including information about the customs value or the tariff classification or origin of imported goods); or
 - (ii) goods tax imposed on imported goods; or
 - (iii) export duty on goods for export; or
 - (iv) excise duty on excisable goods; or
- (b) an application for a refund;

and the information is false or misleading.

Penalty—200 penalty units.

Note For refunds see Part 6.6.

(2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) Information may be false or misleading by what is omitted as well as by what is asserted.

170. (1) A person commits an offence if—

- (a) the person gives Customs information of a kind referred to in section 172(1); and
- (b) the information is false or misleading; and

Giving false or misleading information about duty to Customs—knowledge or recklessness

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- (c) the person knows or believes that, or is reckless as to whether, the information is false or misleading.

Penalty—

- (d) for a first offence—
 - (i) the higher of 3 x the value of the goods and 500 penalty units; or
 - (ii) imprisonment for 5 years;
 or both; and
- (e) for a second or later offence—
 - (i) the higher of 5 x the value of the goods and 1,000 penalty units; or
 - (ii) imprisonment for 10 years;
 or both.

(2) For subsection (1), the value of goods, in the case of imported goods or goods for export, means the customs value of the goods.

(3) Information may be false or misleading by what is omitted as well as by what is asserted.

Fraud on the revenue in relation to imports, exports or excisable goods

- 171.** (1) A person commits an offence if—
- (a) the person—
 - (i) makes or participates in making arrangements for the import of goods or for imported goods to be released or moved into home consumption; and
 - (ii) does so with the intention that some or all of the import duty on, or the goods tax

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imposed on the import of, the goods will not be paid; or

- (b) the person—
 - (i) makes or participates in making arrangements for the export of goods; and
 - (ii) does so with the intention that some or all of the export duty on the goods will not be paid; or
- (c) the person—
 - (i) makes or participates in making arrangements for excisable goods to be released or moved into home consumption; and
 - (ii) does so with the intention that some or all of the excise duty on the goods will not be paid.

Penalty—the same maximum penalty as for section 173.

Note For the customs value of goods see Part 6.2.

- 172.** The captain of a craft commits an offence if he or she—
- (a) knows or believes that—
 - (i) goods for import are on the craft; and
 - (ii) the importer intends to commit an offence against section 172, 173 or 174 in respect of the import of the goods, or goods tax imposed on the import of the goods; or
 - (b) knows or believes that—
 - (i) goods for export are on the craft; and

Carrier's liability for defrauding the revenue in relation to imports or exports

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- (ii) the importer intends to commit an offence against section 172, 173 or 174 in respect of the export of the goods;

and fails to report the matter to Customs as soon as practicable.

Penalty—50 penalty units.

Claiming or obtaining refunds, remissions, and rebates of duty when not entitled

- 173.** (1) A person commits an offence if—
- (a) the person claims or obtains a refund of duty; and
 - (b) the person is not entitled to the refund; and
 - (c) one of the following applies—
 - (i) the person knows or believes that he or she is not entitled to the refund;
 - (ii) the person is reckless as to whether he or she is entitled to the refund;
 - (iii) the person knows facts that would have led a reasonable person in his position to believe that he or she may not be not so entitled.

Penalty—5 × the amount of the refund claimed or obtained, or imprisonment for 5 years, or both.

- (1) It is a defence to a prosecution for an offence against subsection (1) on the basis of subsection (1)(c)(iii) that the defendant—
- (a) took all reasonably practicable steps to find out whether he or she was entitled to the refund of duty; and
 - (b) having taken those steps, believed that he or she was entitled to it.

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174. A trial for an offence against this Part is to be heard and determined summarily.

Prosecutions for offences against this Part

(2) The Court may, on application or of its own motion, make orders for directions to facilitate the conduct of the trial.

(3) Without limiting the direction that may be made, direction may be made for the exchange of statements and reports between the parties.

CHAPTER 7—ENTRY AND RELEASE**PART 7.1—ENTRY AND RELEASE**

175. Goods may be entered—

Kinds of entries

- (a) for home consumption; or
- (b) for warehousing; or
- (c) for transshipment; or
- (d) for export.

176. Goods are entered when information, whether or not it is correct, about all the matters prescribed for the relevant kind of entry has been given to Customs.

When goods entered

177. (1) Except as provided by this Act, a person commits an offence if—

Goods not be moved into home consumption unless entered for home consumption and duty paid

- (a) a border law requires that goods not be imported, or not enter home consumption (however that concept is expressed), without the approval, consent, licence or permission of a specified person; and

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- (b) the person moves goods into home consumption without the approval, consent, licence or permission being given.

Penalty—200 penalty units.

(2) A Customs authority to release imported or excisable goods into home consumption is of no effect unless—

- (a) the goods have been entered for home consumption; and
- (b) the import or excise duty payable in respect of the goods has been paid, or arrangements have been made for its payment satisfactory to a designated Customs officer.

Note If an authority to release goods into home consumption is of no effect, the goods remain customs controlled goods or excise controlled goods.

Release into home consumption of goods urgently needed

178. (1) A Customs officer may, on application, give authority to release goods into home consumption before the goods are entered for home consumption if—

- (a) a Customs officer is satisfied that the goods are needed for disaster relief; or
- (b) a Customs officer is satisfied that the goods are urgently needed for medical purposes; or
- (c) the goods are perishable food; or
- (d) the goods are live animals.

(2) An authority under subsection (1) is subject to the condition that, within 7 days after the goods are moved into home consumption, the person to whom the authority is given will enter the goods for home consumption.

Note Breach of a condition of an authority will lead to an offence— see section 377(3).

(3) Subsection (2) does not limit the conditions that may be imposed on the authority.

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(4) A refusal to grant such an application, or a grant it subject to conditions other than the condition in subsection (2), is a reviewable decision.

179. (1) A Customs officer may give authority to release the following goods into home consumption without the goods being entered for home consumption—

Release of certain goods without entry

- (a) a traveller's accompanied or unaccompanied personal or household effects;
- (b) goods sent by post the customs value of which is not more than \$200 or, if another amount is prescribed—that amount;
- (c) goods prescribed for this paragraph.

Note No application is needed in these cases.

Note A refusal to give an authority under this subsection is not a reviewable decision.

(2) Rules made for paragraph (1)(c) may prescribe conditions in respect of the release of the goods, including condition relating to giving returns to a Customs officer in relation to the goods concerned.

(3) A container that is imported on a temporary basis to be re-exported, whether empty or loaded, does not need to be entered.

180. (1) A Customs officer may, on application, give authority to release any goods into home consumption without the goods being entered on condition that the goods are exported before a time specified in the authority.

Release into home consumption of goods imported temporarily

Note Breach of a condition of an authority will lead to an offence— see section 377(3).

(2) Subsection (1) does not apply to a ship to which a cruising permit applies.

Note For cruising permits see Part 3.5.

(3) Subsection (1) does not limit the conditions that may be imposed on the authority.

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(4) A refusal to give an authority under this section is a reviewable decision.

Movement of
customs
controlled goods
to warehouses
can only be
authorised after
entry for
warehousing

181. Except as provided by this Act, an authority to move customs controlled goods to a licensed warehouse is of no effect for this Act unless—

- (a) the goods have been entered for warehousing, for transshipment or for export; or
- (b) the goods are stores; or
- (c) the authority was given on an application by—
 - (i) the operator of the craft on which the goods were brought to Solomon Islands; or
 - (ii) the person authorised to unload the craft;

and the application was made because the importer cannot easily be found or the identity of the importer is not known to the applicant.

Imported goods
not to be entered
for home
consumption
more than once

182. (1) A person commits an offence if—

- (a) the person lodges an entry for home consumption for imported goods (in this section, the “later entry”); and
- (b) the goods have previously been entered for home consumption (in this section, the “previous entry”) and the previous entry has not been withdrawn; and
- (c) the person knew that paragraph (b) applied, or was reckless as to whether it applied.

Penalty—50 penalty units.

(2) The later entry is invalid for all purposes except subsection (1).

Note See also section 109(4).

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183. A person who lodged an entry in respect of particular goods (in this section, the “earlier entry”) may, if a Customs officer, on application, permits, lodge an entry that amends the earlier entry. Lodging such an entry is not a contravention of section 182.

Amending
entries

184. (1) The person who lodged an entry may, if a Customs officer, on application, permits, withdraw it—

Withdrawing
entries

- (a) for an entry for warehousing—before the authority to move the goods to a warehouse is given; or
- (b) for an entry for home consumption—before the authority to release the goods into home consumption is given; or
- (b) for an entry for transshipment—before the goods are exported; or
- (c) for an export entry—before the authority to export the goods is given.

(2) If an entry is withdrawn, the goods are taken never to have been entered.

(3) A withdrawal of an entry or the correction of information in an entry does not affect the provisions of this Act about a person’s liability for a false or misleading statement in the entry. However, those provisions do not apply if the withdrawal or correction was made before the entry was selected by a Customs officer or by a Customs computer system for examination.

Note For liability for false or misleading statements see sections 172, 173, 174 and section 413.

185. (1) A person who has lodges an entry or a return under this Act commits an offence if he or she fails to keep make and records as required by this section and the rules.

Record keeping
requirements

Penalty—100 penalty units.

(2) The records that must be kept are commercial documents that—

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- (a) contain information relevant to the accuracy or completeness of information given to Customs in the entry or return; and
 - (b) come into the person's possession or under his or her control (either before or after the entry was lodged or the return given to a Customs officer).
- (3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (4) The records must be kept for at least 7 years after the goods to which they relate left the person's possession.
- (5) It is a defence to a prosecution for an offence against subsection (1) that—
- (a) the defendant was complying with a record keeping arrangement applicable to the record concerned; or
 - (b) a Customs officer dispensed with the requirement to keep the document.

Note For record keeping arrangements see section 225 and Part 9.1 generally.

Customs powers **186.** (1) A Customs officer may question any of the following about any matter to do with an entry or return under this Act—

- (a) the person making the entry or giving the return;
- (b) the owner of the goods the subject of the entry or return.

Note Customs questions must generally be answered—see section 233.

- (2) A Customs officer may give a direction to a person mentioned on subsection (1) to produce to a Customs officer a specified document that relates or may relate to the entry or return, or the goods the subject of the entry or return.

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Note This power may be exercised to facilitate checking compliance with border laws—see section 6, 232.

Note A person given a Customs direction must comply with it—see section 238.

(3) A Customs officer may examine any goods the subject of an entry or return, at any time before the goods are released into home consumption or exported.

CHAPTER 8—LICENSING**PART 8.1—LICENSING PLACES***Division 1—General licensing requirements*

187. A designated Customs officer may, on application by the operator of a place, issue any of the following kinds of licences for the place—

Issuing
warehousing
licences, excise
manufacturer's
licences and
duty free shop
licences,

- (a) a warehouse licence, which is an authority to do 1 or more of the following at the place—
 - (i) store specified customs or excise controlled goods pending payment of import duty or excise duty and release into home consumption;
 - (ii) prepare specified ship's or aircraft's stores for export;
 - (iii) package specified customs or excise controlled goods;
 - (iv) unpack a container, or an item of non-containerised cargo, containing specified customs controlled goods;
 - (v) temporarily hold specified customs controlled goods;
- (b) an excise manufacturer's licence, which is an authority to manufacture or produce specified excisable goods at the place;

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(c) a duty free shop licence, which is an authority to sell specified customs controlled goods or excise controlled goods from the place to persons—

(i) intending to leave Solomon Islands (an outwards duty free shop);

(ii) who have completed a journey to Solomon Islands on an aircraft before they present themselves to Customs (an inwards duty free shop);

and to store goods of that kind at the place for the sales.

Applications for
licences

188. (1) An application for a licence under this Part is to be in an approved form.

(2) A designated Customs officer may give the applicant a notice requiring further specified information to be provided relevant to the application. A designated Customs officer need not deal further with the application until the information is provided.

(3) An application for a licence is taken to have been refused if a designated Customs officer has not given the applicant notice of the decision on the application—

(a) within 30 days after the application was received; or

(b) if a designated Customs officer gave the applicant a notice under subsection (2)—within 30 days after the further information was provided.

Restrictions on
issuing licences

189. (1) A designated Customs officer must not issue a licence under this Part if—

(a) the conduct of operations under the licence would involve an unacceptable risk—

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- (i) of non-compliance with this Act or another border law; or
 - (ii) to the collection of import duty, export duty, excise duty or goods tax; or
 - (b) the operator of the place to be licensed, or a person involved in the management of the operations at the place, is a disqualified person.
- (2) A designated Customs officer must not issue a licence under this Part for a place as an inwards duty free shop unless the place is at a customs airport and is so located that passengers arriving on international flights at the airport have access to the place before they are cleared under this Act.
- (3) If the applicant is a body corporate, a designated Customs officer must not issue a licence under this Part to the applicant if—
- (a) any director of the applicant is a disqualified person; or
 - (b) any proposed authorised employee of the applicant is a disqualified person.
- (4) Without limiting the matters that a designated Customs officer may take into account for paragraph (1)(a), the following matters may be taken into account—
- (a) whether the arrangements for the physical security of the place to be licensed are satisfactory;
 - (b) the plant and equipment to be used at the place;
 - (c) whether the record-keeping systems, and the accounting and control systems, to be used in relation to the place are satisfactory;
 - (d) whether the place is too far from the nearest place where Customs officers regularly perform

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their duties for them to be able conveniently to check compliance with this Act in relation to the place;

- (e) whether information given in connection with the application is false or misleading in a material particular.

(5) A designated Customs officer must not issue a licence under this Part unless a customs security acceptable to a designated Customs officer in respect of the licence is provided.

Note For Customs securities see Part 10.10.

(6) Subsections (2), (3) and (4) do not limit the grounds on which a designated Customs officer may refuse to register an applicant.

(7) A designated Customs officer must give the applicant notice of the decision on the application, as soon as practicable after the decision is made.

Licence
conditions

190. (1) A licence under this Part is subject to the conditions specified in the licence.

(2) A person commits an offence if—

(a) the person—

- (i) holds a licence under this Part; or
- (ii) is involved in the management of the operations at a place licensed under this Part; and

(b) the person engages in conduct that contravenes a condition of the licence.

Penalty—100 penalty units.

Note Contravention of a licence condition can also lead to suspension or cancellation of the licence—see sections 196 and 197.

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(3) Strict liability applies to paragraphs (2)(c).

Note For strict liability see section 300.

191. (1) A designated Customs officer may, by notice to the licensee, vary a licence under this Part by— Varying licences

- (a) imposing a condition on the licence; or
- (b) modifying a condition; or
- (c) omitting a condition.

(2) A designated Customs officer must not impose a condition, or modify a condition, unless a Customs officer has given the licensee at least 30 days notice of the proposed condition or modification.

(3) A decision to impose a condition, or modify a condition, is a reviewable decision.

192. A designated Customs officer may give a direction to a licensee under this Part to provide, at the licensed place, such office space, office furniture, lighting and access to a telephone and toilet and washing facilities as is reasonable to enable Customs officers to perform their duties or functions, or to exercise their powers, under this Act. Facilities for Customs at licensed places

Note A person given a Customs direction must comply with it—see section 238.

193. (1) A licensee under this Part commits an offence if one of the following happens and a report about the matter is not given to a Customs officer without delay— Reporting obligations of licensees

- (a) a person who was not previously involved in the management or control of the licensed place or of operations carried out under a licence becomes so involved;
- (b) the licensee is convicted or found guilty of an offence against this Act or another border law;
- (c) the licensee becomes insolvent;
- (d) there is a material change in—

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- (i) security measures implemented at the place; or
 - (ii) plant or equipment at the place; or
 - (iii) the kinds of records kept in relation to the licence or the way that they are kept;
- (e) the licensee becomes aware that—
- (i) a person involved in the management or control of the licensed place or of operations carried out under the licence is a disqualified person; or
 - (ii) information given in connection with the application for the licence was false or misleading in a material particular.

Penalty—50 penalty units.

(2) For paragraph (1)(d), a material change is a change relevant to—

- (a) an assessment of the risk that the conduct of operations under the licence would involve a contravention of this Act or another border law; or
- (b) an assessment of the risk to the collection of import duty, export duty, excise duty or goods tax involved in the conduct of operations under the licence.

(3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(5) To avoid doubt, this section applies to events and circumstances that occur while the licence is suspended.

194. (1) A licence under this Part—

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- (a) comes into force on the day it is granted or on a later day specified in the licence; and
- (b) unless sooner cancelled, remains in force until the next 30 June.

(2) A designated Customs officer may, on application, renew a licence under this Part. The provisions of this Part apply in relation to a renewal in the same way as they apply to applications for licences.

195. (1) A licence under this Part cannot be transferred from the licensee to another person. Licences cannot be transferred

(2) If a licensee under this Part who is an individual dies or becomes incapacitated, the licensee's legal personal representative thereupon becomes, by force of this section, the licensee.

Note Under section 193(1)(a), the legal personal representative will have to notify Customs of the original licensee's death or incapacity. Customs will then determine whether the legal personal representative is a suitable person to be the licensee. If Customs determines that the legal personal representative is not a suitable person to be the licensee, it may suspend or cancel the licence.

196. (1) A designated Customs officer may suspend a licence under this Part if the licensee requests the suspension, in writing. Suspension of licences

(2) A designated Customs officer may suspend a licence under this Part if—

- (a) it appears to a designated Customs officer that no operations of the kind licensed are being conducted at the licensed place; or
- (b) it appears to a designated Customs officer that a condition of the licence, or a requirement of this Part, has not been complied with in relation to the licensed place or operations at the licensed place;
- (c) it appears to a designated Customs officer that conduct of operations under the licence would involve an unacceptable risk—

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- (i) of a contravention of this Act or another border law; or
- (ii) to the collection of import duty, export duty, excise duty or goods tax; or
- (d) it appears to a designated Customs officer that the operator of the licensed place, or a person involved in the management of the operations at the place, is a disqualified person; or
- (e) a fee payable in respect of the licence is unpaid and has been unpaid for at least 30 days after it became payable; or
- (f) if the licensee is the licensee because of section 195(2)—
 - (i) the licensee has not complied with the obligation to report the change in licensee; or
 - (ii) it appears to a designated Customs officer that the licensee is not suitable to hold the licence.

Note For paragraph (f)—under section 195(2), if a licensee who is an individual dies, the licensee's legal personal representative automatically becomes the licensee.

(3) A notice of suspension under subsection (2) is to state that the licence may be cancelled after the end of 30 days after the notice is given.

(4) A licence that is suspended ceases to have effect during the period when it is suspended.

(5) A designated Customs officer may at any time revoke the suspension of a licence.

