

# **CUSTOMS ACT 1901**

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**CUSTOMS ACT 1901**

An Act relating to the Customs

**PART I-INTRODUCTORY**

**Short title**

1. This Act may be cited as the *Customs Act 1901.*'

**Commencement**

2. This Act shall commence on a day to be fixed by Proclamation.'

**Interpretation**

d. 11)

"Cannabinoids" means cannabinoids of all kinds, other than a cannabinoid of a kind that can be obtained from a plant that is not a cannabis plant.

"Cannabis" means a cannabis plant, whether living or dead, and includes, in any form, any flowering or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant or cannabis plants and any mixture of parts of a cannabis plant or cannabis plants, but does not include cannabis resin or cannabis fibre.

"Cannabis fibre" means goods that consist wholly or substantially of fibre obtained from a cannabis plant or cannabis plants but do not contain any other substance or thing obtained from a cannabis plant.

"Cannabis plant" means a plant of the genus *Cannabis*.

"Cannabis resin" means a substance that consists wholly or substantially of resin (whether crude, purified or in any other form) obtained from a cannabis plant or cannabis plants.

"Commercial quantity" means-

- (a) in relation to a narcotic substance the name of which is specified in Column 1 of Schedule VIII-the quantity that is specified in column 2 of that Schedule opposite to the name of the substance; and
- (b) in relation to a narcotic substance that is for the time being declared by the regulations to be a prescribed narcotic substance-the quantity that is prescribed by the regulations to be the commercial quantity in relation to that narcotic substance.

"Narcotic goods" means goods that consist of a narcotic substance.

"Narcotic-related goods" means-

- (a) narcotic goods;
- (b) moneys within the meaning of section 229A to which that section applies or is believed by the person in possession of the moneys to apply;
- (c) goods within the meaning of section 229A to which that section applies or is believed by the person in possession of the goods to apply; or
- (d) ships, aircraft, vehicles or animals that are, or are believed by the person in possession of them to be, forfeited goods by reason of having been used in the unlawful importation, exportation or conveyance of prohibited imports, or prohibited exports, that are narcotic goods.

"Narcotic substance" means a substance or thing the name of which is specified in column 1 of Schedule VI or any other substance or thing for the time being declared by the regulations to be a narcotic"substance.

"Prescribed narcotic substance" means a narcotic substance the name of which is specified in Column 1 of Schedule VIII or any other narcotic substance for the time being declared by the regulations to be a prescribed narcotic substance.

"Smuggling" means any importation, introduction or exportation or attempted importation, introduction or exportation of goods with intent to defraud the revenue.

"Trafficable quantity", in relation to a narcotic substance, means-

- (a) where the name of the substance is specified in column I of Schedule VI-the quantity that is specified in column 2 of that Schedule opposite to the name of the substance; and
- (b) where the substance is for the time being declared by the regulations to be a narcotic substance-the quantity that is prescribed by the regulations to be the trafficable quantity in relation to that substance.

(4) For the purposes of this Act, goods (including goods in the form of a preparation, mixture or solution) that do not consist of a narcotic substance but from which a narcotic substance can be obtained shall be deemed to consist of that substance, and shall be deemed to consist of a quantity of that substance equal to the quantity of the substance that can be obtained from the goods.

#### **Penalties at foot of sections or sub-sections**

5. The penalty, pecuniary or other, set out-

- (a) at the foot of a section of this Act; or
- (b) at the foot of a sub-section of a section of this Act, but not at the foot of the section,

indicates that a contravention of the section or of the sub-section, as the case may be, whether by act or omission, is an offence against this Act, punishable upon conviction by a penalty not exceeding the penalty so set out.

*Division IA-The Use of Listening Devices in relation to Narcotics Offences*

**Interpretation**

**219A. (1)** In this Division-

"Judge" means-

- (a) a Judge of the Federal Court of Australia or of the Supreme Court of the Australian Capital Territory;
- (b) a Judge of the Supreme Court of a State in respect of whom an appropriate arrangement in force under section 11 is applicable; or
- (c) a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in paragraph (a) and in respect of whom an appropriate arrangement in force under section 11 is applicable;

"listening device" means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to spoken words;

"narcotics offence" means an offence punishable as provided by section 235.

