

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

CUSTOMS (DETENTION AND SEARCH) BILL 1989

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 30 November 1989

*(Minister representing the Minister for Industry,
Technology and Commerce)*

A BILL

FOR

An Act to amend the *Customs Act 1901*, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Customs (Detention and Search) Act 1989*.

Commencement

2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

10 **(2)** If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

PART 2—AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

3. In this Part, “Principal Act” means the *Customs Act 1901*¹.

Interpretation

4. (1) Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions: 5

“Carry”, for the purposes of Division 1B of Part XII, has the meaning given by subsection (19);

‘Detention officer’ means:

- (a) for the purposes of Subdivision A of Division 1B of Part XII—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA (1); or 10
- (b) for the purposes of Subdivision B of that Division—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA (2); or 15
- (c) for the purposes of Subdivision C of that Division—an officer of Customs who is a detention officer because of a declaration under subsection 219ZA (3);

‘Detention place’ means:

- (a) for the purposes of Subdivision B of Division 1B of Part XII—a place that is a detention place because of subsection 219ZB (1); and 20
- (b) for the purposes of Subdivision C of that Division—a place that is a detention place because of subsection 219ZB (2);

‘Division 1B Judge’ means: 25

- (a) a Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory; or
- (b) a Judge of the Supreme Court of a State to whom an appropriate arrangement under subsection 11 (1) applies; or
- (c) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in paragraph (a) and to whom an appropriate arrangement under subsection 11 (2) applies; 30

‘Division 1B Magistrate’ means:

- (a) a Magistrate of the Australian Capital Territory; or
- (b) a Magistrate of a State to whom an appropriate arrangement under subsection 11 (1) applies; or 35
- (c) a Magistrate of the Northern Territory to whom an appropriate arrangement under subsection 11 (2) applies;

‘External search’, in relation to a person, means a search of the body of, and of anything worn by, the person: 40

- (a) to determine whether the person is carrying any prohibited goods; and
- (b) to recover any such goods;

but does not include an internal examination of the person’s body;

'Frisk search', in relation to a person, means:

- (a) a quick search of the person by the rapid and methodical running of hands over the person's outer garments; and
- (b) an examination of anything worn by the person that can be conveniently removed and is voluntarily removed by the person;

to:

- (c) determine whether the person is carrying any prohibited goods; and
- (d) recover any such goods;

'In need of protection' has the meaning given by subsection (20);

'Internal search', in relation to a person, means an examination (including an internal examination) of the person's body to determine whether the person is internally concealing a substance or thing, and includes the recovery of any substance or thing suspected on reasonable grounds to be so concealed;

'Lawyer' means a person who has been admitted in a State or Territory to practise as a barrister, as a solicitor or as a barrister and solicitor and whose right so to practise is not suspended or has not been cancelled;

'Medical practitioner' means any person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners;

'Prohibited goods' means:

- (a) goods whose importation or exportation is prohibited by this Act or any other law of the Commonwealth; or
- (b) goods whose importation or exportation is subject to restrictions or conditions under this Act or any other law of the Commonwealth; or
- (c) goods subject to the control of the Customs;

'Suspicious substance' means a narcotic substance that would, or would be likely to, assist in the proof of the commission by any person of an offence against this Act that is punishable by imprisonment for a period of 7 years or more;".

(2) Section 4 of the Principal Act is amended by adding at the end the following subsections:

"(19) A reference in Division 1B of Part XII to a person carrying prohibited goods includes a reference to a person having prohibited goods on his or her person.

"(20) For the purposes of Division 1B of Part XII, a person is in need of protection if, and only if, the person is:

- (a) under 17 years of age; or

- (b) in a mental or physical condition (whether temporary or permanent) that makes the person incapable of managing his or her affairs.”.