Cancellation of licences

197. (1) A designated Customs officer may cancel a licence under this Part if the licensee requests cancellation, in writing.

(2) A designated Customs officer may cancel a licence under this Part if—

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- (a) a designated Customs officer is satisfied that no operations of the kind licensed are being conducted at the licensed place; or
- (b) a designated Customs officer is satisfied that a condition of the licence, or a requirement of this Part, has not been complied with in relation to the licensed place or operations at the licensed place;
- (c) a designated Customs officer is satisfied that the continued conduct of operations under the licence would involve an unacceptable risk—
 - (i) of a contravention of this Act or another border law; or
 - (ii) to the collection of import duty, export duty, excise duty or goods tax; or
- (d) a designated Customs officer is satisfied that the operator of the licensed place, or a person involved in the management of the operations at the place, is a disqualified person; or
- (e) the licensee is the licensee because of section 195(2), and a designated Customs officer is satisfied that the licensee—
 - (i) has not complied with the obligation to report the change in licensee; or
 - (ii) is not suitable to hold the licence; or
- (f) a designated Customs officer is satisfied that a fee or other amount (include duty or an amount on account of duty) payable in respect of the licence is unpaid and has been unpaid for at least 30 days after it became payable; or
- (g) a Customs security in respect of the licensed place or operations ceases to be in force, or

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- (h) a requirement for a Customs security in respect of the licensed place or operations is not complied with.

Note Under section 195(2), if a licensee who is an individual dies, the licensee's legal personal representative automatically becomes the licensee.

Note For Customs securities see Part 10.10.

- (3) A designated Customs officer must not cancel a licence under subsection (2) unless—

- (a) a Customs officer has given the licensee written notice—
- (i) of his or her intention to cancel the licence, and why; and
 - (ii) giving the licensee a specified period (at least 21 days) to show cause why the licence should not be cancelled; and
- (b) the designated Customs officer has taken into account any representations made by or for the licensee within the period in determining whether to cancel the licence;

or a designated Customs officer is satisfied on reasonable grounds that it is necessary to do so urgently to avoid a breach of this Act or another border law, or to deal with a significant risk to the collection of import duty, export duty, excise duty or goods tax.

- (4) The cancellation of a licence has effect from the day the notice of cancellation is served on the licensee.

Licensing
decisions
reviewable

198. The following decisions under this Part are reviewable decisions—

- (a) a decision to refuse to grant a licence;
- (b) a decision to impose a condition on a licence;
- (c) a decision to vary a condition on a licence;

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- (d) a decision to suspend a licence under section 196(2);
- (e) a decision to cancel a licence under section 197(2).

199. (1) This section applies when a licence for a place under this Part is suspended or cancelled.

Consequences of suspension and revocation

(2) Subject to any direction given by a Customs officer, any customs controlled goods or excise controlled goods at the place at the time of suspension or cancellation may remain there.

(3) A Customs officer may give an authority for—

- (a) specified goods to be stored or unpacked at the place; or
- (b) operations specified in the licence, including a process of manufacture or production, to continue at the place.

Note When a licence is suspended or cancelled, there is no longer authority for what was licensed.

(4) A Customs officer may supervise or take control of the place, any customs controlled goods or excise controlled goods at the place or any of the operations carried out at the place if he or she considers it necessary or desirable to do so for the purpose of ensuring compliance with this Act.

(5) A Customs officer may give a direction to any of the following to move customs controlled goods or excise controlled goods at the place to another place specified by a Customs officer—

- (a) the licensee or former licensee;
- (b) the owner of customs controlled goods or excise controlled goods at the place;
- (c) the person named as owner in an entry relating to the goods at the place;

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- (d) if the customs controlled goods or excise controlled goods at the place have not been entered—the person who was authorised by Customs to move the goods to the place.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

(6) If the direction is not complied with, a Customs officer may do what is necessary to give effect to the direction, or may arrange for that to be done. In that case, a Customs officer may give—

- (a) the person to whom the direction was given—a written notice demanding payment of a specified amount, being the amount of the costs reasonably incurred by Customs in arranging to give effect to the direction; and
- (b) the licensee or former licensee—a written notice demanding payment of a specified amount, being the amount of the cost reasonably incurred by Customs in connection with any of the following—
- (i) enforcing the suspension or revocation;
 - (ii) supervising or taking control of the place, any customs controlled goods or excise controlled goods at the place or any operations carried out at the place;
 - (iii) stocktaking of goods at the place;
 - (iv) auditing commercial documents relating to the operations carried out under the licence.

Return of
licence on
cancellation

200. (1) A person commits an offence if—

- (a) the person is a licensee under this Part for a place; and

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- (b) the licence is cancelled; and
- (c) the licence is not returned to a Customs officer as soon as practicable after the cancellation takes effect.

Penalty—10 penalty units.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) It is a defence to a prosecution for an offence against subsection (1) that the licence is lost or destroyed.

201. If a licence under this Part is cancelled, there is payable to the former licensee the proportion of the licence fee that corresponds to the unexpired portion of the period of the licence.

Refund of licence fees on cancellation

202. (1) This section applies if—

- (a) a licence for a place (not an excise manufacturer's licence) is cancelled; and
- (b) there are in the place customs controlled goods or excise controlled goods; and
- (c) import duty or goods tax is payable in respect of the goods and has not been paid; and
- (d) a Customs officer believes on reasonable grounds that the former licensee has a legal or equitable interest in the goods (not merely a lien over the goods).

Sale of certain controlled goods following cancellation of licence

(2) Customs may sell the goods, but not unless—

- (a) a Customs officer has given the former licensee a written notice—
 - (i) demanding payment of a specified amount, being the amount of duty (including penalty duty) and goods tax payable in respect of the goods; or

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- (ii) directing that the goods be moved to another place specified in the notice;

within 30 days and stating that, unless the notice is complied with, Customs may sell the goods; and

- (b) the notice is not complied with.

Notes The period in paragraph (a) may be extended—see section 19.

For powers of sale or disposal see Part 10.9.

Sale of certain excisable goods following cancellation of licence

- 203.** (1) This section applies if—
- (a) an excise manufacturer’s licence for a place is cancelled; and
 - (b) there are excisable goods in the place; and
 - (c) excise duty is payable in respect of the goods and has not been paid; and
 - (d) no entry for the goods, or return for the goods, has been made within 30 days after cancellation.
- (2) A Customs officer may sell the goods and any packages in which the goods are contained.

Note For powers of sale or disposal see Part 10.9.

Sale of certain goods where arrears of warehouse charges etc.

- 204.** (1) This section applies if—
- (a) either—
 - (i) Customs has given a duty or recovery demand in respect of goods; or
 - (ii) Customs has incurred an amount on account of warehouse or other storage charges for goods; or
 - (iii) an amount on account of warehouse or other storage charges are payable to the licensee of a place licensed under this

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Part on account of warehouse or other storage charges for goods so moved; and

- (b) the amount has remained unpaid for 30 days.

Note Customs may extend the 30 days period—see section 19.

- (2) Subject to subsection (4), Customs may sell the goods, but not unless—

- (a) Customs has given the appropriate person a notice demanding payment of the amount within 30 days and stating that, unless the notice is complied with, Customs may sell the goods; and

- (b) the notice is not complied with.

Notes Customs may extend the 30 days—see section 19.

For Customs powers of sale generally see Part 10.9.

- (3) In subsection (2)—

“appropriate person” means—

- (a) for excise controlled goods—

- (i) the person named as owner of the goods in an entry for the goods; or
- (ii) if there is no such person or the person cannot be found after reasonable inquiry—the manufacturer or producer of the goods;

- (b) for other goods—

- (i) the person named as owner of the goods in an entry for the goods; or
- (ii) if there is no such person or the person cannot be found after reasonable inquiry—the consignee of the goods;

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- (iii) if there is no consignee or the consignee cannot be found after reasonable inquiry—a person who had been given authority to move the goods; or
- (iv) if there is no such person or the person cannot be found after reasonable inquiry—the operator of the craft on which the goods were brought to Solomon Islands.

(4) If the person mentioned in subparagraph (3)(a)(ii) or (b)(iv) cannot be identified after reasonable inquiry, the requirements for notice in subsection (2) do not apply, and Customs may sell the goods.

Customs
powers—
licensing

205. following—

- (1) A Customs officer may question any if the
 - (a) an applicant for a licence under this Part for a place;
 - (b) a person proposed to be involved in the management of operations at a place for which an application for a licence has been made;

about any matter to do with the application, including the place or the operations the subject of the proposed licence.

(2) A Customs officer may question any of the following—

- (a) a licensee under this Part; or
- (b) a person involved in the management of operations at a licensed place;
- (c) a person who is in or in the vicinity of a licensed place;

about any matter to do with—

- (d) the licence; or

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- (c) any operations or activities carried out or that have been carried out at the licensed place, or that a Customs officer suspects on reasonable grounds are being or have been carried out at the licensed place;
- (e) any goods that are or have been at the licensed place, or that a Customs officer suspects on reasonable grounds are or have been at the licensed place.

Note Customs questions must generally be answered—see section 233.

(3) A Customs officer may give a direction to a person mentioned in subsection (1) or (2) to produce to a Customs officer a specified document that relates or may relate to a matter about which Customs officer may question the person under that subsection.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

(4) A Customs officer may enter a licensed place at any time, and search the place for any goods.

Notes “Goods” includes documents—see section 4.

For searching and examining generally see Parts 10.4 and 10.5.

(5) A Customs officer may examine any goods found at a licensed place.

206. (1) A notice to a person who is or was licensed under this Part or the corresponding provisions of the Customs and Excise Act (Cap. 121) in respect of a place may be served on or given to—

- (a) the person; or
- (b) if the person cannot be found after reasonable inquiry—some other person apparently involved in the management or control of—
 - (i) the licensed place; or

Notices to licensees may be given to persons involved in management or control

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(ii) operations carried out under the licence.

(2) For this Act, service under paragraph (1)(b) is effective service on the licensee or former licensee.

Division 2—Duty free shops

Division applies in addition to Division 1

207. This Division applies in addition to Division 1.

What travellers who buy duty free goods at outwards duty free shops have to do

208. (1) A person who bought, at an outwards duty free shop, customs controlled goods or excise controlled goods on which duty has not been paid commits an offence if the person does not leave Solomon Islands with the goods within 14 days after the day specified in the record of the sale as the day on which he or she will leave Solomon Islands.

Penalty—20 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) that the goods were returned to the licensee of the outwards duty free shop, in the same condition as they were in when they were bought, before the end of the 14 day period.

(3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

Rules about duty free shops

209. The rules may make provision with respect to the operation of duty free shops, including—

- (a) requirements in respect of sales of customs controlled goods and excise controlled goods duty free; and
- (b) requirements as to reporting and lodgement of returns; and
- (c) record keeping requirements.

Note. For rules see section 419.

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PART 8.2—LICENSING CLEARING AGENTS

210. (1) A person who provides customs clearing services for another person for reward commits an offence unless the person—

Persons not to provide customs clearing services without a licence

- (a) is a licensed clearing agent; or
- (b) is an authorised employee of a licensed clearing agent.

Penalty—50 penalty units.

Note The defendant bears the onus of establishing that that he or she was licensed and must do so on the balance of probabilities—see section 307.

(2) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) either—
 - (i) the defendant; or
 - (ii) a member of the defendant’s family;

was the owner of the goods in respect of which the defendant was acting as a clearing agent; or
- (b) the defendant’s employer was the owner of the goods in respect of which the defendant was acting as a clearing agent and the defendant was acting in the course of his duties as employee.

(3) A person must not hold himself or herself out as able or willing to provide customs clearing services for reward unless he or she is a licensed clearing agent.

Penalty—50 penalty units.

211. A designated Customs officer may, on application by a person, issue a clearing agents licence to the person.

Issuing clearing agents licences

Note A decision not to grant an application for a clearing agent’s licence is reviewable.

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Applications for
clearing agents
licences

212. (1) An application for a clearing agents licence is to be in an approved form.

(2) A designated Customs officer may give the applicant a notice requiring further specified information to be provided relevant to the application. A designated Customs officer need not deal further with the application until the information is provided.

(3) An application for a licence is taken to have been refused if a designated Customs officer has not given the applicant notice of the decision on the application—

- (a) within 30 days after the application was received; or
- (b) if a designated Customs officer gave the applicant a notice under subsection (2)—within 30 days after the further information was provided.

Restrictions on
issuing licences

213. (1) A designated Customs officer must not issue a clearing agents licence to a person unless the person—

- (a) has knowledge of and experience in customs matters and procedures satisfactory to Customs; and
- (b) if the person employs any person in connection with acting as a clearing agent—has and implements procedures and systems (including with respect to training) satisfactory to Customs.

(2) A designated Customs officer must not issue a clearing agents licence to a disqualified person.

(3) If the applicant is a body corporate, a designated Customs officer must not issue a clearing agents licence to the applicant if—

- (a) any director of the applicant is a disqualified person; or

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(b) any proposed authorised employee of the applicant is a disqualified person.

(4) Subsections (1), (2) and (3) do not limit the grounds on which Customs may refuse to issue a clearing agents licence to an applicant.

214. (1) A clearing agents licence is subject to the conditions specified in the licence. Clearing agents licence conditions

(2) A person commits an offence if—

- (a) the person holds a clearing agents licence; and
- (b) the person, or an authorised employee of the person, engages in conduct; and
- (c) the conduct contravenes a condition of the licence.

Penalty—50 penalty units.

Note Contravention of a licence condition can also lead to suspension or revocation of the licence—see sections 219(2)(b) and 220(2)(b).

(3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(4) A clearing agents licence must specify the authorised employees of the licensed clearing agent.

215. (1) A designated Customs officer may, by notice to a licensed clearing agent, vary the clearing agents licence by— Varying clearing agents licences

- (a) imposing a condition on the licence; or
- (b) varying a condition; or
- (c) omitting a condition; or
- (d) varying the authorised employees specified in the licence.

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(2) A designated Customs officer must not impose a condition, or modify a condition, unless a designated Customs officer has given the agent at least 30 days notice of the proposed condition or modification.

Reporting obligations of licensed clearing agents

- 216.** (1) A licensed clearing agent commits an offence if—
- (a) an event or circumstance set out in subsection (2) occurs; and
 - (b) a report about the matter is not made to a Customs officer without delay.

Penalty—50 penalty units.

- (2) The events and circumstances are—
- (a) an authorised employee of the agent ceases to be an authorised employee of the agent;
 - (b) the agent is convicted or found guilty of an offence against this Act or another border law;
 - (c) the agent otherwise becomes a disqualified person;
 - (d) the agent becomes aware that—
 - (i) an authorised employee of the agent is a disqualified person; or
 - (ii) information given in connection with the application for the licence was false or misleading in a material particular.

- (3) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (4) To avoid doubt, this section applies to events and circumstances that occur while the licence is suspended.

Duration and renewal of clearing agents licences

- 217.** (1) A clearing agents licence—

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- (a) comes into force on the day it is issued or on a later day specified in the licence; and
- (b) unless sooner cancelled, remains in force until the next 30 June.

(2) A designated Customs officer may, on application, renew a licensed clearing agent's licence. This Part applies in relation to a renewal in the same way as it applies to applications for clearing agents licences.

218. A clearing agents licence cannot be transferred from the licensee to another person.

Clearing agents licences cannot be transferred

219. (1) A designated Customs officer may suspend a clearing agents licence if the licensee requests the suspension, in writing.

Suspension of clearing agents licences

(2) A designated Customs officer may suspend a clearing agents licence if—

- (a) it appears to a designated Customs officer that the licensee is not providing customs clearing services for reward; or
- (b) it appears to a designated Customs officer that a condition of the licence has not been complied with; or
- (c) it appears to a designated Customs officer that the licensee is not performing customs clearing services satisfactorily; or
- (d) it appears to a designated Customs officer that the licensee, or an authorised employee of the licensee, is a disqualified person; or
- (e) a fee payable in respect of the licence is unpaid and has been unpaid for at least 30 days after it became payable.

Note A decision to suspend a licence is reviewable.

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(3) A notice of suspension is to state that the licence may be cancelled after the end of 30 days after the notice is given.

(4) A licence has no effect while it is suspended.

(5) Customs may at any time revoke the suspension of a licence.

Cancellation of
licences

220. (1) A designated Customs officer may cancel a clearing agents licence if the licensee requests cancellation, in writing.

(2) A designated Customs officer may cancel a clearing agents licence if—

- (a) a designated Customs officer is satisfied that the licensee is not providing customs clearing services for reward; or
- (b) a designated Customs officer is satisfied that a condition of the licence has not been complied with; or
- (c) a designated Customs officer is satisfied that the licensee is not performing customs clearing services satisfactorily; or
- (d) a designated Customs officer is satisfied that the licensee, or an authorised employee of the licensee, is a disqualified person; or
- (e) a designated Customs officer is satisfied that a fee or other amount (include duty or an amount on account of duty) payable in respect of the licence is unpaid and has been unpaid for at least 30 days after it became payable; or
- (f) a Customs security in respect of the licensed place or operations ceases to be in force.

Note For Customs securities see Part 10.10.

(3) A designated Customs officer must not cancel a licence under subsection (2) unless—

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- (a) a Customs officer has given the licensee written notice—
 - (i) of his or her intention to cancel the licence, and why; and
 - (ii) giving the licensee a specified period (at least 21 days) to show cause why the licence should not be cancelled; and
- (b) a designated Customs officer has taken into account any representations made by or for the licensee within the period in determining whether to cancel the licence;

or a designated Customs officer is satisfied on reasonable grounds that it is necessary to do so urgently to avoid a breach of this Act or another border law, or to deal with a significant risk to the collection of import duty, export duty, excise duty or goods tax by Customs.

Note The period in paragraph (a)(ii) may be extended—see section 19.

(4) The cancellation of a clearing agents licence has effect from the day the notice of cancellation is served on the licensee.

221. The following decisions under this Part are reviewable decisions—

Licensing
decisions
reviewable

- (a) a decision to refuse to grant a licence;
- (b) a decision to refuse to include a specified person as an authorised person in a licence;
- (c) a decision to vary a licence by removing a specified person as an authorised person in a licence;
- (d) a decision to impose a condition on a licence;
- (e) a decision to vary a condition on a licence;

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- (f) a decision to suspend a licence under section 219(2);
- (g) a decision to cancel a licence under section 220(2).

Return of
clearing agents
licence on
cancellation

- 222.** (1) A person commits an offence if—
- (a) the person is a licensed clearing agent; and
 - (b) the licence is cancelled; and
 - (c) the licence is not returned to Customs as soon as practicable after the cancellation takes effect.

Penalty—5 penalty units.