(2) In this Division, unless the contrary intention appears-

- (a) a reference to narcotics inquiries that are being made by members of the Australian Federal Police shall be read as a reference to-
  - (i) inquiries that are being made by members of the Australian Federal Police in relation to a narcotics offence that has been committed or is reasonably suspected of having been committed; or
  - (ii) if there are circumstances reasonably giving rise to the suspicion that a narcotics offence is likely to be committed-inquiries that are being made by members of the Australian Federal Police in relation to the likely commission of that offence; and
- (b) a reference to narcotics inquiries that have been made by members of the Australian Federal Police shall be read as a reference to-
  - (i) inquiries that have been made by members of the Australian Federal Police in relation to a narcotics offence that has been committed or was reasonably suspected of having been committed; or
  - (ii) if there have been circumstances that reasonably gave rise to the suspicion that a narcotics offence was likely to be committed-inquiries that have been made by members of the Australian Federal Police in relation to the likely commission of that offence.

**Use of listening devices**

**219B. (1)** It is unlawful for a member of the Australian Federal Police to use for the purposes of narcotics inquiries that are being made by members of the Australian Federal Police, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless-

- (a) he is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard;
- (b) not being a person permitted to listen to or record the words under paragraph (a), he does so with the consent, express or implied, of such a person; or
- (c) he does so in accordance with a warrant issued under this Division.

(2) It is unlawful for a person acting by arrangement with a member of the Australian Federal Police to use, for the purpose of narcotics inquiries that are being made by members of the Australian Federal Police, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless he is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard.

(3) It is the duty of the Commissioner of Police to take reasonable steps to ensure that sub-sections (1) and (2) are not contravened.

(4) Notwithstanding any law of a State or Territory-

(a) a member of the Australian Federal Police does not act unlawfully by reason only of using a listening device as referred to in sub-section (1) in circumstances to which paragraph (a), (b) or (c) of that sub-section is applicable; and

(b) a person acting by arrangement with a member of the Australian Federal Police does not act unlawfully by reason only of using a listening device as referred to in sub-section (2) in circumstances in which the use of that device is not declared to be unlawful by that sub-section.

(5) Where, upon application being made to a Judge by a member of the Australian Federal Police for the issue of a warrant under this section authorizing the use of a listening device in relation to a particular person, the Judge is satisfied, by information on oath, that-

(a) the person has committed, or is suspected on reasonable grounds of having committed, or of being likely to commit, a narcotics offence; and

(b) the use by members of the Australian Federal Police of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist members of the Australian Federal Police in or in connection with-

(i) inquiries that are being made in relation to a narcotics offence that the person has committed or is reasonably suspected of having committed; or

(ii) if there are circumstances reasonably giving rise to the suspicion that the person is likely to commit a narcotics offence-inquiries that are being made in relation to the likely commission, by that person, of that offence,

the Judge may, by warrant under his hand in accordance with the prescribed form, authorize members of the Australian Federal Police, subject to any conditions or restrictions that he sees fit to specify in the warrant, to use a listening device for the purpose of listening to or recording words spoken by, to or in the presence of that person, and such a warrant may authorize members of the Australian Federal Police to enter any premises in which the person is, or is likely to be, for the purpose of installing, maintaining, using or recovering a listening device or a part of a listening device.

(6) A Judge may grant a warrant under sub-section (5) authorizing the use of a listening device for the purpose of listening to or recording words spoken by, to or in the presence of a person anywhere in Australia.

(7) Where, upon application being made to a Judge by a member of the Australian Federal Police for the issue of a warrant under this section authorizing the use of a listening device in relation to particular premises, the Judge is satisfied, by information on oath, that-

- (a) there are reasonable grounds for suspecting that the premises have been, or are likely to be, used in connection with the commission of a narcotics offence; and
- (b) the use by members of the Australian Federal Police of a listening device to listen to or record words spoken by or to persons in those premises will, or is likely to, assist members of the Australian Federal Police in, or in connection with, inquiries that are being made in relation to the use, or likely use, of the premises in connection with the commission of a narcotics offence,

the Judge may, by warrant under his hand in accordance with the prescribed form, authorize members of the Australian Federal Police, subject to any conditions or restrictions that he sees fit to specify in the warrant, to use a listening device for the purpose of listening to or recording words spoken by or to any person while the person is in those premises, and such a warrant may authorize members of the Australian Federal Police to enter those premises for the purpose of installing, maintaining, using or recovering a listening device or a part of a listening device.

(8) A Judge may grant a warrant under sub-section (7) authorizing the use of a listening device in respect of premises situated anywhere in Australia.

(9) Where a warrant under this section authorizes entry on premises the warrant shall state whether entry is authorized to be made at any time of the day or night or only during specified hours and may, if the Judge issuing the warrant thinks fit, provide that entry may be made without permission first being sought or demand first being made, and authorize measures that he is satisfied are necessary for that purpose.

(10) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months.

(11) Sub-section (10) shall not be construed as preventing the issue of any further warrant.