Arrangements with States and the Northern Territory

5. Section 11 of the Principal Act is amended:

- (a) by inserting after paragraph (1) (a) the following paragraph: 5
 “(aa) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that State of the functions of a Judge under Subdivision C of Division 1B of Part XII; and”;
- (b) by omitting from paragraph (1) (b) “sections 196 and 196A.” and substituting “that Subdivision; and”; 10
- (c) by adding at the end of subsection (1) the following paragraph:
 “(c) for the performance by all or any of the persons who are medical practitioners employed by that State of the functions of a medical practitioner under Division 1B of Part XII.”; 15
- (d) by inserting after paragraph (2) (a) the following paragraph:
 “(aa) for the performance by all or any of the persons who from time to time hold office as Judges of the Supreme Court of that Territory (and are not also Judges of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory) of the functions of a Judge under Subdivision C of Division 1B of Part XII; and”; 20
- (e) by omitting from paragraph (2) (b) “sections 196 and 196A.” and substituting “that Subdivision; and”; and
- (f) by adding at the end of subsection (2) the following paragraph: 25
 “(c) for the performance by all or any of the persons who are medical practitioners employed by that Territory of the functions of a medical practitioner under Division 1B of Part XII.”.

Power to question passengers etc. 30

6. Section 195 of the Principal Act is amended by omitting paragraphs (1) (f) and (g) and substituting the following word and paragraph:

“or (f) prohibited goods.”.

Repeal

7. Section 196 of the Principal Act is repealed. 35

8. After Division 1A of Part XII of the Principal Act the following Divisions are inserted:

“Division 1B—Detention and search of suspects

“Subdivision A—Detention and frisk search of suspects

Detention for frisk search

5 “219L. (1) Where, at a place identified under section 234AA as a place of a kind referred to in that section, a detention officer forms a reasonable suspicion that a person is unlawfully carrying any prohibited goods, an officer of Customs may detain the person at the place for the purposes of being searched under this Subdivision.

10 “(2) Without limiting the generality of subsection (1), a reasonable suspicion includes a suspicion reasonably formed on the basis of any of the following:

- (a) the person’s travel itinerary, including plans in relation to places that have been visited or are intended to be visited by the person;
- 15 (b) declarations or statements made under a law of the Commonwealth by the person in the course of arriving in or departing from Australia;
- (c) documents in the person’s possession, including passports, visas or tickets;
- (d) unusual behaviour of the person observed by or reported to an
20 officer of Customs;
- (e) the contents of or appearance of the person’s baggage.

Frisk search

“219M. (1) A frisk search of a person detained under section 219L is not to be carried out unless it is carried out:

- 25 (a) as soon as practicable after the detainee is detained; and
- (b) by an officer of Customs who is of the same sex as the detainee.

“(2) Before carrying out the frisk search, the officer of Customs must:

- 30 (a) advise the detainee of the detainee’s right to request that the search be carried out in an area of the place of detention that would, in the Comptroller’s opinion, provide adequate personal privacy to the detainee during the search; and
- (b) if the detainee so requests, take the detainee to such an area.

Power to require production of things

35 “219N. The officer of Customs carrying out the frisk search may require the production of any things found, as a result of the search, to be carried by the detainee in order to determine whether they are, or contain, prohibited goods unlawfully carried by the detainee.

Persons to whom section 219R applies

“219P. Section 219R applies to a person detained under section 219L if:

- (a) the detainee refuses to submit to a frisk search under this Subdivision; or
- (b) the detainee, having submitted to the frisk search, refuses to produce a thing that he or she is required to produce under section 219N. 5

“Subdivision B—Detention and external search of suspects

Detention for external search

“219Q. (1) Where a detention officer or police officer suspects on reasonable grounds that a person is unlawfully carrying any prohibited goods, an officer of Customs or police officer may detain the person for the purposes of being searched under this Subdivision. 10

“(2) Where a person is so detained, an officer of Customs or police officer must, as soon as practicable, take the person to:

- (a) a detention place that the officer considers suitable for the detention of the person for the purposes of this Subdivision; or 15
- (b) a place (other than a detention place):
 - (i) if the person is detained by a detention officer—that, in the Comptroller’s opinion, affords adequate personal privacy to the person; or 20
 - (ii) if the person is detained by a police officer—that, in the police officer’s opinion, affords adequate personal privacy to the person.