- (2) Strict liability applies in relation to subsection (1).
- (3) It is a defence to a prosecution for an offence against subsection (1) that the licence is lost or destroyed.

Refund of licence
fees on
cancellation

223. If a clearing agents licence is cancelled, there is payable to the former licensee the proportion of the licence fee that corresponds to the unexpired portion of the period of the licence.

Customs
powers—clearing
agents

- 224.** (1) A Customs officer may question—
- (a) an applicant for a licence under this Part; or
 - (b) a person proposed to be an authorised employee in relation to a licensee or an applicant for a licence under this Part;

about any matter to do with the application.

(2) A Customs officer may question any of the following—

- (a) a licensed clearing agent;
- (b) an authorised employee of a licensed clearing agent;

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about any matter to do with the licence or the customs clearing services provided by the licensed clearing agent.

Note Customs questions must generally be answered—see section 233.

(3) A Customs officer may give a direction to a person mentioned in subsection (1) or (2) to produce to a Customs officer a specified document that relates or may relate to a matter about which Customs officer may question the person under that subsection.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

CHAPTER 9—KEEPING DOCUMENTS**PART 9.1—KEEPING DOCUMENTS**

225. (1) The Comptroller may enter into an arrangement under this section with a person that is required by or under this Act to keep a document. Arrangements about documents that must be kept

(2) A record keeping arrangement is an arrangement with respect to keeping documents. Without limiting what may be included in a record keeping arrangement, a record keeping arrangement may—

- (a) make provision for where and how specified documents are to be kept; or
- (b) dispense with the need to keep specified documents; or
- (c) reduce the period for which specified documents are to be kept; or
- (d) make provision with respect to the production of specified documents to Customs as required by this Act.

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(3) A record keeping arrangement must not dispense with section 227.

Note Section 227 requires documents that must be kept to be kept in Solomon Islands.

(4) A record keeping arrangement must be in writing.

Requirements to keep documents include requirements to keep amendments

226. (1) A person commits an offence if—

- (a) the person is required by this Act to keep a document (in this section, the “original”); and
- (b) either—
 - (i) the person creates a document (in this section, an “amendment”) that amends the contents of the original; or
 - (ii) an amendment comes into the person’s possession or under the person’s control; and
- (c) the person does not keep the amendment until the requirement to keep the original ceases to apply.

Penalty—the same maximum penalty as applies to the requirement to keep the original.

(2) A person commits an offence if the person—

- (a) is required by this Act to keep a document (in this section, also the “original”); and
- (b) becomes aware that the contents of the original are amended, but not by a document; and
- (c) does not, as soon as practicable after becoming aware, make a record that shows how the original was amended and keep the record until the requirement to keep the original ceases to apply.

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Penalty—the same maximum penalty as applies to the requirement to keep the original.

(3) Strict liability applies to subsections (1) and (2).

Note For strict liability see section 300.

(4) It is a defence to a prosecution for an offence against subsection (1) that Customs had dispensed with the need—

(a) to keep the original; or

(b) to keep the amendment.

(5) It is a defence to a prosecution for an offence against subsection (2) that Customs had dispensed with the need—

(a) to keep the original; or

(b) to make the record; or.

(c) to keep the record.

Note A record keeping arrangement can dispense with the need to keep originals or amendments.

227. A requirement of or under this Act or a record keeping arrangement to keep a document is a requirement to keep the document in Solomon Islands.

Documents to be kept in Solomon Islands

228. (1) A Customs officer may question a person who is required by this Act to make a keep a record (however described). The questioning may be about any matter to do with the record (including the transactions that are or are required to be recorded in the record).

Customs powers—keeping documents

(2) A Customs officer may question a person who is a party to a record keeping arrangement about any matter to do with the arrangement or the records that are being or are required to keep (including the transactions that are or are required to be recorded in the record) in compliance with the arrangement.

Note Customs questions must generally be answered—see section 233.

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(3) A Customs officer may give a direction to a person mentioned in subsection (1) or (2) to produce to a Customs officer a specified document that relates or may relate to a matter about which Customs officer may question the person under those subsections.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

(4) A Customs officer may examine any records produced under this section.

Note For examining generally see Part 10.5.

CHAPTER 10—CUSTOMS POWERS**PART 10.1—PRELIMINARY**

Act does not affect law relating to privilege

229. This Act does not affect the law relating to legal professional privilege.

Powers not limited by other powers

230. Each provision of this Act conferring a power on a Customs officer is separate and independent of each other such power and, unless the contrary intention expressly or by necessary implication appears, is not to be read down by reference to any other such power.

Power to patrol etc. the foreshore

231. To facilitate the exercise of a power of a Customs officer under this Act, a Customs officer may enter and pass freely over any part of, or anywhere adjacent to, the coastline of Solomon Islands, inland waters, a port or an aerodrome, including a private airstrip.

Powers may be exercised to facilitate checking compliance with border laws

232. Without limiting the purposes for which a power conferred on a Customs officer may be exercised, the power may be exercised to facilitate checking compliance with a border law.

Note For what checking compliance with this Act means see section 6.

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PART 10.2—QUESTIONING

- 233.** (1) A person commits an offence if—
- When Customs questions must be answered
- (a) a Customs officer asks a person a question that the Customs officer is authorised by this Act to ask; and
 - (b) the person—
 - (i) fails to answer the question; or
 - (ii) fails to answer the question to the best of the person’s knowledge, information and belief.

Penalty—20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) constituted by a failure to answer a question that—
- (a) section 234 required a warning to be given to the person; and
 - (b) the warning was not given.

However, the defence does not apply where the offence charged is that the person answered the question but not to the best of the person’s knowledge, information and belief.

- 234.** (1) This section applies if—
- When a warning must be given
- (a) a Customs officer suspects, or ought reasonably to suspect, that a person (in this section, the “relevant person”) is committing or has committed an offence against a border law; and
 - (b) a Customs officer is authorised under this Act to question the person.
- (2) A Customs officer must not exercise a power to question the person about a matter to do with an offence

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against a border law unless the officer, or another Customs officer, warned the person that the person did not have to answer a question, or do anything else in response to a question, but that anything the person does say or do may be used in evidence.

(3) In a prosecution of a person for an offence against a border law, evidence of what the person said or did when questioned in circumstances set out in subsection (1) is not admissible unless it is established that, before the question was asked, the warning required by that subsection was given.

(4) This section does not limit the grounds on which the evidence may be inadmissible.

Incriminating
answers

235. (1) Section 234 applies to a question asked by a Customs officer even if the answer to the question would tend to incriminate the person asked the question.

(2) In a customs or excise proceeding, evidence that has been obtained as a direct or indirect consequence of an answer to a question asked by a Customs officer under this Act is not inadmissible merely because the evidence may tend to incriminate a person (including a party to the proceeding).

PART 10.3—DIRECTIONS

Customs
powers—
directions to
facilitate
exercise of other
powers

236. If a Customs officer may exercise a power under this Act, that officer or another Customs officer may give a direction to any person to facilitate the exercise of the power.

Note A person given a Customs direction must comply with it—see section 238.

Directions may
be oral

237. Unless this Act expressly provides otherwise, a direction may be given orally or in writing.

Compliance
with Customs
directions
generally

238. (1) A person commits an offence if—

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- (a) a Customs officer gives the person a direction that the officer is authorised by this Act to give; and
- (b) the person fails or refuses to comply with the direction.

Penalty—20 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant was prevented from complying with the direction because of an act or omission of another person; and
- (b) the defendant took all practicable steps to comply with the direction, or to ensure compliance.

(3) Unless the direction specifies otherwise, it is sufficient compliance with a direction to produce a document if the person produces a copy of the document.

Note See section 7.

239. (1) A person is not excused from complying with a direction under this Act to produce a document or other thing to Customs merely because to do so would tend to incriminate the person.

Incriminating
documents

(2) In a customs or excise proceeding, evidence that has been obtained as a direct or indirect consequence of the production to Customs of a document or other thing in compliance with a direction by a Customs officer is not inadmissible merely because the evidence may tend to incriminate a person (including a party to the proceeding).

240. (1) If—

- (a) a person is required by or under this Act to keep a document; and
- (b) the person keeps the document using a computer system; and

Producing
computer
documents

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- (c) a Customs officer gives the person a direction to produce the document to Customs, being a direction that the officer is authorised by this Act to give the person;

the person complies with the direction only if the document is produced in a form that can be read without using a computer system.

- (2) If a person uses, or provides access to, a computer system for the purpose of complying with a direction to produce a document, a Customs officer may give a direction to the person to allow the system to be tested to find out whether it accurately reproduces the contents of, or the information in, documents.

Note These directions can include directive means of access to provide to the computer to conduct the testing; for example, by providing PINs and passwords.

- (3) The testing must be carried out where the computer system usually is, and at a reasonable time.

Frustrating compliance with directions

241. A person commits an offence if the person intentionally hinders or prevents compliance with a direction under this Act given to some other person.

Penalty—50 penalty units, or 6 months imprisonment, or both.

PART 10.4—ENTRY AND SEARCH

Customs powers—restrictions on entry

242. If a Customs officer has power under this Act to enter and search a place, a Customs officer may enter and search the place—

- (a) with the consent of the occupier of the place; or
- (b) if authorised by a warrant issued by a judicial officer.
- (2) Paragraphs (1)(a) and (b) do not apply to—
- (a) a customs place or a licensed place; or

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(b) a craft or a vehicle.

(2) Paragraphs (1)(a) and (b) do not prevent a Customs officer entering a place if that or some other Customs officer believes on reasonable grounds that it is necessary to enter the place urgently to prevent the loss of destruction of—

- (a) prohibited imports or goods for export that are prohibited exports; or
- (b) a thing that may afford evidence of an offence against a border law.

243. (1) If a Customs officer has the power to enter and search a place under this Act, the Customs officer or another Customs officer— General entry and search powers

- (a) may use reasonable force to enter the place and conduct the search; and
- (b) is entitled to full and free access to the place to conduct the search; and
- (c) may do whatever is reasonably necessary to conduct a search; and
- (d) may examine any goods found during the search.

(2) A Customs officer may, for the purpose of exercising a power to enter and search a place for goods or to examine goods, take, and use, a dog, or other animal.

244. If—

- (a) a Customs officer has power to search for, or to examine, goods at a place; and Bringing devices, including computers, to places
- (b) that officer or some other Customs officer believes on reasonable grounds that it is necessary to bring a tool or device, including a computer, to the place and use it for the search and examination;

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that officer or some other Customs officer may bring the device to the place and use it for the search or examination.

Access to
computer
information

245. (1) If a Customs officer has power to search for, or to examine, a document at a place, that officer or some other Customs officer may operate a computer that is already at the place if that officer or some other Customs officer believes on reasonable grounds that—

- (a) it is necessary for a Customs officer to operate the computer to achieve any of the following purposes—
 - (i) to search for the document;
 - (ii) to examine the document;
 - (iii) to put a document into readable form;
 - (iv) to copy a document to some other document to examine it or put it into readable form; and
 - (b) the computer is suitable for the search or the examination; and
 - (c) the search or the examination can be carried out without damage to the computer or to the document.
- (2) The officer does not have to ask permission before using the computer.
- (3) If a Customs officer—
- (a) has power to search for, or to examine, a document at a place; and
 - (b) is using a computer for the purpose of the search or examination;

then, for that purpose, the computer may be used to get access to any document that the computer can lawfully get access to, including a document held at another place.

DRAFT FOR PUBLIC CONSULTATION PURPOSES**246.** (l) If—Limited power
to frisk search

- (a) during a search a Customs officer suspects on reasonable grounds that a person found at the place has on his or her person a document or goods that affords, or is likely to lead to the discovery of, evidence of the commission of—
 - (i) an offence against Part 2.1; or
 - (ii) if the search is authorised by warrant—an offence specified in the warrant; and
- (b) the person has refused or failed to comply with a request by a Customs officer to hand over the document or goods;

that officer or some other Customs officer may carry out a frisk search of the person to find out whether the person has the document or goods on his or her person.

Notes For general provisions about frisk searches see section 282.

Part 2.1 deal with offences of importing prohibited imports and exporting prohibited exports.

247. A Customs officer may, during a search under this Act and for the purposes of the search, question any of the following persons about a document or thing found during the search—

Customs
powers—
searches—
questioning

- (a) the occupier of a place where the document or thing is;
- (b) the owner of the document or thing;
- (c) a person in possession of the document or thing;
- (d) a person authorised under this Act to have possession of the document or thing.

Note Customs questions must generally be answered—see section 233.

248. If a Customs officer has a power to search for goods, each of the following—

Obligations to
help Customs

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- (a) the occupier of a place where the goods are;
- (b) the owner of the goods;
- (c) a person in possession of the goods;
- (d) a person authorised to have possession of the goods;
- (e) the person who is in charge of a craft or vehicle on which the goods are;

must, on being asked by that officer or some other Customs officer, or by an authorised person, give such help, and provide such facilities, as it is reasonable for the person to give or provide to enable a Customs officer to search for and examine the goods or to have them examined.

Penalty—20 penalty units.

Note “Goods” includes documents and vehicles—see section 4.

Note Examples of what a Customs officer might ask the person to do include the following—

- indicate the location of the goods;
- make them available for examination;
- open a room, package, container or vehicle in which they are;
- bring the goods to a particular place for examination;
- make a copy, or allow a Customs officer to use a device at the place to make a copy, of a relevant document.

Removing
goods and
documents for
examination

- 249.** (1) If—
- (a) a Customs officer finds goods at a place during a search; or
 - (b) goods are produced or presented to a Customs officer at a place as required by or under this Act;

then, if the goods are, or a Customs officer suspects on reasonable grounds that they are—

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- (c) customs controlled goods or excise controlled goods; or
- (d) goods that a Customs officer has power to examine;

that officer or some other Customs officer may take possession of and remove the goods from the place to examine the goods.

(2) If the goods are a document, a Customs officer may, instead of —

- (a) a Customs officer finds a document at a place during a search; or
- (b) a document is produced to a Customs officer at a place as required by or under this Act;

then, to examine the document, that officer or some other Customs officer may take possession of and remove it from the place if it is not practicable to do either of the following—

- (c) to examine the document at the place;
- (d) to make a copy of the document and remove the copy.

(4) Without limiting the matters relevant to working out whether a particular course of action is practicable, the following are relevant—

- (a) how many documents there are to be searched for and examined;
- (b) what facilities and assistance the occupier of the place is prepared to give;
- (c) the cost to the Government;
- (d) whether the document will be secure if left at the place.

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Copying
documents

250. If—

- (a) a Customs officer finds a document at a place during a search under this Act; or
- (b) a document is produced or presented to a Customs officer at a place as required by or under this Act;

then, to facilitate examination of the document, that officer or some other Customs officer may make a copy of the document and take possession of and remove the copy from the place.

If requested,
Customs must
make a copy of
documents
removed during
a search

251. (1) If—

- (a) a Customs officer is about to remove, or has removed, a document from a place under this Part; and
- (b) the owner, or the person otherwise entitled to possession of the document, requests a Customs officer to give him or her a copy of the document;

that officer or some other Customs officer is to give to the person who made the request, without delay after the request, a copy of the document certified by a Customs officer to be a true copy.

(2) A copy of a document, being a copy certified as provided in subsection (1), is to be taken for all purposes to be the document of which it is a copy and is admissible in all proceedings as if it were that document.

Removing
goods and
documents for
evidentiary
reasons

252. If—

- (a) a Customs officer finds goods at a place during a search; or
- (b) goods are produced or presented to a Customs officer at a place as required by or under this Act;

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then, if that officer or some other Customs officer believes on reasonable grounds that the goods afford evidence, or are likely to lead to the discovery of evidence, of a border offence, a Customs officer may take possession of and remove the goods from the place.

- 253.** If, during a search or examination at a place under this Act, a Customs officer suspects on reasonable grounds that anything at the place—
- Customs powers—securing goods and places during a search
- (a) will or is likely to afford evidence of an offence, whether or not against this Act; or
 - (b) will or is likely to be used to commit a border offence, whether or not against this Act;

that officer or some other Customs officer may secure the thing or the place for any of the following purposes—

- (c) to enable the goods or equipment to be examined to find out whether they afford evidence of the offence;
- (d) to enable the goods or equipment to be used as evidence in proceedings in relation to the offence;
- (e) to prevent the commission of the offence.

PART 10.5—EXAMINING AND TESTING GOODS

- 254.** (1) The rules may prescribe methods or procedures for taking samples of goods for the purposes of this Act.
- Rules may prescribe sampling and analysis methods
- (2) The rules may prescribe methods or procedures for analysing samples of goods for the purposes of this Act.
 - (3) If—
 - (a) a method of taking and analysing samples of goods of a particular kind is prescribed; and
 - (b) a sample of goods of that kind was taken and analysed in accordance with that method;

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then, in a customs or excise proceeding, it is to be presumed, unless the contrary is shown, that the goods were the same as the sample.

(4) If—

- (a) in taking and analysing the sample, there is a deviation from the prescribed method; and
- (b) the court finds, on the balance of probabilities, that the deviation had no material effect on the result;

the sample is to be taken to have been taken and analysed in accordance with that method.

(5) This section does not limit the methods or procedures for taking or analysing samples for this Act.

Examinations
and testing

255. (1) If a Customs officer has power to examine or test goods, that officer or some other Customs officer may do whatever is reasonably necessary to examine the goods, or arrange for it to be done, including by an expert.

(2) Without limiting subsection (1), what may be done includes the following—

- (a) taking a sample of the goods;
- (b) breaking them open or disassembling them;
- (c) using a device, such as an X-ray machine, on them;
- (d) measuring or counting them;
- (e) testing or analysing them;
- (f) in the case of a computer file or computer disk—using computer software to—
 - (i) produce a readable version of the file, or a file on the disk; or

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- (ii) restore a deleted file; or
- (iii) get access to a hidden or protected file on the disk; or
- (iv) track changes to files; or
- (v) otherwise examine and test the files;
- (g) in the case of a document—reading the document.

PART 10.6—SECURING GOODS AND PLACES

256. (1) If a Customs officer has power to secure goods, a Customs officer may do whatever is reasonably necessary to prevent interference with the goods without Customs authority, including taking possession of the goods.

Customs
powers—
securing goods
and places

(2) If a Customs officer has power to secure a place, a Customs officer may do whatever is reasonably necessary to prevent or restrict access to the place without Customs authority.

(3) To avoid doubt, Customs may arrange for a person with appropriate expertise to help in securing goods or a place.

Note Examples of what may be done to secure goods or a place include the following—

- marking goods;
- sealing goods or a place;
- locking goods, or a place or container in which the goods are;
- putting up borders to entry to a place;
- taking possession of goods or place.

