

1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1991

(Minister for Small Business and Customs)

A BILL

FOR

An Act to amend the *Customs Act 1901*

The Parliament of Australia enacts:

Short title etc.

1. (1) This Act may be cited as the *Customs Amendment Act 1991*.
- (2) In this Act, “Principal Act” means the *Customs Act 1901*¹.

5 Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. Section 4 of the Principal Act is amended by omitting paragraph
10 (a) of the definition of “Division 1B Judge” in subsection (1) and substituting the following paragraph:

“(a) a Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory, or of the Family Court of Australia, in relation to whom a consent under subsection 219RA (1) and a nomination under subsection 219RA (2) are in force; or”.

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4. Before section 219S of the Principal Act the following section is inserted in Subdivision C of Division 1B of Part XII:

Certain Judges and Magistrates eligible to give orders under this Subdivision

“219RA. (1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Family Court of Australia may, by writing, consent to be nominated by the Minister under subsection (2).

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“(2) The Minister may, by writing, nominate a Judge of a court referred to in subsection (1) in relation to whom a consent is in force under that subsection to be a Division 1B Judge.”.

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Repeal of section 219AB

5. Section 219AB of the Principal Act is repealed.

6. Section 219ZL of the Principal Act is repealed and the following section is substituted:

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Protection of Judge or Magistrate

“219ZL. (1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Family Court of Australia has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

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“(2) A Judge of the Supreme Court of a State, or a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in subsection (1), has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as if he or she were performing that function as that Supreme Court or as a member of that Supreme Court.

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“(3) A Magistrate performing a function of, or connected with, issuing a warrant or giving an order under this Part has the same protection and immunity as if he or she were performing that function as a Magistrates Court or as a member of a Magistrates Court.”.

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Interpretation

7. Section 269T of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

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“ ‘agricultural operations’ means:

- (a) the cultivation or gathering in of crops; or
- (b) the rearing of live-stock; or
- (c) the conduct of forestry operations;

and includes:

- 5 (d) viticulture, horticulture or apiculture; or
- (e) hunting or trapping carried on for the purpose of a business;

10 **'fish'** means freshwater or salt-water fish, and includes turtles, dugong, crustacea, molluscs or any other living resources of the sea or of the sea-bed;

'fishing operations' means:

- (a) the taking, catching or capturing of fish; or
- (b) the farming of fish; or
- (c) pearling operations;

15 **'forestry operations'** means the felling, in a forest or plantation, of standing timber;

'production cost', in relation to processed agricultural goods, means the sum of the direct labour costs, the direct material costs and the factory overhead costs incurred in relation to those goods;

20 **'raw agricultural goods'** means goods directly obtained by the undertaking of any agricultural operation or any fishing operation;”;

- 25 (b) by omitting subsection (4) and substituting the following subsections:

“(4) For the purposes of this Part, if, in relation to goods of a particular kind, there is a person or there are persons who produce like goods in Australia:

- 30 (a) there is an Australian industry in respect of those like goods; and
- (b) subject to subsection (4A), the industry consists of that person or those persons.

35 “(4A) Where, in relation to goods of a particular kind first referred to in subsection (4), the like goods referred to in that subsection are close processed agricultural goods, then, despite subsection (4), the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.

40 “(4B) For the purposes of subsection (4A), processed agricultural goods derived from raw agricultural goods are not to be taken to be close processed agricultural goods unless the Comptroller is satisfied that:

- (a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods; and
- (b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods; and
- (c) either:

- (i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or

- (ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be, constituted by the cost to the producer of those goods of the raw agricultural goods.

“(4C) Where the Comptroller is satisfied that sufficient information has not been furnished or is not available to enable the production cost of processed agricultural goods to be ascertained for the purpose of subsection (4B), the production cost of those goods is such amount as is determined by the Comptroller having regard to all relevant information.”.

Comptroller to have regard to same considerations as Minister in certain circumstances

8. Section 269TE of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Where the Comptroller:

- (a) in making a decision under section 269TC to accept or reject an application in relation to the goods the subject of the application; or
- (b) in making a preliminary finding under section 269TD in relation to those goods;

is required to determine any matter ordinarily required to be determined by the Minister under the Anti-Dumping Act in respect of those goods, the Comptroller:

- (c) must determine the matter in like manner as if he or she was the Minister; and
- (d) must have regard to the same considerations (other than the considerations referred to in subsection 8 (5A), 9 (5A), 10 (5A) or 11 (5A) of that Act, whichever is appropriate) to which the Minister would be required to have regard under that Act if the Minister were determining the matter.”.

Periods during which certain notices and undertakings to remain in force

9. (1) Section 269TM of the Principal Act is amended:

- (a) by omitting subsections (1), (2) and (3) and substituting the following subsections:

“(1) Where a notice is published after this section commences under a relevant notification provision in respect of goods of a particular kind, that notice expires 3 years after the day on which it is published unless it is revoked before the end of that period.

“(2) Where an undertaking is entered into after this section commences under a relevant undertaking provision in respect of goods of a particular kind, that undertaking expires 3 years after the day on which it was entered into unless provision is made for its earlier expiration.”;

(b) by omitting subsection (6).

(2) Where a notice was published under a relevant notification provision of the Principal Act before this section commences, subsections 269TM (1) and (3) of the Principal Act as in force immediately before this section commences continue in force in relation to that notice as if the amendments made by paragraph (1) (a) of this section had not been made.

(3) Where an undertaking was entered into under a relevant undertaking provision of the Principal Act before this section commences, subsections 269TM (2) and (3) of the Principal Act as in force immediately before this section commences continue in force in relation to that undertaking as if the amendments made by paragraph (1) (a) of this section had not been made.

(4) For the purposes of subsections (2) and (3), “relevant notification provision” and “relevant undertaking provision” have the same meaning as they have under section 269TM of the Principal Act.

NOTE

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 9, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66, 76, 99, 120 and 121, 1988; Nos. 23, 24, 78, 108 and 174, 1989; and Nos. 6, 11, 37, 70 and 79, 1990.