External search

“219R. (1) Where: 25

- (a) by force of section 219P, this section applies to a person detained under section 219L; or
- (b) a detention officer or police officer suspects on reasonable grounds that a person detained under section 219Q is unlawfully carrying prohibited goods; 30

then:

- (c) subject to subsection (5), if:
 - (i) there are reasonable grounds to believe that the detainee is not in need of protection; and
 - (ii) the detainee consents to be searched; 35
 an officer of Customs or police officer must, as soon as practicable, carry out an external search of the detainee; or
- (d) in any other case, the detention officer or police officer must, as soon as practicable, apply to an authorised officer, the Comptroller, or a Justice, for an order for an external search of the detainee. 40

“(2) Subject to subsection (3), the person to whom an application is made may order that an external search of the detainee be carried out.

5 “(3) The person must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is unlawfully carrying prohibited goods.

“(4) Where the person does not make such an order, he or she must order that the detainee be released immediately.

10 “(5) If an external search of the detainee is ordered and the person making the order is satisfied that the detainee is in need of protection, the person must order that the search be carried out in the presence of:

- (a) the detainee’s legal guardian; or
- (b) a specified person (not being an officer of Customs or a police officer) who is capable of representing the detainee’s interests in relation to the search.

15 “(6) So far as is practicable, a person mentioned in an order under subsection (5) as the person in whose presence an external search is to be carried out must be acceptable to the detainee.

“(7) Subject to subsection (8), the detainee may at any time communicate with another person.

20 “(8) An officer of Customs or police officer may stop the detainee from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:

- (a) safeguard the processes of law enforcement; or
- (b) protect the life and safety of any person.

25 “(9) Where:

- (a) an external search of the detainee is ordered; and
- (b) a detention officer or police officer still suspects on reasonable grounds that the detainee is unlawfully carrying prohibited goods;

30 an officer of Customs or police officer may, subject to subsections (5) and (10), carry out an external search of the detainee.

“(10) An external search of the detainee is to be carried out by a person who is of the same sex as the detainee.

“(11) While:

35 (a) a person is detained under section 219L and, by force of section 219P, this section applies to the person; or

(b) a person is detained under section 219Q;

a detention officer or police officer may question the person:

(c) for the purpose of carrying out an external search of the person under this section; or

- (d) concerning any prohibited goods found to have been illegally carried by the person as a result of the carrying out of an external search of the person under this section.

“(12) The detention officer or police officer must not question the detainee under subsection (11) unless the detention officer or police officer has informed the detainee:

- (a) that the detainee is not obliged to answer any questions asked of him or her; and
 (b) that anything said by him or her may be used in evidence; and
 (c) of his or her right to communicate with another person.

“(13) In this section:

‘**authorised officer**’ means an officer of Customs authorised in writing by the Comptroller for the purposes of this section.

“Subdivision C—Detention and internal search of persons suspected of internally concealing substances etc.

Initial detention

“219S. (1) Where a detention officer or police officer suspects on reasonable grounds that a person is internally concealing a suspicious substance, an officer of Customs or police officer may detain the person for the purposes of enabling an application for an order for the detention of the person under section 219T to be made.

“(2) If the person is so detained, an officer of Customs or police officer:

- (a) must, as soon as practicable, take the person to the nearest detention place that the officer considers suitable for the detention of the person for the purposes of this Subdivision; and
 (b) may, subject to subsections 219Z (3), (4), (5) and (6), detain the person at that place for those purposes.

Initial order for detention

“219T. (1) Where a person is detained under section 219S and subsection 219V (2) does not apply, the Comptroller or a police officer must, as soon as practicable, apply:

- (a) if there are reasonable grounds to suspect that the person is in need of protection—to a Division 1B Judge; or
 (b) in any other case—to a Division 1B Judge or a Division 1B Magistrate;

for an order that the detainee be detained.