257. (1) A person commits an offence if the person interferes with a seal or lock, or erases or alters a mark, that a Customs officer has, under this Act, fixed or placed on goods, on a part of a craft, on a place or on a vehicle.

Seals etc not be
broken

Penalty—50 penalty units.

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- (2) The captain of a craft commits an offence if—
- (a) a seal, lock or mark on the craft, or on goods on the craft, is interfered with; and
 - (b) the seal, lock or a mark was fixed or placed on the goods, part of a craft or place by a Customs officer.

Penalty—50 penalty units.

- (3) A person commits an offence if—
- (a) the person knowingly interferes with a seal or lock, or erases or alters a mark, fixed or placed on goods, on a part of a craft or place, or on a vehicle; and
 - (b) the person knew that, or was reckless as to whether, the seal, lock or a mark was fixed or placed on the goods, part of a craft or place by a Customs officer.

Penalty—100 penalty units or imprisonment for 2 years, or both.

- (4) To avoid doubt, this section extends to a craft anywhere in the territorial sea.

Where goods or place no longer need to be secured

258. If the grounds for the officer's securing goods or place cease, a Customs officer must—

- (a) do whatever is reasonably practicable to restore the goods or place to the state they were in before they were secured; and
- (b) if a Customs officer took possession of the goods or place—restore possession to the person from whom they were taken.

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PART 10.7—POST CLEARANCE AUDITING

259. (1) Subject to this Part, a Customs officer may enter and search a place for a commercial document that relates to—

Customs' audit powers—enter places and to search for documents

- (a) goods that have been released into home consumption or for which Customs has given an authority to export; or
- (a) an entry or a return that relates to goods mentioned in paragraph (a);
- (b) information given to Customs in connection with such goods or such an entry or return.

(2) Subject to this Part, a Customs officer may enter and search a place for a commercial document that relates to—

- (a) an application for a refund of duty that has been determined under this Act; or
- (b) information given to Customs in connection with such an application.

(3) Subsections (1) and (2) do not apply in relation to—

- (a) goods released into home consumption or exported; or
- (b) an application for a refund of duty that has been determined under this Act;

more than 5 years before the power is exercised.

(4) If the place is occupied or used, in the course of a business, by—

- (a) the owner, the importer, the exporter, the manufacturer or the producer of the goods to which the entry, authority, application or return relates; or

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- (b) a person named in the entry, authority, application or return as the owner, importer, exporter, manufacturer or producer of the goods;

the Customs officer may enter the place only—

- (c) after 7 am and before 7 pm on a business day; or
- (d) with the occupier's consent; or
- (e) in accordance with a warrant issued by a judicial officer.

(5) If the place is not occupied or used as mentioned in subsection (4), the Customs officer may only enter the place in accordance with a warrant issued by a judicial officer.

(6) A judicial officer is not to issue a warrant unless satisfied that there are reasonable grounds to believe that a commercial document of a relevant kind at the place.

**PART 10.8—FORFEITED GOODS, AND DETENTION,
SEIZURE AND CONDEMNATION OF GOODS**

Forfeited goods **260.** (1) Subject to this Act, the following goods are, by force of this section, forfeited to the Crown—

- (a) goods that have been imported and are prohibited imports;
- (b) goods for export that have been taken to a place of export and are prohibited exports;
- (c) excisable goods that have been manufactured or produced by a person not licensed to do so;
- (d) a craft that has been constructed or adapted as mentioned in section 27;
- (e) goods in respect of which another offence against Part 2.1 or an offence against Part 6.8

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has been committed (not those referred to in paragraph (d) or (f));

- (f) a ship or aircraft used in the commission of an offence against Part 2.1 or 6.8, where the captain or operator of the craft knew that craft was so used, or intended that it be so used;
- (g) a ship or aircraft from which goods are thrown overboard or destroyed to prevent seizure by a Customs officer;
- (h) customs controlled goods, or excise controlled goods, that are moved, altered or interfered with without Customs authority;
- (i) live animals in the possession of a Customs officer;
- (j) goods seized by a Customs officer that a designated Customs officer determines—
 - (i) are perishable goods; or
 - (ii) would, if kept by Customs, be a danger to public health or safety, or to the health of other animals, or to plants or agricultural products;
- (k) a craft seized by a Customs officer that a designated Customs officer determines is unseaworthy or not airworthy and is uneconomic to repair and maintain;
- (l) goods in respect of which duty is payable that are found to be at a place without Customs authority;
- (m) goods in respect of which duty is payable, where a person liable to pay the duty cannot be found after reasonable inquiry;

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- (n) goods found on a ship or aircraft that is on or has completed an international journey that have not been reported in accordance with this Act;
- (o) goods unloaded from a craft, or unpacked from a container, in contravention of this Act;
- (p) any goods in respect of which duty is payable that have been packed or concealed as to deceive a Customs officer.
- (q) any goods in respect of which duty is payable that are in the possession of, or accompany, a person who is on or has been on a craft that is on or has completed an international journey, being goods that were not disclosed to a Customs officer when required under this Act;
- (r) time up goods, that is, goods that have been in a licensed place for more than the prescribed period and have not been entered for home consumption or for export;
- (s) goods offered for sale on the pretence that they are prohibited imports or smuggled goods.

Notes For paragraph (1)(a)—see section 10 for the time when goods are imported.

For paragraph (1)(b)—see section 8 the time for when goods are exported.

For paragraph (1)(d)— section 27 prohibits the construction or modification of a craft to hide things from Customs.

For paragraphs (1)(e) and (f)—Part 2.1 relates to prohibited imports and exports; Part 6.8 relates to offences in respect of duty matters.

For paragraph (1)(q)—falsely completing a passenger declaration form amounts to non-disclosure for this paragraph.

- (2) The forfeiture of goods extends to the packages in which they are contained. The forfeiture of a package extends to all goods in the package.
- (3) In subsection (1)(r)—

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“prescribed period” means

- (a) 30 days; or
- (b) if the regulation prescribe a longer period—that longer period.

Note Customs may extend this period—see section 19.

261. (1) A Customs officer may detain any goods mentioned in Detaining goods subsection (2)—

- (a) if the goods are forfeited goods; or
 - (b) to examine or test the goods to determine whether they are forfeited goods; or
 - (c) while a Customs officer makes inquiries to determine whether they are forfeited goods, or should be detained so that they can be examined or tested to determine whether they are forfeited goods.
- (2) The goods are the following—
- (a) any goods produced to a Customs officer under this Act (including goods produced to a Customs officer in compliance with a direction);
 - (b) any goods at a customs place;
 - (c) any goods at a licensed place.
- (3) A Customs officer may detain a craft if that officer or some other Customs officer believes on reasonable grounds that the craft has been constructed or adapted to conceal from Customs officers goods that are being imported or exported.
- (4) A Customs officer may detain any goods that are found on—

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- (a) a craft that is on an international journey and is in the territorial seas; or
- (b) found on a Solomon Islands craft, wherever it is;

if that officer or some other Customs officer believes on reasonable grounds that, because of a prescribed international agreement (such as a treaty or convention) in force in relation to Solomon Islands, Solomon Islands is required to prevent, or to help prevent, the goods entering a foreign country.

Seizing goods

262. A Customs officer may seize any goods that are, or that that officer or another Customs officer believes on reasonable grounds are, forfeited goods.

Customs entitled to possession of detained or seized goods

263. The Comptroller is entitled to exclusive possession of any goods that have been detained or seized under this Act, despite any other law or agreement.

Notice of seizure

264. (1) If goods are seized under this Act, a Customs officer must serve, within 7 days after the seizure, a seizure notice on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized.

(2) Subsection (1) applies whether or not a claim for the return of the goods seized has been made.

(3) A seizure notice may be served—

- (a) personally, by post; or
- (b) if none of the persons mentioned in subsection (1) can be found after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.

(4) A seizure notice must—

- (a) identify the goods seized;

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- (b) state the day on which they were seized;
- (c) state the ground, or each of the grounds, on which they were seized;
- (d) state that, if a claim for the return of the goods is not made within 30 days after the day the notice is served, the goods will be taken to be condemned as forfeited to the Crown;
- (e) state that a claim for the return of the goods cannot be made if—
 - (i) an infringement notice for an offence in relation to the goods has been served with the seizure notice; and
 - (ii) the penalty specified in the infringement notice is paid within the period within which, or by the time by which, the penalty is required to be paid; and
 - (iii) the infringement notice is not withdrawn.

265. (1) If a Customs officer detains goods, that officer or another Customs officer may authorise a person (including the owner of the goods) to retain possession of the goods subject to specified conditions.

Directions in relation to detained or seized goods

- (2) A person commits an offence if—
 - (a) the person has possession of goods as mentioned in subsection (1); and
 - (b) the person engages in conduct; and
 - (c) as a result, a condition mentioned in subsection (1) is contravened.

Penalty—50 penalty units.

266. (1) If goods have been seized from a person under this Act, a court may, on application by the person or by another person who claims an interest in the goods, make an order that—

Court may order return of seized goods

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- (a) the goods be returned to the first mentioned person; or
- (b) the goods be delivered to the other person.

(2) A court must not make an order under subsection (1) for return or delivery of goods to a person unless satisfied that—

- (a) the person has or would have had, but for the seizure, a right to possession of the goods; and
- (b) the goods are not forfeited to the Crown.

Condemnation
and forfeiture

267. (1) A court may, on application by a designated Customs officer, declare goods seized under this Act to be condemned as forfeited to the Crown.

(2) The court may give such directions about giving notice of the application as appear to the court to be likely to bring the application to the attention of persons who may have or had, at a relevant time, an interest in the goods.

Effect of
forfeiture

268. If goods become or are declared to be condemned as forfeited to the Crown, title to the goods immediately vests in the Crown to the exclusion of all other interests in the goods, and the title cannot be called into question.

Liability for loss
etc. of detained
or seized goods

269. Neither the Government nor a Customs officer is liable for any loss of, or damage to, goods that have been detained or seized under this Act, being loss or damage that occurs while the goods are in the custody of the Government or of a Customs officer, except to the extent that the loss or damage was caused by the neglect or default of a Customs officer.

Money
Laundering and
Proceeds of
Crime Act not
affected

270. This Part does not affect the operation of the Money Laundering and Proceeds of Crime Act 2002.

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PART 10.9—SELLING, DISPOSING OF AND DESTROYING
GOODS

271. (1) A Customs officer may, in accordance with this Part, sell condemned goods. Goods that may be sold etc

Note See section 267.

(2) A Customs officer may sell, in accordance with this Part, or otherwise dispose of, perishable goods, live animals or hazardous goods in the possession of the Comptroller.

272. (1) Goods sold under this Part must be sold by auction or public tender. Sales to be by auction or public tender

(2) Any sale must be conducted in accordance with the rules.

Note. For rules see section 419.

273. (1) A Customs officer may not sell goods until— Public notice of sales

(a) after the end of 7 days after notice of the sale of the goods has been published in a newspaper circulating in the locality in which the goods are situated; or

(b) in the case of perishable goods, live animals or hazardous goods—after reasonable public notice.

(2) The notice is—

(a) to describe the goods; and

(b) to state whether the sale is to be by public auction or by tender; and

(c) if the sale is by public auction—to specify the time, place and date of the sale; and

(d) if the sale is by tender—to set out the terms and conditions of the tender, including how tenders may be lodged.

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Sales to transfer
property

274. A sale of goods under this Part has effect to transfer title in the goods to the buyer—

- (a) to the exclusion of all other interests in the goods; and
- (b) free from any liability to pay duty or goods tax in respect of the goods;

and the title cannot be called into question.

Note. The goods will still have to comply with the requirements for licences, permission or the like.

Proceeds of sales

275. (1) The proceeds of sale of goods under this Part are to be applied as follows—

- (a) first—to the costs incurred in selling the goods;
- (b) then—to the duty (if any) outstanding in respect of the goods;
- (c) then—to the goods tax (if any) outstanding in respect of the goods;
- (d) then—to other charges in relation to the goods that Customs has incurred or of which Customs has received written notice before the sale, in this order—
 - (i) first—harbour and wharfage dues;
 - (ii) then—rent and charges incurred in warehousing the goods;
 - (iii) then—freight and any other charges.

Note For paragraph (a)—these costs include costs of removal and storage in connection with the sale.

(2) Any balance remaining is to be paid to the Consolidated Fund.

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PART 10.10—CUSTOMS SECURITIES

276. (1) A Customs officer may require and take a customs security from a person, or from 2 or more persons, for any 1 or more of the following purposes—

Power to require
and take
Customs
securities

- (a) to secure payment of import duty, export duty or excise duty;
 - (b) to secure payment of goods tax imposed in respect of imported goods;
 - (c) to secure compliance with this Act;
 - (d) to secure compliance with a border law so far as it relates to imported goods or goods for export;
 - (e) to secure compliance with the Goods Tax Act so far as it relates to imported goods.
- (2) A customs security may relate to a single transaction, or to 2 or more transactions.
- (3) A customs security may be in addition to another security.
- (4) A requirement for a customs security must specify the amount of the security, and the way and the form in which it is to be given.

277. (1) A customs security binds the person who gives it, and does so even if it is not sealed.

Effect of
Customs
securities

- (2) If 2 or more persons give a customs security, their liability is joint and several unless the security specifies otherwise.
- (3) In a customs or excise proceeding it is presumed, unless the contrary is established, that a customs security was properly and effectively given by the person, or by each person, who gave it.

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(4) A customs security is not discharged or invalid, and a person who gave a customs security is not released or discharged from liability, merely because of a concession given by a Customs officer or of some other matter that, apart from this section, might discharge or invalidate the security.

(5) Without limiting subsection (4), the following are concessions for that subsection—

- (a) a Customs officer consenting to or acquiescing in anything;
- (b) a failure to bring a proceeding, or take some other step, to enforce a right in relation to a security;
- (c) granting an extension of time.

Discharge of
customs
securities

278. If the reason for taking a customs security no longer exists, a Customs officer must do what is needed to discharge the security.

Customs
securities not
liable to stamp
duty

279. A customs security is not liable to stamp duty.

Reviewable
decisions

280. Each of the following decisions of a Customs officer is a reviewable decision—

- (a) a decision to require a customs security from a person;
- (b) a decision as to the amount or terms of such a security;
- (c) a decision to refuse to discharge a customs security.

PART 10.11—PERSONAL SEARCHES

Kinds of
searches

281. A power under this Act to search a person is a power to conduct, in accordance with this Part, the following searches—

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- (a) an external search (which includes a frisk search);
- (d) an internal search.

282. (1) If, under a provision of this Act, a Customs officer has a power to search a person, that officer or another Customs officer may conduct an external search of the person—

Customs powers—
external searches

- (a) for a purpose set out in the provision; or
 - (b) to find out whether the person is carrying, or there is hidden on the person or in the person's clothing or property—
 - (i) a weapon or other thing capable of being used to inflict bodily injury or to help the person escape; or
 - (ii) any goods that may be evidence of a border offence; or
 - (iii) any prohibited imports or goods for export that are prohibited exports.
- (2) An external search of a person must be conducted by a Customs officer of the same gender as the person searched.
- (3) An external search of a person must, so far as practicable, be conducted in a place that provides appropriate personal privacy to the person.
- (4) A Customs officer may not conduct a frisk search of a person unless the officer or some other Customs officer suspects that the person is carrying, or there is hidden on the person or in the person's clothing or property, a thing mentioned in paragraph (1)(b).
- (5) To conduct an external search, a Customs officer may give a direction to the person—
- (a) to remove any of the person's outer garments (including but not limited to the person's

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overcoat, coat, jacket, gloves, shoes and head covering); or

- (b) to remove any of the person's other garments, but only if—
 - (i) the officer or another Customs officer suspects on reasonable grounds that the person is carrying, or there is hidden on the person or in the person's clothing or property, a thing mentioned in paragraph (1)(b); and
 - (ii) the Comptroller, a Deputy Comptroller or a Customs officer holding a prescribed office approves.

Note A person given a Customs direction must comply with it—see section 238.

(6) If a person given a direction under subsection (5) to remove his or her garments fails to comply with the direction, a Customs officer may remove them.

(7) In conducting an external search of a person, a Customs officer must not use more force, or subject the person to greater indignity, than is reasonably necessary to conduct the search.

Restrictions on
internal searches

283. (1) An internal search of a person under this Act must not be conducted unless—

- (a) a Customs officer suspects on reasonable grounds that the person is internally concealing a prohibited import or goods for export that are a prohibited export; and
- (b) either—
 - (i) the person has given written consent to the search; or

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- (ii) the conduct of the internal search is authorised by a warrant issued by a judicial officer.

(2) A person under 18 is not capable of giving consent for subsection (1).

(3) A consent is not effective for subsection (1) unless the person to be searched has been told that he or she need not consent, and that if he or she does not consent, the approval of a judicial officer is required to conduct the search.

(4) A judicial officer must not issue a warrant authorising an internal search of a person unless satisfied that there are reasonable grounds for believing that the person is internally concealing prohibited imports or goods for export that are prohibited exports.

284. (1) An internal search of a person may only be conducted by a medical practitioner.

Medical practitioners to conduct internal searches

(2) In carrying out an internal search, the medical practitioner may use any medical procedure or apparatus that the medical practitioner considers to be reasonably safe in the circumstances. However, the practitioner must not use any medical procedure involving surgical incision unless he or she considers it necessary because the person's life is at risk.

(3) The medical practitioner may take such measures in carrying out an internal search, including removing the person being searched to another place, as the medical practitioner considers necessary because the person's life is at risk, including measures involving surgical incision or exploration.

(4) If the medical practitioner—

- (a) suspects during the internal search that the detainee is internally concealing a substance or thing; and
- (b) does not have enough expertise to recover it;

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he or she must, as soon as practicable, arrange for another medical practitioner who has that expertise to do so.

(5) Proceedings, other than proceedings concerning negligently causing injury, do not lie against a medical practitioner, or any person assisting or providing facilities to a medical practitioner, in respect of anything done by the medical practitioner that is authorised under this Part.

Customs may take goods found on a search

285. A Customs officer may remove and take possession of any goods found in a search of person under this Part.

Customs powers—detaining persons for searching

286. If, under a provision of this Act, a Customs officer has a power to search a person, the officer or some other Customs officer may detain the person to facilitate conduct of the search.

PART 10.12—DETAINING PERSONS

Restrictions on detention of persons

287. (1) A person is not to be detained under this Act for more than 12 hours unless the detention is authorised by warrant issued by a judicial officer.

(2) Subsection (1) applies in addition to section 283.

Note Section 283 deals with conducting internal searches of persons.

(3) A judicial officer is not to issue a warrant for subsection (1) unless satisfied that—

- (a) the person's detention was in accordance with this Act; and
- (b) when the warrant is issued, the person's continued detention is in accordance with this Act.

(4) A warrant is not to authorise the detention of a person for more than 24 hours, but this subsection does not prevent the issue of a further warrant.

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288. A Customs officer may give any direction to a person detained under this Act for the purposes of the detention.

Directions to detainees

Note A person given a Customs direction must comply with it—see section 238.

289. A person detained by a Customs officer under this Act commits an offence if the person escaped from that detention.

Detainees not to escape

Penalty—50 penalty units or imprisonment or imprisonment for 2 years, or both.

290. (1) If a designated Customs officer becomes aware that the ground on which the person was detained no longer exists, the person must be released from the detention as soon as practicable.

Release from detention

(2) Subsection (1) does not prevent a Customs officer exercising a power to detain the person later.

PART 10.13—ARREST

291. (1) A Customs officer may, without a warrant, arrest a person if the officer believes on reasonable grounds that—

Arrest without warrant

- (a) the person is committing or has committed a border offence; and
- (b) unless the person is arrested for the offence there is or will be a substantial risk—
 - (i) that the person will fail to appear before a court in a prosecution for the offence; or
 - (ii) that the offence will continue or be repeated, or some other border offence will be committed; or
 - (iii) that evidence relating to the offence will be concealed, lost or destroyed; or
 - (iv) that a potential witness will be harassed or interfered with; or

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- (v) that evidence relating to the offence will be fabricated; or
- (vi) to the safety or welfare of the person or another person.

(2) If, before the person arrested is charged, the Customs officer in charge of the investigation into the offence believes on reasonable grounds that the person was not committing and had not committed a border offence, or that keeping the person in custody is not necessary for any of the reasons mentioned in paragraph (1)(b), the person is to be released from custody without delay.

(3) This section extends to a person—

- (a) on a craft in the territorial sea; or
- (b) on a Solomon Islands craft on the high seas.

(4) For the purposes of a law relating to immigration, a person arrested under subsection (1) and taken ashore is not to be taken, for that reason alone, to have entered Solomon Islands.

Using force in making arrests

292. A Customs officer may use reasonable force in making an arrest under this Part.

Arrested persons to handed over to police

293. If a Customs officer (not a police officer) arrests a person under this Part, the officer or some other Customs officer must, without delay, give the person arrested into the custody of a police officer to be dealt with according to law.

PART 10.14—WARRANTS

Applying for warrants

294. (1) A judicial officer is not to issue a warrant under this Act except on application made by a Customs officer.

(2) The application is to be in writing and accompanied by a statement in writing setting out information in support of the application. The judicial officer may require further information.

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(3) All information, whether oral or in writing, in support of the application must be given on oath or affirmation.

(4) If it is impracticable to apply for the warrant in person, the application may be made by fax, telephone or other appropriate means. In such a case—

- (a) the judicial officer is not to issue the warrant unless he or she is satisfied that it is impracticable for the applicant to apply in person for the warrant; and
- (b) if the judicial officer issues the warrant—
 - (i) the judicial officer is to prepare and sign the warrant and tell the applicant its terms; and
 - (ii) the applicant is to prepare an instrument in the same terms as the warrant and write on it the judicial officer's name and the time at which and the day on which the warrant was signed; and
 - (iii) the applicant is to give to the judicial officer who signed the warrant, not later than 24 hours after it was signed, the statement mentioned in subsection (2) and the instrument mentioned in subparagraph (ii).

(5) Without limiting the matters that are relevant to determining whether it is impracticable to apply for the warrant in person, the following are relevant—

- (a) the period for doing what the warrant authorised;
- (b) the time that would be taken if an application were to be made in person.

(6) While the warrant remains in force, the instrument may be used instead of the warrant.

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(7) In any proceeding a court is not to find that anything was done in accordance with a warrant issued as mentioned in subsection (4) unless the warrant, signed as mentioned in paragraph (4)(b), is admitted in evidence in the proceeding.

Period of
warrants

295. (1) A warrant is to specify the day, not more than 7 days after its issue, on which it ceases to be in force.

(2) Another warrant may be issued before or after a warrant has ceased to be in force.

Execution of
warrants

296. (1) A warrant to enter or search a place may be executed at any time of the day or night unless it specifies otherwise.

(2) A warrant to enter or search a place is not to be taken as having been discharged merely because a Customs officer, including the officer responsible for executing the warrant, leaves the place where it is being executed—

(a) for not more than 1 hour between 8 am and 6 pm; or

(b) between 6 pm and 8 am; or

(c) with the written consent of the occupier of the place.

(3) If—

(a) a court orders the execution of a warrant to be stopped; and

(b) the order is later reversed or revoked on appeal; and

(c) the warrant is still in force;

the execution of the warrant may be completed.

Warrants also
authorise
necessary
assistance

297. A warrant under this Act to enter or search a place authorises the Customs officer named in the warrant, and any other Customs officer, to execute the warrant with such assistance as is necessary.

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CHAPTER 11—ENFORCEMENT

PART 11.1—APPLICATION OF CRIMINAL LAW

298. The fact that a person who is—

- (a) directed by a Customs officer to do something, including to produce a document or other thing;
or
- (b) required under this Act to answer a question;

Failure to answer a question or to produce documents etc. could indicate offence

does not do so may be taken into account in considering whether it is reasonable to suspect or believe that the person has committed an offence against this Act or a border law.

299. (1) Except as provided by this or another Act, the principles and rules of the common law with respect to criminal liability (including those relating to the voluntariness of acts) apply with respect to offences against this Act.

Common law as to criminal liability preserved

Note The common law with respect to criminal liability include the common law about defences to prosecutions. The common law generally requires *mens rea* and it is presumed that a statute creating an offence requires the offender to intend to do the act that the statute forbids. This section preserves that position. In some cases this Act expressly modifies the requirement that the prosecution establish *mens rea*, or eliminates it.

(2) Except as provided by this Act, Parts IV, V and VI of the Penal Code (Cap. 26) apply with respect to offences against this Act.

Note Parts IV, V and VI of the Penal Code relate to the general rules of criminal responsibility, offenders and punishments. See also section 15.

300. (1) The expression “strict liability”, when used in this Act in relation to a provision creating an offence, means that, except as expressly provided by this Act, in a prosecution for the offence—

- (a) the prosecution need not establish the defendant’s state of mind, intentions or belief, or whether the defendant was reckless as to a relevant matter;

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- (b) those matters cannot be relied on by way of defence; and
 - (c) a defence of mistake of fact cannot be raised.
- (2) The expression “strict liability”, when used in this Act in relation to an element of an offence against this Act, means that, except as expressly provided by this Act, in a prosecution for the offence—
- (a) the prosecution need not establish the defendant’s state of mind, intentions or belief, or whether the defendant was reckless as to that element of the offence;
 - (b) those matters cannot be relied on by way of defence; and
 - (c) a defence of mistake of fact as to that element of the offence cannot be raised.
- (3) Subsections (1) and (2) do not affect the determination of a question whether the defendant is fit to be tried or, if the defendant is convicted, of the penalty to be imposed.

Defence of
mistake of fact

301. If, in relation to an offence against this Act, it is expressly provided that it is a defence that the defendant or some other person did not know or believe, or mistakenly believed, that a fact or circumstance existed or did not exist, a defence of mistake of fact that would otherwise have been available under the general law or under the Penal Code (Cap. 26) cannot be relied on.

Note For defences of mistake of fact generally see Penal Code section 10.

Defence of
impossibility

302. (1) In a prosecution for an offence against this Act an element of which is—

- (a) a failure or omission to make a report, give information or do some other specified act; or
- (b) a state of affairs existing, or an event occurring, at a particular time;

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it is a defence to a prosecution for the offence that it was impossible to make the report, give the information, do the act or prevent the state of affairs existing or the event occurring.

(2) The defence is not available if the impossibility arose because of some intentional, reckless or negligent act or omission by the defendant.

303. In a prosecution for an offence against this Act—

Defence of
emergency

- (a) it is a defence if the defendant did what he or she did because he or she believed on reasonable grounds that there was no other practicable way of averting an immediate danger of death or serious injury to a person, or of the loss of or serious damage to a craft; and
- (b) the common law defence of necessity is excluded and cannot be relied on by way of defence.

304. (1) In this section—

Alternative
verdicts

“lesser offence”, for an offence against a provision specified in column 1 of the following table (in this section, the “primary offence”), means an offence against the provision specified in column 2 of the table for the provision—

Column 1	Column 2
section 22	section 21
section 26	section 25
section 90(2)	section 90(1)
section 173	section 172
section 254(3)	section 272(2)
section 380(2)	section 380(1)

(2) If, in a prosecution for a primary offence, the court is not satisfied that the defendant is guilty of the primary

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offence, but is satisfied beyond reasonable doubt that the defendant is guilty of the lesser offence, the court may find the defendant not guilty of the primary offence but guilty of the lesser offence.

(3) Subsection (2) does not apply unless the defendant has been accorded procedural fairness in relation to the finding of guilt in respect of the lesser offence.

Note Procedural fairness includes ensuring the person affected has a reasonable opportunity to make submissions about the matter.

What acts etc.
are to be taken
to be acts etc. of
a body corporate

305.

prosecution.

(1) This section applies only in a customs or excise

(2) If a relevant person does an act that is within the person's actual or apparent authority from a body corporate, the body corporate is to be taken to have done the act also unless it is established that, in doing the act, the person acted only for his or her own benefit.

(3) If a relevant person has a particular state of mind, intention or belief in relation to an act done by the person, then, if the person did the act with actual or apparent authority from a body corporate, the body corporate is to be taken to have the state of mind, intention or belief in relation to the act.

(4) If a relevant person—

- (a) authorises or purports to authorise, with actual or apparent authority from a body corporate, another relevant person to do an act; and
- (b) has a particular state of mind, intention or belief in relation to the act;

the body corporate is to be taken also to have the state of mind, intention or belief in relation to the act.

(5) This section does not affect the liability of a body corporate for acts done by or in accordance with a resolution of the board of directors.

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(6) In this section—

“relevant person”, in relation to a body corporate, means any of the following—

- (a) a director of the body corporate;
- (b) an officer of the body corporate acting in that capacity;
- (c) an employee of the body corporate;
- (d) an agent of the body corporate.

306. (1) In a prosecution of a body corporate for an offence against this Act, if it is established that the body corporate did a particular act that is an element of the offence, it is a defence if it is established that the body corporate had taken all reasonable precautions, and had exercised due diligence, to prevent its officers, including its directors and employees, and its agents from doing the act.

Bodies
corporate—
defence of
reasonable
precautions and
diligence

(2) Without limiting subsection (1), the court is not to find that the precautions taken were reasonable or that due diligence had been exercised if the person who did the act believed on reasonable grounds that reporting the matter to the board of directors or in accordance with a system of the body corporate for reporting contraventions of the law would not have led to the body corporate taking effective measures to prevent the contravention or would have led to the person being prejudiced.

307. In a prosecution for an offence against this Act, the defendant may rely on any defence, exception, exemption, excuse, qualification or justification provided for in this Act in respect of the provision creating the offence only if the defence, exception, exemption, excuse, qualification or justification is established on the balance of probabilities.

Burden of proof
for defences,
exceptions, etc

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PART 11.2—INFRINGEMENT NOTICES

Note A decision to serve an infringement notice is not reviewable. A person who has received an infringement notice may simply wait to be prosecuted, and defend the prosecution.

Offences to which this Part applies

308. (1) This Part applies to an offence against this Act prescribed by regulations.

(2) This Part does not apply to a misstatement to which Part 11.3 applies.

Note Part 11.3 relates to material misstatements in entries and returns relevant to duty.

Infringement notices

309. (1) If a designated Customs officer believes on reasonable grounds that a person has committed an offence, that officer or some other designated Customs officer may serve a notice (an “infringement notice”) on the person.

(2) An infringement notice is to set out each of the following—

- (a) the name and address of the person to be served;
- (b) particulars of the offence, including the day on which, and the place at which, the offence is alleged to have been committed;
- (d) a statement of the maximum penalty that may be imposed by a court for the offence, or a statement how that amount is calculated;
- (e) a statement of the penalty to be paid if the matter is to be dealt with under this Part (“infringement notice penalty”);
- (f) a statement of how the infringement notice penalty is to be paid;
- (g) a statement to the effect that, within 21 days after the notice is served—

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- (i) the person may pay, as indicated in the notice, the amount of the infringement notice penalty, and that, if payment is made, the person will not be prosecuted for the offence; or
- (ii) the person may notify a designated Customs officer, in the way set out in the notice, of any facts or matters that the person says ought to be taken into account in relation to the offence or the amount of the infringement notice penalty (the notification is a “submission”); or
- (iii) the person may apply to a designated Customs officer to pay the amount of the infringement notice penalty by instalments;

but that if none of these is done within the 21 days, the person may be prosecuted for the offence.

- (3) A notice under this section in respect of an offence cannot be served more than 12 months after the offence is alleged to have been committed.

310. The maximum amount of an infringement notice penalty is as prescribed by regulations.

Maximum amount of infringement notice penalty

311. (1) An infringement notice penalty is payable at the end of 21 days after the infringement notice is served on the person.

Due date for payment

Note This period may be extended—see section 19.

- (2) However, if, on application mentioned in section 309(2)(g)(iii), a designated Customs officer has agreed to payment of the infringement notice penalty by instalments, the infringement notice penalty is payable in accordance with the agreement.

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Where
infringement
notice penalty
paid

312. If the amount of an infringement notice penalty for an offence is paid as required by the notice, the person served with the notice is not to be prosecuted in respect of the offence.

(2) If, on application under section 309(2)(g)(iii), a designated Customs officer has agreed to payment of an infringement notice penalty by instalments, the person served with the notice is not to be prosecuted in respect of the alleged offence if payments are made in accordance with the agreement.

Where
infringement
notice disputed

313. (1) If a person served with an infringement notice notifies Customs as mentioned in section 309(2)(g)(ii), a designated Customs officer is to decide whether to withdraw the infringement notice.

(2) A designated Customs officer must give the person notice of the decision (in this section, a “decision notice”). If the decision is not to withdraw the infringement notice, the decision notice is to contain statements to the effect of the following—

- (a) that, if the amount of the infringement notice penalty is paid, as indicated in the decision notice, within 21 days after service of the decision notice or by instalments in accordance with an agreement referred to in under section 309(2)(g)(iii), the person will not be prosecuted for the offence; and
- (b) that, if that amount is not so paid, the person may be prosecuted for the offence.

Action not to be
taken for 21
days after notice

314. If—

- (a) an infringement notice is served on a person in respect of an offence; or
- (b) a decision notice is served on a person;

a prosecution of the person in respect of the offence is not to be commenced against the person before the end of 21 days after the relevant notice is served.

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315. Withdrawal of an infringement notice does not prevent the service of another infringement notice for the same offence.

Withdrawal of
infringement
notice

316. If—

- (a) a person is prosecuted for a customs or excise offence; and
- (b) the person was served with an infringement notice in respect of the offence;

Submissions not
admissible in
customs or excise
prosecutions

evidence of an admission that the person made in a submission in respect of the infringement notice is not admissible in the prosecution.

Note For submissions see section 309(2)(g)(ii).

317. If a person served with an infringement notice is prosecuted for and convicted of the offence, then, in determining the penalty to be imposed for the offence, the court is not to take into account the fact that the matter was dealt with by a court rather than by the person paying the infringement notice penalty.

Matters not to be
taken into
account in
determining
sentence

318. The serving of an infringement notice, and any action taken by a Customs officer under this part in respect of an infringement notice, does not affect any liability of a person for duty.

Duty liability not
affected

PART 11.3—ADMINISTRATIVE PENALTIES FOR MATERIALLY INCORRECT ENTRIES OR RETURNS

Note A decision to impose an administrative penalty under this Part is not reviewable. A person who has received an administrative penalty notice may simply wait to be prosecuted, and defend the prosecution.

319. (1) For this Part, an entry or return is materially incorrect if any of the following is misstated in the entry or return—

Interpretation—
“materially
incorrect”

- (a) the identity of the importer, the overseas supplier or the person making the entry or providing the return;
- (b) for imported goods—
 - (i) the identity of the importing craft;

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- (ii) details of the international voyage of the importing craft;
- (iii) the bill of lading, air waybill or container identification details;
- (d) the supplier's invoice number and date;
- (e) the invoice amount;
- (f) the reference or other identifying number of any permit, licence or permission relevant to any conditions or restriction on the import or export of the goods;
- (g) the tariff item in which the goods are classified;
- (h) the country of origin of the goods;
- (i) the country from which the goods have been exported;
- (j) the quantity of the goods;
- (k) the currency in which the goods are traded;
- (l) the customs value of the goods;
- (m) any amount required to be stated in the entry that is relevant to the calculation of the customs value of the goods.

(2) A reference in this Part to an entry or return includes a reference to a document lodged with or in relation to an entry or return.

(3) For this Part, an entry or return is not taken to be materially incorrect on the basis that a document lodged with or in relation to the entry is incorrect if the entry or return identifies the error in the document.

Administrative
penalty may be
imposed where
entry or return
materially
incorrect

320. (1) If a designated Customs officer is satisfied that a person has made an entry, or given a return, that is materially incorrect, that

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officer or another designated Customs officer may, by notice to the person, impose a penalty under this section (an “administrative penalty”) in respect of the misstatement.

Note A misstatement relevant to duty is an offence—see sections 172 and 173.

- (2) The notice must state the following—
- (a) the name and address of the person to be served;
 - (b) the misstatement alleged to have been made;
 - (c) a statement of the maximum penalty that may be imposed by a court for the offence comprising the misstatement, or a statement how that amount is calculated;
 - (d) the amount of the administrative penalty;
 - (e) a statement of how the administrative penalty is to be paid;
 - (f) a statement to the effect that, within 21 days after the notice is served—
 - (i) the person may pay, as indicated in the notice, the amount of the administrative penalty, and, if payment is made, the person will not be prosecuted in respect of the misstatement; or
 - (ii) the person may notify a designated Customs officer, in the way set out in the notice, of any facts or matters that the person says ought to be taken into account in relation to the misstatement or the amount of the administrative penalty (the notification is a “submission”); or
 - (iii) the person may apply to a designated Customs officer, in the way set out in the

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notice, to pay the amount of the penalty by instalments;

but that if none of these is done within the 21 days, the person may be prosecuted in respect of the misstatement.

(3) The notice under this section is to be served on the person no more than 3 years after the misstatement was made.