“(2) Subject to subsection (3), the Judge or Magistrate may order that the detainee be detained under this section for a period of 48 hours from:

- (a) the time at which the detention began; or
 (b) the time at which the order is made;

as the Judge or Magistrate thinks fit.

“(3) The Judge of Magistrate must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

5 “(4) Where the Judge or Magistrate does not make such an order, he or she must order that the detainee be released immediately.

“(5) Where:

(a) a Judge or Magistrate orders that a detainee be detained under this section; and

10 (b) the Judge or Magistrate is satisfied that the detainee is in need of protection;

the Judge or Magistrate must appoint a person (not being an officer of Customs or police officer) to represent the detainee’s interests in relation to this Division until the detainee is no longer in need of protection.

15 “(6) So far as is practicable, a person so appointed must be acceptable to the detainee.

Renewal of order for detention

“219U. (1) Where:

(a) a person is being detained under an order under section 219T; and

20 (b) a detention officer or police officer decides that a further period of detention is necessary in order to determine whether the person is internally concealing a suspicious substance;

the Comptroller or a police officer may apply:

(c) if there are reasonable grounds to suspect that the detainee is in need of protection—to a Division 1B Judge; or

25 (d) in any other case—to a Division 1B Judge or a Division 1B Magistrate;

for an order that the detainee be further detained.

30 “(2) Subject to subsection (3), the Judge or Magistrate may order that the detainee be further detained under this section for a period of 48 hours from the end of the period for which the unexpired order is in force.

“(3) The Judge or Magistrate must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

35 “(4) Where the Judge or Magistrate does not make such an order, he or she must order that, at the end of the period for which the unexpired order is in force, the detainee be released immediately.

Arrangement for internal search

40 “219V. (1) This section applies only so long as a detention officer or police officer suspects on reasonable grounds that the detainee is internally concealing a suspicious substance.

“(2) If:

(a) there are no reasonable grounds to believe that the detainee is in need of protection; and

(b) the detainee signs a written consent to be internally searched;

an officer of Customs or police officer must, as soon as practicable, arrange for an internal search of the detainee.

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“(3) If:

(a) there are no reasonable grounds to believe that the detainee is in need of protection; and

(b) the detainee has been detained under section 219U; and

(c) the detainee has not signed a written consent to be internally searched;

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the Comptroller or a police officer must, before the end of the period of detention under that section, apply to a Division 1B Judge for an order for an internal search of the detainee.

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“(4) If there are reasonable grounds to believe that the detainee is in need of protection, the Comptroller or a police officer must:

(a) if a person has been appointed under subsection 219T (5) or 219X (3) to represent the detainee’s interests in relation to this Division and that person consents to the detainee being internally searched—as soon as practicable after the consent is given; or

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(b) if paragraph (a) does not apply, and the detainee has been detained under section 219U—before the end of the period of that detention;

apply to a Division 1B Judge for an order for an internal search of the detainee.

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“(5) After the end of a period of detention under section 219S, 219T or 219U, the detainee may be further detained by force of this subsection:

(a) if subsection (2) applies—until the internal search is completed; or

(b) if subsection (3) or (4) applies—until an order under this section is granted.

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“(6) Subject to subsection (7), the Judge may order that the detainee:

(a) be internally searched, the search to start:

(i) if consent to the search has been given under paragraph (4) (a)—as soon as practicable after the order is made; or

(ii) in any other case—not sooner than the end of the period of detention under section 219U;

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and no later than a time specified in the order; and

(b) be detained as long as is reasonably necessary for the internal search to be completed.

“(7) The Judge must not make such an order unless he or she is satisfied that there are reasonable grounds for suspecting that the detainee is internally concealing a suspicious substance.

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“(8) Where the Judge does not make such an order, he or she must order that the detainee be released immediately.

5 “(9) The time specified in an order under paragraph (6) (a), including that time as extended under subsection (10), must not be later than 48 hours after:

- (a) if the detainee is being detained under section 219S, 219T or 219U—the end of the period of that detention; or
- (b) if the detainee is being detained under subsection (5)—the time when that detention began.

10 “(10) On application made by the Comptroller or a police officer within the time specified in an order under paragraph (6) (a) or the time as extended under this subsection, the Judge may extend that time, subject to subsection (9).

Detention under this Subdivision

15 “219w. (1) A person detained under this Subdivision may at any time:
(a) consult a lawyer; or
(b) subject to subsection (3), communicate with another person.

20 “(2) Where a person detained under this Subdivision wishes to consult a lawyer, an officer of Customs or police officer must arrange for the person to consult a lawyer of the person’s choice.

“(3) An officer of Customs or police officer may stop a person so detained from communicating with another person if the officer believes on reasonable grounds that such communication should be stopped in order to:
25 (a) safeguard the processes of law enforcement; or
(b) protect the life and safety of any person.

“(4) While a person is being detained under an order under this Subdivision, or has consented to an internal search under this Subdivision, a detention officer or police officer may ask the person such questions as are reasonable:

- 30 (a) to determine whether the person is internally concealing a suspicious substance; or
(b) concerning any such substance found to have been internally concealed by the person.

35 “(5) The detention officer or police officer must not question the detainee under subsection (4) unless the detention officer or police officer has informed the detainee:

- 40 (a) that the detainee is not obliged to answer any questions asked of him or her; and
(b) that anything said by him or her may be used in evidence; and
(c) of his or her right to consult a lawyer or communicate with another person.

“(6) While the person is detained under an order made under this Subdivision:

- (a) subject to section 219ZF, the person is to be detained at a detention place; and
- (b) the detention is to be conducted with such medical supervision as is specified in an order relating to the person’s detention under this Subdivision; and 5
- (c) the detainee, his or her representative or (where applicable) a person appointed under subsection 219T (5) or 219X (3) to represent the detainee’s interests in relation to this Division may at any time apply to: 10
 - (i) if the order was made by a Judge—a Division 1B Judge; or
 - (ii) if the order was made by a Magistrate—a Division 1B Judge or a Division 1B Magistrate;
 for the order to be revoked. 15

Detainee becoming in need of protection

“219X. (1) If:

- (a) at any time while a person is being detained under this Subdivision, there are reasonable grounds to believe that the detainee has become in need of protection; and 20
- (b) until that time, the detainee has not been treated under this Subdivision as being in need of protection;

the Comptroller or a police officer must, as soon as practicable, apply for an order under this section.

“(2) The application is to be made: 25

- (a) if the person is being detained under an order made by a Division 1B Judge or Division 1B Magistrate—to such a Judge or Magistrate, as the case may be; or
- (b) if not—to a Division 1B Judge.

“(3) The Judge or Magistrate must, if satisfied that the detainee is in need of protection, appoint a person (not being an officer of Customs or a police officer) to represent the detainee’s interests in relation to this Division until the detainee is no longer in need of protection. 30

“(4) So far as is practicable, a person so appointed must be a person acceptable to the detainee. 35

Applications for orders under this Subdivision

“219Y. (1) A detainee must be given adequate opportunity to obtain legal advice and legal representation in relation to an application for an order under this Subdivision.

“(2) An application under this Subdivision may be made orally or in writing and, subject to subsection (5), must be made in person, and on oath or affirmation, at a hearing before the relevant Judge or Magistrate. 40

“(3) Subject to subsection (4), the detainee has the right to be present at, to make submissions to, and to be represented before, any hearing before the Judge or Magistrate.

5 “(4) The Judge or Magistrate, to the extent that he or she thinks necessary to:

- (a) safeguard the processes of law enforcement; or
- (b) protect the life and safety of any person;

may:

- 10 (c) restrict the rights under subsection (3) of the detainee to hear or have access to evidence presented by or on behalf of the Comptroller or a police officer; or
- (d) order that a witness not be required to answer a question or to produce a document.