(4) An administrative penalty is not to be imposed in respect of a misstatement if—

- (a) a prosecution for an offence constituted by the misstatement has been commenced; or
- (b) an infringement notice has been issued in respect of the misstatement; or
- (c) the misstatement is disclosed to Customs before the entry is examined by Customs.

Note For infringement notices see Part 11.2.

Maximum amount of administrative penalty be—

321. The maximum amount of an administrative penalty is to

- (a) \$10,000; or
- (b) if another amount is prescribed by regulations—that other amount.

Due date for payment, and additional penalties for late payment

322. (1) An administrative penalty is payable at the end of 21 days after the notice under section 320(1) is served on the person.

Note This period may be extended—see section 19.

(2) However, if, on application under section 320(2)(g)(iii), a designated Customs officer has agreed to payment of the infringement notice penalty by instalments, the infringement notice penalty is payable in accordance with the agreement.

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(3) If an administrative penalty remains unpaid by the due date for payment, there is also payable—

- (a) an additional penalty of 5% of the amount of the administrative penalty unpaid on the due date; and
- (b) an additional penalty of 2% of the sum of amount of the administrative penalty, and any additional penalty, unpaid at the end of the period of 1 month after the due date; and
- (c) an additional penalty of 2% of the amount of the penalty, and additional penalty, unpaid at the end of each succeeding period of 1 month.

323. If the amount of an administrative penalty (including any additional penalty) for an offence is paid as required by the notice, the person served with the notice is not to be prosecuted in respect of the offence.

Where
administrative
notice penalty
paid

Note For additional penalty see section 322(3).

(2) If, on application under section 320(2)(g)(iii), a designated Customs officer has agreed to payment of an administrative penalty by instalments, the person served with the notice is not to be prosecuted in respect of the alleged offence if payments are made in accordance with the agreement.

324. (1) If a person served with an infringement notice notifies Customs as mentioned in section 320(2)(g)(ii), a designated Customs officer is to decide whether to—

Where
administrative
penalty disputed

- (a) withdraw the administrative penalty notice; or
- (b) reduce the amount of the administrative penalty.

(2) A designated Customs officer must give the person notice of the decision (in this section, the “decision notice”).

(3) If the decision is not to withdraw the infringement notice and not to reduce the amount of the administrative

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penalty, the decision notice is to contain statements to the effect of the following—

- (a) that, if the amount of the administrative penalty is paid, as indicated in the decision notice, within 21 days after service of the decision notice or by instalments in accordance with an agreement referred to in under section 320(2)(g)(iii), the person will not be prosecuted for the offence; and
 - (b) that, if that amount is not so paid, the person may be prosecuted for the offence.
- (3) If the decision is to reduce the amount of the administrative penalty, the decision notice is to contain statements to the effect of the following—

- (a) that, if the reduced amount of the administrative penalty is paid, as indicated in the decision notice, within 21 days after service of the decision notice or by instalments in accordance with an agreement referred to in under section 320(2)(g)(iii), the person will not be prosecuted for the offence; and
- (b) that, if that amount is not so paid, the person may be prosecuted for the offence.

Action not to be taken for 21 days after administrative penalty imposed

325. If—

- (a) an administrative penalty is imposed on a person for a misstatement; or
- (b) a decision notice is served on a person;

a prosecution of the person in respect of the misstatement is not to be commenced against the person before the end of 21 days after the relevant notice is served.

Withdrawal of administrative penalties

326. Withdrawal of an administrative penalty does not prevent the imposition of another administrative penalty in respect of the same entry or return.

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327. If an administrative penalty has been imposed on a person on more than 2 occasions in any period of 12 months—

Where 2 or more administrative penalties

- (a) a Customs officer may notify the person that further entries or returns from the person will not be dealt with by Customs until the person has completed, to the satisfaction of a designated Customs officer, training specified in the notice; and
- (b) if the notice is given—a Customs officer is not required to deal with any further entries or returns from the person until the person has so completed the training.

328. If—

Submissions not admissible in customs or excise prosecutions

- (a) a person is prosecuted for a customs or excise offence; and
- (b) an administrative penalty is imposed in respect of the offence;

evidence of an admission that the person made in a submission in respect of the administrative penalty is not admissible in the prosecution.

Note For submissions see section 320(2)(f)(ii).

329. If a person on whom an administrative penalty is imposed is prosecuted for and convicted of the offence in relation to the misstatement, then, in determining the penalty to be imposed for the offence, the court is not to take into account the fact that the matter was dealt with by a court rather than by the person paying the administrative penalty.

Matters not to be taken into account in determining sentence

330. The imposition of an administrative penalty, and any action taken by a Customs officer under this part in respect of an infringement notice, does not affect any liability of a person for duty.

Duty liability not affected

PART 11.4—CUSTOMS OR EXCISE PROCEEDINGS

Note See also section 177.

331. In this Part—

Interpretation

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“prescribed” means prescribed by regulations.

Courts to act in
aid of each other

332. All courts and judicial officers, and all officers of or under the control of a court, are severally to act in aid of and be auxiliary to each other in relation to a customs or excise proceeding.

Jurisdiction of
Magistrates
Court in
customs and
excise
proceedings

333. (1) Subject to this section, the Magistrates Court has jurisdiction in customs and excise matters without any regard to geographic limitations of jurisdiction, but subject to any monetary limitations on its jurisdiction.

(2) The Magistrates Court has jurisdiction in proceedings for the forfeiture or condemnation of goods the customs value of which is or is less than—

- (a) \$500,000; to
- (b) if a higher amount is prescribed—that amount.

(3) If the maximum pecuniary penalty for a customs or excise offence exceeds—

- (a) in the case of a natural person—100 penalty units; or
- (b) in the case of a body corporate—500 penalty units;

a Magistrates Court may not impose a pecuniary penalty for the offence of more than—

- (a) on a natural person—100 penalty units; or
- (b) on a body corporate—5000 penalty units.

(4) If—

- (a) a customs or excise proceeding is commenced in the Magistrate’s Court; and
- (b) the Magistrate’s Court determines that it is appropriate to do so or the High Court so directs;

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the proceeding is to be transferred to the High Court.

(5) The High Court may give directions as to the conduct of proceedings transferred to it.

334. (1) A prosecution for a customs or excise offence, except an indictable offence, may be commenced by and in the name of the Comptroller.

Institution of prosecutions

(2) Subsection (1) does not affect any other law.

335. Except in the case of an offence against Part 2.1 or 6.8, a prosecution before the Magistrates Court for a customs or excise offence is not to be commenced after 12 months after the offence is alleged to have been committed.

Time limit for summary prosecutions for non-fraud offences

Note Part 2.1 prohibits certain imports and exports. Part 6.8 deals with offences related to duty.

336. A customs or excise proceeding is not invalidated by a formal defect or irregularity unless the court determines that—

Proceedings not invalidated by formal defect etc.

- (a) the defect or irregularity has caused or is likely to cause substantial injustice; and
- (b) the injustice cannot be remedied by an order of the court.

337. (1) In a prosecution for a customs or excise offence, an averment of the prosecutor contained in the information, summons or other initiating process is admissible as evidence of the matter or matters averred and is *prima facie* evidence of those matters.

Averments

(2) This section applies to a matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; and
- (b) the matter averred is a mixed question of law and fact, but in that case the averment is evidence of the fact only.

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(3) The credibility and probative value of, and the weight to be given to, evidence led in support or rebuttal of a matter averred is not affected by this section.

(4) If it would be unjust to allow the prosecutor to rely on an averment, the court may, by order, disallow the averment.

(5) Without limiting the matters that the court is to take into account for subsection (4), the court is to take into account the following—

- (a) whether the averment is of a matter that is merely formal or is not substantially in dispute;
- (b) whether the prosecutor is in a position to adduce evidence of the matter and if the prosecutor is not in such a position, whether because the evidence is overseas or for some other reason, obtaining the evidence would result in undue cost or delay;
- (c) whether the defendant is reasonably able to obtain information or evidence about the matter;
- (d) what admissions, if any, the defendant has made in relation to the matter.

(6) The prosecutor cannot rely on a disallowed averment.

(7) This section does not apply—

- (a) to an averment of the intent of the defendant; or
- (b) in a proceeding for an indictable offence or an offence directly punishable by imprisonment.

Costs in
prosecutions

338. In a trial of a person for a customs or excise offence, the court may, in its discretion, award costs against any party.

Protection of
informants

339. (1) This section applies in a customs or excise proceeding.

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(2) The court may, by order, direct that evidence is not to be adduced when, if it were adduced, it would disclose, or would enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of this Act or of some other border law.

(3) Subsection (2) does not apply if the court is satisfied that to exclude the evidence would prejudice the fair trial of the defendant.

340. This Part does not affect the power of a court to control the conduct of a proceeding in the court, except as expressly provided in this Part.

Powers of court to control proceedings not affected

CHAPTER 12—REVIEW OF CUSTOMS AND EXCISE DECISIONS

PART 12.1—THE CUSTOMS AND EXCISE REVIEW PANEL

341. (1) There is established a panel, to be known as the Customs and Excise Review Panel.

Customs and Excise Review Panel

(2) The functions of the Panel are—

- (a) to review reviewable decisions, in accordance with this Chapter; and
- (b) any other functions conferred on the Panel by or under a written law.

(3) The Panel has no function in relation to duty related decisions.

342. (1) The Panel is to consist of 3 members appointed by the Minister.

Membership of Panel

(2) The Minister is to appoint one of the Panel members to be Chairman of the Panel.

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- (3) The Minister is not to appoint a person to be a member of the Panel unless satisfied that the person has appropriate experience and expertise in law or customs matters.
- (4) The Minister may make an acting appointment.
- (5) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because—
 - (a) the occasion for the appointment had not arisen;
 - (b) there was a defect or irregularity in connection with the appointment;
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Disclosure of
interests

343. (1) Each Panel member must disclose in writing to each other Panel member all interests that the Panel member has that could conflict with the proper performance of the functions of his or her office. The disclosure must be given as soon as practicable after the Panel member becomes aware of the interest.

- (2) A Panel member who has an interest in relation to a particular matter that could conflict with the proper performance of the functions of his or her office must not perform those functions.
- (3) For subsections (1) and (2), it does not matter whether an interest is direct, indirect, pecuniary or non-pecuniary, and it does not matter when the interest was acquired.
- (4) For the purposes of this section, if—
 - (a) a related person of a Panel member has an interest; and
 - (b) if the Panel member had the interest, it could conflict with the proper performance of the functions of his or her office;

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the Panel member is taken to have the interest, and this section applies accordingly.

(5) The Panel must record, and maintain a register of, all disclosures under this section

- 344.** (1) A Panel member holds office for— Period of office
- (a) 5 years from the date of his or her appointment;
or
- (b) if a shorter period is specified in the instrument of appointment—that shorter period;

but may be reappointed.

(3) A person may resign office as a Panel member by giving a written resignation to the Minister.

(4) A Panel's member's appointment terminates immediately if he or she becomes a disqualified person.

(5) The Minister may terminate a person's appointment as a Panel member if the Panel member—

- (a) is suffering from a mental or physical condition such that he or she cannot properly carry out the duties of the office;
- (b) has become insolvent.

345. A Panel member is entitled to be paid remuneration and allowances determined by the Minister. Remuneration of Panel members

346. A Panel member holds office on terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister. The terms and conditions must not be inconsistent with this Act. Other terms and conditions of office

347. A Panel member is not personally liable for an act done by him or her in good faith in pursuance or intended pursuance of his or her powers and authorities under this Act. Panel members not personally liable

Note "Act" includes omission—see section 4.

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PART 12.2—REVIEW OF REVIEWABLE DECISIONS

Information to
be provided
about
reviewable
decisions

348. (1) In this Part—

“person affected”, in relation to a reviewable decision,
means—

- (a) a person on or in respect of whose application the decision was made; or
- (b) in relation to a decision affecting a licence or registration—the person licensed or registered.

(2) Where a Customs officer makes a reviewable decision, that officer or another Customs officer must give each affected person written notice of the decision. The notice must include—

- (a) a statement that the decision is a reviewable decision; and
- (b) a statement of the reasons for the decision, and the material facts on which the decision was made; and
- (c) a statement how to initiate a review of the decision, including the period within which any application for review must be made.

Applications for
review

349. A person affected by a reviewable decision may apply to the relevant review authority for a review of the decision under this Part.

Parties to reviews
by the Panel

350. The parties to a review before the Panel are the Comptroller and the person affected who applied for the review.

Note As reviews of duty related decisions are conducted by the Comptroller, there are no “parties” to such a review.

Panel members

351. If the Panel is the review authority for a reviewable decision, the Chairman of the Panel must determine which Panel member or members are to conduct the review.

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352. A Customs officer may not vary, set aside or make a substituted decision after an application for review of a reviewable decision (not a duty related decision) is made unless the person affected agrees.

Customs not to vary etc decisions under review

353. (1) In a review of a reviewable decision—

Procedure of review authorities

- (a) the procedure of the review authority is, subject to this and any other Act, and the rules, within the discretion of the review authority; and
- (b) the review authority must accord the person affected procedural fairness; and
- (c) subject to paragraph (b), the review is to be conducted with as little formality and technicality, and with as much expedition, as practicable; and
- (d) the review authority is not bound by the rules of evidence but may inform itself on any matter, as it thinks appropriate.

Note Procedural fairness includes ensuring the person affected has a reasonable opportunity to make submissions to the review authority, and to be provided with the material on which the review authority proposes to make its decision.

(2) Without limiting subsection (1), in a review by the Panel, the Panel may give directions to facilitate the conduct of the review.

Note For example, directions may require the person affected or Customs to provide further information to the Panel, or require the parties to provide written arguments, or a statement of matters or contentions that the party intends to rely.

Note Subsection (2) does not apply to the Comptroller as review authority.

(3) On a review by the Panel, the Panel is not to conduct a hearing unless—

- (a) it appears to the Panel that the issues for determination cannot be adequately determined without a hearing; or

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- (b) the parties agree that the review cannot be adequately determined without a hearing.
- (4) A hearing before the Panel is to be a public hearing, but the Panel may make orders prohibiting or restricting the publication of—
- (a) the names and addresses of persons who give evidence at the hearing; or
 - (b) any evidence given before the Panel, whether in public or not, or matters contained in documents lodged with the Panel or received in evidence by the Panel.
- (5) If—
- (a) the Panel makes an order under subsection (4); and
 - (b) a person publishes any material contrary to the order;

the person commits an offence unless the person establishes that he or she did not know, and could not reasonably have been expected to have known, that the publication was contrary to the order.

Penalty—50 penalty units.

Note The Comptroller as review authority will not hold hearings.

Powers of the
Panel

- 354.** (1) For the purpose of reviewing a decision, the Panel may—
- (a) take evidence on oath or affirmation; and
 - (b) if there is a hearing—proceed in the absence of a party who has had reasonable notice of the hearing; and
 - (c) require a person appearing before the Panel at a hearing to give evidence either to take an oath or to make an affirmation that the answers that

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he or she will give to questions asked him or her will be true; and

- (d) may administer an oath or affirmation to such a person; and
- (e) adjourn a hearing from time to time.

(2) The Chairman of the Panel may summon a person to do either or both of the following—

- (a) give evidence at a hearing of a review by the Panel;
- (b) produce books, documents or records, relevant to a review by the Panel, being books, documents or records in the possession, custody or control of the person.

Note These powers do not apply to the Comptroller as review authority.

355. A person giving evidence in a hearing before the Panel has all the protections and liabilities of a witness giving evidence in proceedings before the High Court. Protection and liabilities of witnesses

356. A review authority may dismiss an application for review if satisfied that the application is frivolous or vexatious. Power to dismiss frivolous or vexatious applications

357. (1) On an application for review of a reviewable decision, the Panel may— Determinations on reviews

- (a) affirm the decision; or
- (b) set aside the decision and remit the matter to the Comptroller for further decision in accordance with the Panel's decision on the application.

(2) On an application for review of a reviewable decision, the Comptroller may—

- (a) affirm the decision; or

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- (b) set aside the decision and substitute the Comptroller's decision.

Costs on a review

358. A review authority has no power to award costs in respect of a review.

Appeals to High Court

359. (1) For a review conducted by the Panel, either party to the review, may, if dissatisfied with the Panel's determination as being erroneous in law, appeal to the High Court.

(2) For a review conducted by the Comptroller, the person affected may, if dissatisfied with the Comptroller's determination as being erroneous in law, appeal to the High Court.

CHAPTER 13—ADMINISTRATION

PART 13.1—THE CUSTOMS

The Comptroller and Deputy Comptrollers

- 360.** (1) There is to be a Comptroller of Customs.
- (2) There is to be at least 1 Deputy Comptroller of Customs.
- (3) The Comptroller and each Deputy Comptroller are to be public officers.

Authorised persons

361. (1) Subject to this Act, each police officer may exercise any of the powers of, and perform any of the functions of, a Customs officer under this Act.

Note "Police officer" means a member of the Royal Solomon Islands Police Force—see section 16(1) of the Interpretation and General Provisions Act (Cap. 85).

(2) The Comptroller may, by instrument, appoint a person or a specified class of persons to exercise all or specified powers of, and perform all or specified functions of, a Customs officer under this Act.

(3) An appointment under subsection (2)—

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(a) may be by reference to the office the person holds; and

(b) may be for a specified period.

(4) The Comptroller may revoke an appointment under subsection (2) at any time.

(5) To avoid doubt, a power or function under this Act exercised or performed by an authorised person is taken for all purposes to have been exercised by a Customs officer.

362. Customs officers and authorised persons are to comply with any directions of the Comptroller in relation to their powers or functions under this Act unless this Act provides otherwise.

Directions of the
Comptroller

363. The Comptroller may, with the approval of the Minister, enter into and give effect to arrangements with the Permanent Secretary of a Department, or another Government agency, for cooperation and collaboration between Customs and the Department or agency.

Co-operation
with other
Government
agencies

364. (1) A Customs officer does not need to have a licence or permission otherwise required by a law (except this Act) for doing an act or thing in connection with the exercise or a power or the performance of a function under this Act or a border law.

Immunity from
certain laws

(2) A requirement of a law (except this Act) to register a thing (such as a vehicle, vessel, aircraft or animal) does not apply to a thing belonging to the Government and used by a Customs officer or an authorised person in connection with the exercise or a power or the performance of a function under this Act or a border law.

365. (1) The Comptroller must issue an identity card, in a form approved by the Comptroller, to each Customs officer and to each authorised person (except an authorised person who is a police officer).

Identity cards

(2) A person commits an offence if the person—

(a) ceases to be a Customs officer or authorised person; and

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- (b) does not, as soon as practicable after so ceasing, return his or her identity card to the Comptroller.