15 “(5) Where it is not practicable to make an application under this Subdivision in person, the application may be made by telephone or any other appropriate method of communication, and:

- (a) if the Judge or Magistrate so requires—the detainee or the detainee’s representative is to be given an opportunity to make submissions to the Judge or Magistrate by the same method of communication; and
- 20 (b) as soon as practicable after making the application, the Comptroller or a police officer must give the Judge or Magistrate a statutory declaration setting out the facts and reasons supporting the application.

Internal search

25 “219Z. (1) An internal search is to be carried out by a medical practitioner.

“(2) Where the detainee is in need of protection, the search is to be carried out in the presence of the person appointed under subsection 219T (5) or 219X (3).

30 “(3) Subject to subsection (5), the search is to be carried out at a place that:

- (a) is specified in regulations made for the purposes of this subsection; or
- 35 (b) is provided with the technical, paramedical and other services prescribed for the purposes of this subsection.

“(4) If the person is not being detained at such a place, an officer of Customs or police officer must, as soon as practicable:

- (a) take the person to the nearest such place that the officer considers, on reasonable grounds, to be suitable for the search; and
- 40 (b) continue the person’s detention at that place.

“(5) The recovery, during the search, of a substance or thing internally concealed by the detainee is to be carried out at a place that:

- (a) is specified in regulations made for the purposes of this subsection; or
- (b) is provided with the technical, paramedical and other services prescribed for the purposes of this subsection.

5

“(6) If the person is not being detained at such a place, an officer of Customs or police officer must:

- (a) take the person to the nearest such place that the officer considers, on reasonable grounds, to be suitable for the recovery; and
- (b) continue the person’s detention at that place.

10

“Subdivision D—Detention generally

Detention officers

“219ZA. (1) The Comptroller may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision A.

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“(2) The Comptroller may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision B.

“(3) The Comptroller may, by signed instrument, declare a class of officers of Customs to be detention officers for the purposes of Subdivision C.

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Detention places

“219ZB. (1) A place that is:

- (a) prescribed for the purposes of this subsection; or
- (b) provided with amenities that satisfy standards prescribed for the purposes of this subsection;

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is a detention place for the purposes of Subdivision B.

“(2) A place that is:

- (a) prescribed for the purposes of this subsection; or
- (b) provided with amenities that satisfy standards prescribed for the purposes of this subsection;

30

is a detention place for the purposes of Subdivision C.

Detention under this Division

“219ZC. (1) An officer of Customs or police officer exercising powers under this Division in relation to a person must produce identification as such an officer when requested by the person to do so.

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“(2) An officer of Customs or police officer exercising powers under this Division in relation to a person must not use more force, or subject the person to greater indignity, than is reasonable and necessary.

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“(3) While a person is being taken to a particular place under this Division (except under subsection 219ZD (3)) the person is regarded as being detained under this Division.

5 “(4) While a person is being detained under this Division, a person is regarded as being in the custody of:

- (a) if the person is being detained by an officer of Customs—the Comptroller; or
- (b) if the person is being detained by a member of the Australian Federal Police—the Commissioner of Police; or
- 10 (c) if the person is being detained by a member of the Police Force of a State or Territory—the person who holds, in relation to that Police Force, the same office as the Commissioner of Police holds in relation to the Australian Federal Police.

Release from, or cessation of, detention

15 “219ZD. (1) In spite of any other provision of this Division, but subject to subsection (2) and section 219ZF, where a person is detained under this Division and:

- (a) an order is made under this Division that the person be released; or
- (b) an order for the detention of the person is revoked; or
- 20 (c) an order for the detention of the person has ended and subsection 219V (5) does not apply; or
- (d) if the detention is under Subdivision B—no detention officer suspects on reasonable grounds that the person is unlawfully carrying prohibited goods; or
- 25 (e) if the detention is under Subdivision C—no detention officer suspects on reasonable grounds that the person is internally concealing a suspicious substance; or
- (f) an internal search of the person is completed;

30 the detention, and any search, of the person under this Division must cease immediately.

“(2) Subsection (1) does not prevent a further application of this Division, or the detention of the person under any law other than this Division.

“(3) If:

- 35 (a) the detainee is released at any place other than the place at which he or she was first detained; and
- (b) the detainee so requests;

the detainee must immediately be returned free of charge to the place of the first detention.

“Subdivision E—Medical practitioners**Conduct of internal search**

“219ZE. (1) Subject to subsection (2), a medical practitioner may, in carrying out an internal search of a detainee under section 219Z, use any medical procedure or apparatus that the medical practitioner considers to be reasonably safe in the circumstances. 5

“(2) The medical practitioner must not use any medical procedure involving surgical incision unless he or she considers it necessary to do so because the detainee’s life is at risk.

“(3) If the medical practitioner: 10

(a) suspects on reasonable grounds during the internal search that the detainee is internally concealing a substance or thing; and

(b) lacks sufficient expertise to recover it;

he or she must, as soon as practicable, arrange for another medical practitioner having that expertise to do so. 15

Medical practitioner may take action to preserve detainee’s life

“219ZF. (1) A medical practitioner may take such measures in relation to a detainee, including removal to another place, as the medical practitioner considers necessary because the detainee’s life is at risk, including measures involving surgical incision or exploration. 20

“(2) While the detainee is being so removed to a place, and while he or she is at that place:

(a) he or she may be detained by force of this subsection; and

(b) time is not to be taken to run under an order made under Subdivision C. 25

Medical practitioner to answer questions and prepare report

“219ZG. (1) Subject to subsection (4), at any time during the period during which a medical practitioner is involved in doing anything under this Division, an officer of Customs or police officer may ask the medical practitioner questions relating to whether an internal search of the detainee should be carried out, the manner in which such a search is being carried out or the results of such a search, and the medical practitioner must answer those questions to the best of his or her ability. 30

“(2) As soon as practicable after completing anything done under this Division, the medical practitioner or medical practitioners involved must give to the chief officer of the person who detained the detainee a written report under subsection (3). 35

“(3) The report is to be in accordance with directions given by the chief officer concerned.

“(4) Subsections (1), (2) and (3) are not limited by any law relating to privilege or confidentiality. 40

“(5) A report prepared under subsection (3) and given to a chief officer under subsection (2) is, in any proceedings under this Act, *prima facie* evidence of the facts stated in the report.

“(6) In this section:

5 ‘chief officer’ means:

- (a) in relation to an officer of Customs—the Comptroller; or
- (b) in relation to a member of the Australian Federal Police—the Commissioner of Police; or
- 10 (c) in relation to a member of the Police Force of a State or Territory—the person who holds, in relation to that Police Force, the same office as the Commissioner of Police holds in relation to the Australian Federal Police.

Proceedings against medical practitioners

15 “219ZH. 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 under this Division.

“Division 1C—Judges and Magistrates

Nature of functions of Judge or Magistrate

20 “219ZJ. (1) Where this Part confers on a Judge or Magistrate the function of issuing a warrant or giving an order, the function is so conferred on the Judge or Magistrate in a personal capacity and not as a court or a member of a court.

25 “(2) Without limiting the generality of subsection (1), a warrant or order issued or given by a Judge or Magistrate under this Part has effect only by virtue of this Act and is not to be taken by implication to be issued or given by a court.

Protection of Judge or Magistrate

30 “219ZK. A Judge or 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 court or a member of a court.”.

PART 3—AMENDMENT OF THE CUSTOMS AMENDMENT ACT 1979

35 Repeal

9. Sections 5 and 6 of the *Customs Amendment Act 1979*² are repealed.

NOTES

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; and Nos. 23, 24, 78 and 108, 1989.
2. No. 92, 1979, as amended. For previous amendments, see Nos. 40 and 175, 1985.



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