Penalty—5 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) that the identity card is lost or destroyed.

- (4) A Customs officer or authorised person (except an authorised person who is a police officer) must carry his or her identity card at all times when exercising powers or performing functions under this Act.

366. (1) The Comptroller may, subject to this section, by instrument in writing, delegate to any Customs officer or authorised person any of the Comptroller's powers and functions, but not this power of delegation. Delegations

- (2) A delegation may be made either generally or as otherwise provided by the instrument of delegation.

- (3) A delegation may be subject to conditions specified in the instrument of delegation.

- (4) A delegated power or function must be exercised or performed in accordance with the instrument of delegation.

- (5) If—

- (a) the exercise of a power or function by the Comptroller depends on the opinion, belief or state of mind of the Comptroller about a matter; and
- (b) the power or function has been delegated under this section;

the power or function may be exercised by the delegate on the delegate's opinion, belief or state of mind in relation to the matter.

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(6) A delegation may be varied or revoked at will and does not prevent the Comptroller from exercising the delegated power or performing the delegated function.

(7) A power or function delegated under this section, when performed or exercised by the delegate, is taken for this Act to have been performed or exercised by the Comptroller.

(8) A delegation continues in effect despite a change in the occupancy of, or a vacancy in, the office of Comptroller, but nothing prevents a revocation or variation of the delegation by the same or a later holder of the office.

367. A person who is not a customs officer or an authorised person commits an offence if he or she pretends or suggests that he or she—

Pretending to be a Customs officer or authorised person

- (a) is a Customs officer or an authorised person; or
- (b) is entitled to exercise a power that a Customs officer or an authorised person may exercise under this Act.

Penalty—100 penalty units, or imprisonment for 2 years, or both.

368. (1) A person who obstructs, interferes with or impedes a Customs officer or an authorised person exercising powers or performing functions under this Act commits an offence.

Obstructing etc Customs officers or authorised persons

Penalty—500 penalty units, or imprisonment for 1 year, or both.

(2) A person who assaults or threatens a Customs officer or an authorised person exercising powers or performing functions under this Act commits an offence.

Penalty—1,000 penalty units, or imprisonment for 2 years, or both.

369. (1) A Customs officer or an authorised person is not liable for damages in a civil proceeding for an act done in good faith in exercising, or in purporting to exercise, a power or function under this Act.

Protections for Customs officers etc

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Note “Act” includes omission—see section 5.

(2) A person acting under a direction of a Customs officer or of an authorised person is not liable for damages, in a civil proceeding, for an act done in good faith in compliance with the direction.

(3) A person giving assistance on request by a Customs officer under this Act is not liable, in a civil proceeding, for an act done in good faith in giving the assistance.

Customs flags,
insignia and seals

370. Rules may make provision with respect to the design and use of the Customs flag and other insignia, Customs uniforms and Customs seals.

PART 13.2—CUSTOMS PLACES

Customs ports,
customs
wharves,
boarding
stations,
customs airports

371. (1) The rules may declare—

- (a) a port to be a customs port; or
- (b) a wharf, or an area, in a customs port to be a customs wharf; or
- (c) a wharf or an area (not in a customs wharf) to be a sufferance wharf for a specified exporter; or
- (d) an area to be a boarding station; or
- (e) an airport to be a customs airport.

(2) The rules must specify the limits of the customs port, customs wharf, sufferance wharf, boarding station or customs airport.

(3) The rules that declare a place to be a sufferance wharf must also specify—

- (a) the exporter for the sufferance wharf; and
- (b) the conditions that the exporter must comply with in respect of its use of the sufferance wharf.

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- (5) A person commits an offence if—
- (a) the person is an exporter specified in an appointment of a sufferance wharf; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a condition specified under paragraph (3)(b).

Penalty—

- (d) for a first offence—500 penalty units or imprisonment for 5 years, or both; and
 - (e) for a second or later offence—1,000 penalty units or imprisonment for 10 years, or both.
- (6) Strict liability applies to subsection (5).

Note For strict liability see section 300.

372. (1) Customs may give a direction to the owner or operator of a customs wharf or a customs airport to provide, at the wharf or airport, such office space, office furniture, lighting and access to a telephone and toilet and washing facilities as is reasonable to enable Customs officers to perform their duties and functions, and to exercise their powers, under this Act at the wharf or airport.

Facilities for
Customs at
customs wharves
and customs
airports

- (2) The operator of a Customs wharf or Customs airport commits an offence if—
- (a) Customs gives the operator a direction under subsection (1); and
 - (b) the direction is not complied with within a reasonable time.

Penalty—200 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) that—

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- (a) the direction was not complied with because of the act or omission of another person; and
- (b) the defendant had taken all reasonably practicable steps to ensure compliance with the direction.

Customs
clearance areas,
customs
controlled areas
and transit areas

373. (1) Customs may set aside an area on a craft or an area anywhere in Solomon Islands as a customs clearance area.

(2) Customs may set aside an area at a wharf or airport as a customs controlled area. The area must be one through which—

- (a) travellers must pass on their way
 - (i) to a craft that is on or about to start an international journey; or
 - (ii) from such a craft to a customs clearance area or a transit area; or
 - (iii) on their way from such a craft to a customs clearance area or a transit area; or
- (b) baggage must pass on its way to such a craft from a customs clearance area or a transit area, or from such a craft on its way to a customs clearance area or a transit area.

(3) A Customs officer may set aside an area at a port or an airport as a transit area.

(4) It must be clear to travellers and other persons using an area set aside under this section that the area has been so set aside.

(5) A person who is not a Customs officer must not enter a customs clearance area, a customs controlled area or a transit area unless—

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- (a) a Customs officer give authority the person to enter the area; or
- (b) for a customs clearance area or a customs controlled area—the person entered the area to be cleared by Customs to go to a transit area or to get on a craft.

Penalty—100 penalty units.

374. The Comptroller may, by notice in the Gazette, appoint a place operated by a public officer to be a Government warehouse.

Government
warehouses

375. (1) A Customs officer may question—

Customs
powers—
Customs places
etc

- (a) any person at or in the vicinity of a Customs place;
- (b) the operator of a Customs place;

about any matter to do with the place or operations or activities that are or have been carried on at the place, or that a Customs officer suspects on reasonable grounds are or have been carried out at the place.

Note Customs questions must generally be answered—see section 233.

(3) A Customs officer may give a direction to a person mentioned in subsection (1) produce a specified document to a Customs officer.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

(4) A Customs officer may enter a Customs place at any time, and search the place for any goods (including documents).

Note For entry and search generally see Part 10.4.

(5) A Customs officer may search a vehicle that is in a Customs place, and may examine such a vehicle, at any time.

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(6) A Customs officer may search a vehicle that is in the vicinity of a Customs place, and may examine such a vehicle, to find out whether there are customs controlled goods or excise controlled goods in or on the vehicle.

Note Under section 236, a Customs officer may give a person a direction to facilitate the exercise any Customs powers.

(7) A Customs officer may examine any goods found at a Customs place, or in or on a vehicle as mentioned in subsection (5) to (6).

PART 13.3—CUSTOMS AUTHORITIES

Powers to
authorise and
dispense

376. (1) Subject to this Act, a Customs officer may give an authority or a dispensation for the purposes of this Act.

(2) Unless a provision of this Act expressly provides to the contrary, an authority or dispensation may be a continuing authority or a continuing dispensation, that is, an authority or dispensation that is not limited to a single act or occasion. However, it is not a continuing authority or a continuing dispensation unless it is expressed as such.

(3) An authority in relation to the export of goods cannot be a continuing authority.

(4) If a period is specified in a continuing authority or a continuing dispensation, the authority or dispensation, unless sooner revoked, ceases to have effect at the end of the period.

Note A licence is a Customs authority for the licensee to do what is licensed.

Authorities,
consents,
dispensations,
exemptions,
licences and
permissions may
be conditional

377. (1) A Customs authority may be subject to conditions imposed for the purpose of the provision for which the authority is sought or granted.

(2) Unless a provision of this Act provides to the contrary, the conditions must be communicated to the person to whom the authority, consent, dispensation, exemption, licence or permission is given before or at the time when the authority, consent, dispensation, exemption, licence or permission is given.

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(3) If a condition of a Customs authority is not complied with in relation to an act covered by a Customs authority, the authority is of no effect in relation to the act.

Notes “Act” includes omission—see section 4.

The effect of subsection (3) is that the act that was authorised will not be authorised, and so will be an offence.

(4) Subsection (3) does not apply in relation to a condition attached to—

- (a) a continuing authority to have possession of, move or interfere with, controlled goods; or
- (b) a continuing authority to release goods into home consumption; or
- (c) a licence.

(5) A condition or restriction in relation to the export of goods is not to require that a person deal or not deal with the goods in a particular way after they are exported.

Defence of
reliance on
authority etc.
where authority
etc. revoked etc.
or conditions
not complied
with

378. (1) If—

- (a) it is a defence to a prosecution for an offence against this Act that there was Customs authority to do what was done, or that the need to do a particular act had been dispensed with under this Act; and
- (b) the authority or dispensation was subject to a condition; and
- (c) the condition had not been complied with;

the defendant may rely on the defence only if it is established that the defendant—

- (d) is not the person to whom the authority or dispensation was given; and
- (e) did not know, and could not reasonably be expected to have known—

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- (i) that the authority or dispensation was subject to the condition; or
 - (ii) that the condition had not been complied with.
- (2) If—
- (a) it is a defence to a prosecution for an offence against this Act that there was authority under this Act to do what was done, or that the need to do a particular act in relation to what was done had been dispensed with under this Act; and
 - (b) the authority or dispensation had been revoked or varied;

the defendant may rely on the defence only if it is established that the defendant—

- (c) is not the person to whom the authority or dispensation was given; and
- (d) did not know, and could not reasonably be expected to have known, that the authority or dispensation had been revoked or varied.

Authorities,
consents,
dispensations etc.
may be revoked
or varied

379. Except as provided by this Act, an approval, authority, consent, dispensation, notice or permission given by a Customs officer or an authorised person may be revoked or varied by a Customs officer.

- (2) Any other approval, authority, consent, dispensation, notice or permission under this Act may be revoked or varied by the person who gave it.
- (3) A revocation or variation is not effective unless—
 - (a) it is communicated to the person to whom the approval, authority, consent, dispensation, notice or permission was given; and

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- (b) if the approval, authority, consent, dispensation, notice or permission was in writing - the revocation or variation is in writing; and
- (c) if the authority, approval, consent, dispensation, notice or permission was transmitted using an approved Customs computer system—the revocation or variation is transmitted to the person using the same system.

380. A Customs officer may give a direction to a person to whom a written instrument—

Authorities, consents, dispensations etc. must be produced on demand

- (a) by which an approval, authority, consent, dispensation, exemption, licence or permission under this Act was given; or
- (b) by which a condition was imposed on such an approval, authority, consent, dispensation, exemption, licence or permission;

to produce the instrument to Customs.

Note A person given a Customs direction must comply with it—see section 238.

381. (1) If a person does an act in compliance with—

Consequences of compliance with a direction or condition of an authority

- (a) a direction given to the person by a Customs officer; or
- (b) a condition of an authority, consent, dispensation, licence or permission;

under this Act, the act is taken to have been authorised by a Customs officer.

(2) If compliance with a direction results in a person parting with, moving or gaining possession of customs controlled goods, the direction is authority for the person to part with, move or have possession of the goods.

Note A licence is a Customs authority for the licensee to do what is licensed.

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Inquiries about
Customs
authorities

382. If a person asks a Customs officer to confirm that a particular Customs authority has been given—

- (a) a Customs officer is to tell the person whether the authority has been given; and
- (b) if the authority has been given—a Customs officer is to tell the person the identifying number, if any, that has been allocated by Customs to the authority.

False assertions
of Customs
authority

383. (1) A person commits an offence if the person—

- (a) does an act; and
- (b) holds himself or herself out as having Customs authority to do the act; and
- (c) does not in fact have Customs authority to do the act.

Penalty—100 penalty units.

(2) A person commits an offence if the person—

- (a) does an act; and
- (b) holds himself or herself out as having Customs authority to do the act; and
- (c) does not in fact have Customs authority to do the act; and
- (d) either—
 - (i) knows that he or she does not have that authority; or

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- (ii) is reckless as to whether he or she has that authority.

Penalty—200 penalty units or imprisonment for 12 months, or both.

Note “Act” includes omission—see section 4.

PART 13.4—NOTICES TO AND FROM CUSTOMS

384. (1) If, for this Act, information is to be given, or a matter reported, to Customs, the information or report may be given—

Giving information, reports etc to Customs

- (a) orally; or
- (b) in writing; or
- (c) by electronic means of communication, including radio, telephone and fax;

unless a provision of this Act or of a Customs authority specifies the way in which the information or report is to be given to Customs.

(2) Information to be given to Customs in writing is taken to be given only if it is given by a document that can be read without the aid of a device.

(3) If a provision of this Act requires that information be given to a specified Customs officer, or left at a specified place, or that a matter be reported to a specified Customs officer, the information is taken to be given to Customs only if it is given to such an officer or left at such a place.

385. Information or a document transmitted to an approved Customs computer system or to a person using an approved computer system is to be taken, for this Act, to have been received by the person if the procedures prescribed for transmissions to or from that system were complied with.

Evidence of transmission of information etc

386. (1) If, for this Act, a Customs officer or some other person may give an authority, direction, dispensation, consent, permission, approval or advice to a person, it may be given—

How Customs gives information etc.

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- (a) orally; or
 - (b) by signs; or
 - (c) in writing; or
 - (d) by electronic means of communication, including radio, telephone and fax.
- (2) An approval, advice, authority, consent, direction, dispensation, permission or request to be given to a person by Customs in writing is given to the person only if—
- (a) it is given by a document that can be read without the aid of a device; and
 - (b) in the case of an individual—it is given to the person personally;

unless a provision of this Act or of a Customs authority specifies the way in which it is to be given.

Giving directions
to captains and
craft

387. If, under this Act, a Customs officer or an authorised person may give a direction or indication to the captain of a craft, it must be given—

- (a) to the captain personally or to a person apparently in charge of the craft or, if there is no person apparently in charge, to a crew member; or
- (b) by being sent to the craft by an appropriate and internationally recognised means of communication.

PART 13.5—REGISTERED USERS OF CUSTOMS COMPUTER SYSTEMS

Division 1—Approval of computer systems

Approved
computer
systems

388. The Comptroller may, by notice in the Gazette, approve a computer system operated by Customs for the purpose of this Act, or for specified purposes in connection with this Act.

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389. (1) A person commits an offence if the person uses an approved computer system to transmit information to, or receive information from, Customs unless the person is—

Only registered users to use approved computer systems

- (a) a Customs officer; or
- (b) a registered user of the system.

Penalty—200 penalty units, or imprisonment for 5 years, or both.

Note The defendant bears the onus of establishing that he or she is a registered user of the system and must do so on the balance of probabilities—see section 307.

(2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) If a person who is not a registered user of the system uses an approved computer system to lodge an entry, or give to Customs a report, return or other information under this Act, the report, return or other information is taken never to have been given to Customs, and the entry is taken not to have been lodged.

390. The rules may make provision with respect to approved computer systems, including with respect to—

Rules for approved computer systems

- (a) applications for registration as a user of an approved computer system; and
- (b) security measures to be taken by users of approved computer systems.

Note For rules see section 419.

Division 2—Registration of users of approved computer systems

391. (1) A designated Customs officer may, on application by a person, register the person as a user of a specified approved computer system.

Registration

- (2) A person may be registered—
 - (a) as an individual user; or

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- (b) as a user representing a specified person (in this section, the “representative user”); or
- (c) as both an individual user and a representative user for a specified person.

Note For example, a person’s employee may be a representative user for the person.

(3) A person cannot be registered as a representative user for another person unless the other person agrees in writing.

(4) If—

- (a) a registered user is a representative user for another person (in this section, also a “represented person”); and
- (b) in that capacity, the registered user does a particular act;

the represented person is taken to have done the act.

Note “Act” includes omission—see section 4.

Applications for
registration

392. (1) An application for registration is to be in the relevant approved form.

(2) A designated Customs officer may give the applicant a notice requiring further specified information to be provided relevant to the application. A designated Customs officer need not deal further with the application until the information is provided.

Note This information may relate to, for example, the computer systems and security arrangements that the applicant proposes to use.

(3) An application under this Part is taken to have refused if a designated Customs officer has not given the applicant notice of the decision on the application—

- (a) within 30 days after the application was received; or
- (b) if a designated Customs officer gave the applicant a notice under subsection (2)—within

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30 days after the further information was provided.

Note A refusal is reviewable.

(4) Registration has effect from the day on which the notice of the decision is given to the applicant.

393. (1) A designated Customs officer must not register a person for an approved computer system if—

Restrictions on registrations

- (a) the person does not have a requirement to use the system on a regular basis; or
- (b) registering the person will pose an unacceptable risk to the security of the system or another Customs computer system or the security or integrity of data in such a system.

(2) Subsection (1) does not limit the grounds on which a designated Customs officer may refuse to register an applicant.

(3) Without limiting the matters that may be taken into account for subsection (1), the following matters may be taken into account—

- (a) whether the applicant's previous history of dealings with Customs, including electronic dealings, makes the applicant unsuitable for registration; and
- (b) the extent of the risk that the applicant will not comply with the rules applying in relation to the system; and
- (c) whether registering the applicant will lead to an unacceptable risk—
 - (i) of unlawful access to data in a Customs computer system (whether approved or not); or

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(ii) of data in a Customs computer system (whether approved or not) being interfered with or destroyed.

(d) whether information given in connection with the application is false or misleading in a material particular.

Registration conditions

394. (1) Registration under this Part is subject to the conditions specified in the notice of the decision.

(2) A registered user commits an offence if—

(a) he or she engages in conduct; and

(b) the conduct contravenes a condition of the registration.

Penalty—50 penalty units.

Note Contravention of a registration condition can also lead to suspension or cancellation of the registration—see sections 399, 400.

(3) A person (the “represented person”) commits an offence if—

(a) a person is registered as a representative user for the person;

(b) either the represented person or the representative user engages in conduct; and

(c) the conduct contravenes a condition of the representative user's registration.

(3) Strict liability applies to subsections (2) and (3).

Note For strict liability see section 300.

Varying conditions of registration

395. (1) A designated Customs officer may, by notice to a registered user, vary the user's registration by—

(a) imposing a condition on the registration; or

(b) modifying a condition; or

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- (c) omitting a condition.

Note A decision to impose a new condition, or modify a condition, is reviewable.

(2) A designated Customs officer may not impose a condition, or modify a condition, unless a designated Customs officer has given the registered user at least 30 days notice of the proposed condition or modification.

396. (1) A registered user must report the following events and circumstances to a Customs officer without delay— Reporting obligations of registered users

- (a) the user is convicted or found guilty of an offence against this Act or another border law;
- (c) the user becomes insolvent;
- (d) there is a material change in—
 - (i) security measures implemented by or in relation to the registered user; or
 - (ii) the kinds of records kept in relation to the registration or the use by the user of approved computer systems or the way that they are kept;
- (e) the user becomes a disqualified person;
- (f) the user becomes aware that information given in connection with the application for registration was false or misleading in a material particular;
- (g) if the user is a representative user of a person— the arrangement under which the user represents the person terminates.

Note For paragraph (g)—for example, if the representative user is the other person's employee, and the employment is terminated.

(2) For paragraph (1)(d), a material change is a change relevant to an assessment of the risk—

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- (a) of unlawful access to data in a Customs computer system (whether approved or not); or
 - (b) of data in a Customs computer system (whether approved or not) being interfered with or destroyed.
- (3) A registered user commits an offence if—
- (a) an event or circumstance set out in subsection (1) occurs; and
 - (b) a report about the matter is not made as required by that subsection.

Penalty—50 penalty units.

- (4) Strict liability applies to subsection (3).

Note For strict liability see section 300.

- (5) To avoid doubt, this section applies to events and circumstances that occur while the registration is suspended.

Duration and
renewal of
registration

- 397.** (1) Registration under this Part—
- (a) comes into force on the day it is granted or on a later day specified in the notice of registration; and
 - (b) unless sooner cancelled, remains in force until the next 30 June.
- (2) A designated Customs officer may, on application, renew a registration under this Part. The provisions of this Part apply in relation to a renewal in the same way as they apply to applications for licences.

Registration
cannot be
transferred

- 398.** A registration under this Part cannot be transferred to another person.

Suspension of
registration

- 399.** (1) A designated Customs officer may suspend a registration under this Part if the registered user requests the suspension, in writing.

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(2) A designated Customs officer may suspend a registration under this Part if—

- (a) it appears to a designated Customs officer that the registered user does not have a requirement to use the system on a regular basis; or
- (b) the user poses or will pose an unacceptable risk to the security of the system or another Customs computer system or the security or integrity of data in such a system; or
- (c) it appears to a designated Customs officer that a condition of the registration, or a requirement of this Part, has not been complied with by or in relation to the user; or
- (d) it appears to a designated Customs officer that the registered user is a disqualified person; or
- (e) a fee payable in respect of the registration is unpaid and has been unpaid for at least 30 days after it became payable.

Note A decision to suspend registration is reviewable.

(3) A notice of suspension under subsection (2) is to state that the registration may be cancelled after the end of 30 days after the notice is given.

Note The notice must also set out reasons for the suspension.

(4) A registration that is suspended does not have effect during the period when it is suspended, but the registered user remains subject to the obligations of a registered user during that period.

Note For example, reporting obligations (see section 396) will still apply.

(5) A designated Customs officer may revoke the suspension of a registration at any time.

400. (1) A designated Customs officer may cancel a registration under this Part if the registered user requests cancellation, in writing.

Cancellation of registration

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(2) If—

- (a) a registered user is a representative user for a person; and
- (b) the arrangement under which the user represents the person terminates;

a designated Customs officer must cancel the registration as soon as he or she becomes aware of the matter.

Note For example, if the representative user is the other person's employee, and the employment is terminated.

(3) A designated Customs officer may cancel a registration under this Part if—

- (a) a designated Customs officer is satisfied that—
 - (i) the registered user does not have a requirement to use the system on a regular basis; or
 - (ii) the user poses or will pose an unacceptable risk to the security of the system or another Customs computer system or the security or integrity of data in such a system; or
 - (iii) a condition of the registration, or a requirement of this Part, has not been complied with by or in relation to the user; or
 - (iv) the registered user is a disqualified person; or
- (e) a fee payable in respect of the registration is unpaid and has been unpaid for at least 30 days after it became payable.

Note A decision to cancel a licence is reviewable.

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(4) A designated Customs officer must not cancel a registration under subsection (2) unless a designated Customs officer—

- (a) has given the registered user written notice—
 - (i) of the proposed cancellation, and why; and
 - (ii) giving the registered user a specified period (at least 21 days) to show cause why the registration should not be cancelled; and
 - (iii) has taken into account any representations made by or for the registered user within the period in determining whether to cancel the registration; or
- (b) is satisfied on reasonable grounds that it is necessary to do so urgently to avoid an unacceptable risk to the security of a Customs computer system or the security or integrity of data in such a system.

(4) The cancellation of a registration has effect from the day the notice of cancellation is served on the registered user.

401. If a registration under this Part is cancelled, there is payable to the former registered user the proportion of the registration fee that corresponds to the unexpired portion of the period of the licence.

Refund of registration fees on cancellation

402. The following decisions under this Division are reviewable decisions—

Registration decisions reviewable

- (a) a decision to refuse to register a person;
- (b) a decision to impose a condition on a person's registration;

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- (e) a decision to vary a condition on a licence in accordance with an application by the registered user to do so;
- (f) a decision to suspend a person's registration under section 399(2);
- (g) a decision to cancel a person's registration under section 400(2).

Customs
powers—
registered users
etc

403. (1) A Customs officer may question an applicant for a licence under this Part about any matter to do with the application.

(2) A Customs officer may question any of the following—

- (a) a registered user of an approved computer system;
- (b) if the registered user is a representative user—the person represented;

about any matter to do with—

- (c) the registration of the registered user; or
- (d) any transaction in respect of which the registered user has used the relevant computer system.

Note Customs questions must generally be answered—see section 233.

(3) A Customs officer may give a direction to a person mentioned in subsection (1) or (2) to produce to a Customs officer a specified document that relates or may relate to a matter about which Customs officer may question the person under that subsection.

Notes This power may be exercised to facilitate checking compliance with border laws—see sections 6 and 232.

A person given a Customs direction must comply with it—see section 238.

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- (4) A Customs officer may examine any document produced in compliance with this section.

Notes For examining generally see Part 10.5.

Customs questions must generally be answered—see section 233.

Division 3—Security arrangements for approved computer systems

- 404.** (1) If a provision of this Act requires that a transmission to Customs on an approved computer system be authenticated by a person's PIN, the Comptroller is, on application, to allocate a PIN to the person. Allocating PINS

(2) The Comptroller, in allocating a PIN to a person, must specify the kinds for transmission for which the person may use the PIN.

(3) The Comptroller may, by notice to a registered user, specify a kind for transmission for which the person may use the PIN.

- 405.** (1) A person commits an offence if— PINS must be kept secure etc
- (a) the person is allocated a PIN under section 404; and
- (b) a prescribed procedure for maintaining the security of the PIN is not complied with.

Penalty—50 penalty units.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

(3) It is a defence to a prosecution for an offence against subsection (1) that the defendant took all reasonably practicable steps to ensure that the procedure was complied with.

- (4) A person who has been allocated a PIN commits an offence if—
- (a) the person becomes aware that the PIN is or is likely to be known to some other person; and

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- (b) the PIN is or is likely to be known to some other person because of a breach of subsection (1);

unless the person reports the matter to a Customs officer without delay.

Penalty—50 penalty units.

Note The defendant bears the onus of that the report was made and must do so on the balance of probabilities—see section 307.

PINS not to be used without proper authority

406. A person (in this section, the “user”) commits an offence if the person uses a PIN to authenticate a transmission of information to an approved computer system unless—

- (a) either—
- (i) the PIN had been allocated by the Comptroller to the user; or
- (ii) the person to whom the PIN had been allocated had authorised the user to use the PIN for the transmission; and
- (b) the transmission is of a kind specified by the Comptroller under section 404(2) or (3) for the person to whom the PIN had been allocated.

Penalty—50 penalty units.

Note The defendant bears the onus of establishing the matters in paragraphs (a) and (b) and must do so on the balance of probabilities—see section 307.

Effect of use of PINS, whether authorised or not

- 407.** (1) If—
- (a) under this Act, information that is to be given to Customs is to be or may be authenticated by a PIN; and
- (b) the information is transmitted to an approved computer system; and
- (c) the transmission is authenticated using the PIN;

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then, for all purposes, the transmission is taken to have been made by the person to whom the PIN was allocated.

(2) Subsection (1) does not apply if the person to whom the PIN was allocated had notified Customs, before the transmission was made, as mentioned in section 405(4).

Division 4— If an approved computer system is “down”

408. (1) If an approved computer system is not working, a requirement under this Act that information be transmitted to Customs by the system is complied with if the information is given in writing to a designated Customs officer.

What happens if an approved computer system is “down”?

(2) If—

- (a) a person transmits information to an approved computer system; and
- (b) the system stops working before an acknowledgment, or other communication required to be given by a Customs officer under this Act (which can include giving an authority) has been transmitted by a Customs officer by using the system;

a Customs officer must give the acknowledgment or other communication in writing to the person.

PART 13.6—SECREC Y

409. In this Part—

Interpretation

“officer” means a person—

- (a) who is or has at any time been a Customs officer or an authorised person; or
- (b) to whom powers or functions are or have at any time been delegated by the Comptroller; or
- (c) a Committee member;

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- (d) although not a Customs officer or an authorised person, is or has at any time been engaged to provide services to the Comptroller in relation to this Act; or
- (e) who, whether or request, by invitation or otherwise, provides information or documents to the Committee in connection with an application under Division 2 of Part 6.4 or under a corresponding provision of another law;

“protected document” means a document that contains protected information (even if it also contains other information);

“protected information”, in relation to an officer, means information obtained by the officer because of the officer’s appointment, employment or engagement as an officer, being information about—

- (a) a person in respect of his or her personal, business, financial, commercial or professional affairs; or
- (b) an organisation (which includes a body corporate) in respect of its business, financial, commercial or professional affairs;

and being information the disclosure of which would adversely affect the personal or other affairs mentioned of the person or the business or other affairs of the organisation.

Secrecy

410. (1) An officer commits an offence if the officer, directly or indirectly—

- (a) makes a record of any protected information; or
- (b) discloses any protected information to another person.

Penalty—200 penalty units, or imprisonment for 5 years, or both.

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(2) It is a defence to a prosecution for an offence against subsection (1)—

- (a) that the act concerned was—
 - (i) done for the purposes of this Act; or
 - (ii) authorised by this section; or
- (b) if the officer is a Committee member or an alternate—that the act concerned was done for the purposes of performing the Committee’s functions (including under another written law); or
- (c) if the offence consists of disclosure of protected information about a person—that the disclosure was made with the written consent of the person; or
- (d) if the offence consists of disclosure of protected information about an organisation—that the disclosure was made with the written consent of the organisation.

Note “This Act” includes the Regulations—see section 4.

(3) An officer is not to be required—

- (a) to produce a protected document in or to a court, tribunal, commission or other adjudication body; or
- (b) to divulge or communicate to a court, tribunal, commission or other adjudication body a matter or thing with respect to information disclosed or obtained under or for the purposes of this Act;

unless it is necessary to do so—

- (c) for the administration of this Act; or
- (d) if the officer is a Committee member or an alternate—for the purposes of the

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administration of a written law that confers functions on the Committee.

CHAPTER 14—MISCELLANEOUS**PART 14.1—MISCELLANEOUS**

Ships' agents

411. (1) A ship's agent must be an individual resident in Solomon Islands or a company carrying on business in Solomon Islands.

(2) Any act of the ship's agent in relation to the ship for the purposes of this Act binds the captain and the operator of the ship.

Note "This Act" includes the regulations and the rules.

(3) A Customs officer may require a ship's agent to provide a customs security or securities to secure compliance with this Act in respect of the ship.

Note For customs securities see Part 10.10.

Report of wrecks

412. (1) If—

- (a) a craft on an international journey is wrecked anywhere in Solomon Islands or in the territorial sea; and
- (b) a report of the matter is not made to Customs without delay;

the captain of the craft, and the operator of the craft, each commits an offence.

Penalty—50 penalty units.

(2) A person who finds a wreck anywhere in Solomon Islands or in the territorial sea commits an offence if—

- (a) the person is or becomes aware that the craft, when wrecked, was on an international journey; and

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- (b) fails to report the matter to Customs without delay.

Penalty—20 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) that the matter had already been reported—

- (a) in the case of a ship—under the Shipping Act 1998; or
- (b) in the case of an aircraft—under the Civil Aviation Act 2008; or
- (c) in any case—to a Customs officer.

(4) The operator of a craft commits an offence if—

- (a) the craft is on an international journey; and
- (b) the craft is wrecked in Solomon Islands or in the territorial sea; and
- (c) a report about the craft and its cargo, in the approved form, is not given to a Customs officer as soon as practicable after the operator becomes aware that the craft is wrecked.

Penalty—50 penalty units.

(5) Strict liability applies to subsection (4).

Note For strict liability see section 300.

(6) It is a defence to a prosecution for an offence against subsection (4) that—

- (a) a Customs officer had dispensed with the need to give the information; or
- (b) the information had already been given to a Customs officer.

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- 413.** (1) A person commits an offence if—
- (a) the person gives information to a Customs officer in connection with the operation of a border law; and
 - (b) the information is false or misleading in a material particular.

Penalty—50 penalty units.

- (2) Strict liability applies to subsection (1).

Note For strict liability see section 300.

- (3) A person commits an offence if—
- (a) the person gives information to a Customs officer in connection with the operation of a border law; and
 - (b) the information is false or misleading in a material particular; and
 - (c) at the time when the information was given, the person knew that it was false or misleading.

Penalty—200 penalty units or imprisonment for 5 years, or both.

- (4) A person commits an offence if—
- (a) the person gives information to Customs in connection with the operation of a border law; and
 - (b) the information is false or misleading in a material particular; and
 - (c) at the time when the information was given —
 - (i) the person knew facts that would have led a reasonable person in the person's

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position to believe that it was false or misleading; and

- (ii) the person did not take such measures as would have been reasonable for a person in the person's position to take to find out the truth of the matter.

Penalty—150 penalty units or imprisonment for 2 years, or both.

(5) Subsections (1), (3) and (4) do not apply to giving information about a matter referred to in section 172.

Note Section 172 is about false or misleading statements relevant to duty.

(6) To avoid doubt, this section extends to information given to Customs in a declaration that a person is required by this Act to give or make to Customs.

(7) Information may be false or misleading by what is omitted as well as by what is asserted.

(8) This section does not apply to information referred to in section 172.

Note Section 172 relates to information relating to duty.

414. (1) An amount demanded in a duty or recovery demand (other than an amount demanded on account of duty) is due and payable at the end of 14 days after the demand is served.

Recovery of amounts

Note For example, amounts of cost recovery, or fees and charges.

(2) The amount may be recovered by action in a court of competent jurisdiction.

415. All transactions and dealings under this Act are to be denominated, calculated and paid in Solomon Islands currency unless the Comptroller otherwise determines in writing in a particular case.

Amounts to be in SBD

416. Amounts payable under this Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Appropriation

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Repeals,
transitional and
savings
provisions

417. (1) The Customs and Excise Act (Cap. 121) and the Customs Valuation Act 2009 (each, a “former law”) are repealed.

(2) The laws specified in Schedule 1 are repealed or amended, as set out in that Schedule.

(3) Each person holding office as a Customs officer at the commencement of this Act continues to hold that office, but this section does not prevent the revocation of his or her appointment under this Act or the Public Service Act (Cap. 92).

(4) If a person, at the commencement of this Act, holds a licence under the former law—

- (a) the person is taken to hold the corresponding licence under this Act, subject to the conditions, if any, applicable to the licence; and
- (b) the licence expires, unless sooner cancelled under this Act, at the end of the financial year after the financial year in which this Act commences.

Foreign state
immunities
preserved

418. (1) Except as expressly provided by this Act (and not by regulations or rules), this Act (including the regulations and the rules) does not affect the privileges and immunities of a foreign State.

(2) For subsection (1)—

- (a) “foreign State” has the meaning given to that term by the Diplomatic Privileges and Immunities Act (Cap. 67);
- (b) the reference to privileges and immunities of a foreign State is a reference to all those privileges or immunities, whether accorded by that Act or otherwise.

Rules

419. (1) The Comptroller may make rules, not inconsistent with this Act or the regulations, prescribing matters—

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- (a) required or permitted by this Act to be prescribed by rules; or
 - (b) necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), rules may make provision with respect to any of the following—
- (a) the keeping of documents that this Act or a record keeping arrangement requires to be kept;
 - (b) giving information and reports to Customs;
 - (c) making declarations to Customs;
 - (d) prescribing penalties, not exceeding 200 penalty units, for offences against the rules.
- (3) To avoid doubt, rules may not make provision—
- (a) imposing fees or charges; or
 - (b) for fixing rates of duty; or
 - (c) prohibiting or restricting the import or export of goods.
- (4) Rules in respect of giving information or reports to Customs may provide that the information required by the relevant approved form be provided.
- (5) Rules are subsidiary legislation for the purposes of the Interpretation and General Provisions Act (Cap. 85).

Note This means that rules, and amendments to rules, must be tabled in Parliament and may be subject to annulment under section 62 of the Interpretation and General Provisions Act (Cap. 85).

420. (1) The Minister may make regulations prescribing matters—

Regulations

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- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the subsection (1), regulations may be made—
- (a) with respect to fees to be paid for applications, entries, authorisations, licences and other matters under this Act; and
 - (b) without limiting paragraph (a)—
 - (i) imposing annual licence fees in respect of licences and registration under this Act; and
 - (ii) imposing fees and charges, and other terms and conditions, in respect of the storage of goods at Government warehouses; and
 - (iii) authorising or requiring a Customs officer to waive the payment of fees or charges, or refund fees or charges, in particular cases on hardship or other special grounds; and
 - (iv) providing that, if fees or charges payable by a person remain unpaid after the due date for payment, a Customs officer may determine not to provide services or perform functions under this Act to or for the person liable to pay the fees or charges; and
 - (c) prescribing penalties, not exceeding 100 penalty units, for offences against the regulations.

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- (3) Without limiting the subsection (1), regulations may be made modifying the application of this Act in relation to installations, including—
- (a) requiring Customs authority for the operation of an installation; and
 - (b) making provision applying provisions of this Act, with modifications specified in the regulations, in relation to installations and activities on or in relation to installations.
- (4) Paragraph (2)(c) does not limit the operation of regulations made under subsection (3).

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Schedule 1—Amendments to other taxation legislation

*This schedule will contain any consequential amendments to
other taxation legislation*