(12) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception of a communication passing over a telecommunications system controlled by the Australian Telecommunications Commission.

#### **Information to be given in support of application for warrant**

219c. Information furnished to a Judge for the purposes of sub-section 2198 (5) or (7)-

- (a) may be given orally or otherwise; and
- (b) shall include the facts and other grounds on which the applicant considers it necessary that the warrant should be issued.

#### **Exercise of powers under warrant**

**219D. (1)** The authority conferred by a warrant issued under section 219E on members of the Australian Federal Police shall be exercised only by the Commissioner of Police and members of the Australian Federal Police approved, for the purposes of that warrant or of warrants issued under that section, by him or by an authorized member of the Australian Federal Police.

(2) In sub-section (1), "authorized member of the Australian Federal Police" means a member of the Australian Federal Police appointed by the

Commissioner of Police, by writing, to be an authorized member of the Australian Federal Police for the purposes of this section.

Discontinuance of action before expiration of warrant

219E. Where, before a warrant under this Division ceases to be in force, the Commissioner of Police is satisfied that the grounds on which the warrant was issued have ceased to exist, he shall-

- (a) forthwith take such steps as are necessary to ensure that action in pursuance of the warrant (other than the recovery of a listening device or a part of a listening device) is discontinued; and
- (b) by instrument under his hand, revoke the warrant.

Certain information not to be disclosed

219F. (1) A person shall not divulge or communicate to another person, or make use of or record, any information obtained by using a listening device for the purposes of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police, being information that has come to his knowledge or into his possession by reason of his being, or having been, a member of the Australian Federal Police or by reason of his having entered into an arrangement with a member of the Australian Federal Police to use a listening device for the purpose of those inquiries, except for the purposes of those inquiries.

Penalty: \$1,000 or imprisonment for 2 years.

(2) Notwithstanding sub-section (1), the Commissioner of Police may, in accordance with the following paragraphs, by himself or by a member of the Australian Federal Police authorized by him, communicate information obtained by using a listening device for the purpose of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police-

- (a) where the information relates, or appears to relate, to the commission, or intended commission, of an offence against the law of the Commonwealth or of a State or Territory, being an offence punishable by imprisonment for life or for a period, or maximum period, of not less than 3 years-the information may be communicated to a member of the Australian Federal Police for the purposes of investigations into the offence, or to an officer of the Police Force of a State or Territory;
- (b) where the information relates, or appears to relate, to activities that constitute, or to intended activities that would constitute, activities prejudicial to security, within the meaning of the *Australian Security Intelligence Organization Act 1979*-the information may be communicated to the person holding, or performing the duties of, the office of Director-General of Security under that Act.

(3) Without limiting the purposes for which a person may, in accordance with sub-section (1), divulge information, a person may divulge or communicate information obtained by using a listening device for the purpose of narcotics inquiries that are being, or have been, made by members of the Australian Federal Police in evidence in a proceeding-

- (a) by way of a prosecution for a narcotics offence or for any other offence against the law of the Commonwealth or of a State or Territory punishable by imprisonment for life or for a period or maximum period of not less than 3 years;
- (b) by way of an application for an order under sub-section 243E (1); or
- (c) for the condemnation or recovery of a ship or aircraft, or of goods, seized under section 203 in connection with the commission of a narcotics offence.

(4) Where a person is prosecuted before a Court for an offence of a kind referred to in paragraph (a) of sub-section (3), the Court may, in its discretion, refuse to permit information referred to in that sub-section to be given in evidence in the proceedings if it is satisfied that it would be unfair to the accused to admit the information in evidence.

#### Certain records to be destroyed

219G. Where, by virtue of a warrant under this Division, any record or copy has been made and the Commissioner of Police is satisfied-

- (a) that the record or copy will not assist, and is not likely to assist, members of the Australian Federal Police in, or in connection with narcotics inquiries that are being, or have been, made by them; and
- (b) that the record or copy is not required, and is not likely to be required-
  - (i) in, or in connection with proceedings with respect to any narcotics offence or of a kind referred to in paragraph 219F (3) (b) or (c); or
  - (ii) in, or in connection with, the exercise by members of the Australian Federal Police of the powers conferred on the Commissioner of Police by sub-section 219F (2),

the Commissioner of Police shall cause the record or copy to be destroyed.

#### Warrants, &c., to be retained

219H. The Commissioner of Police shall cause to be retained in the records of the Australian Federal Police all warrants issued under section 219B, all documents furnished to a Judge in connection with the issue of those warrants, and all instruments issued under section 219E revoking warrants so issued.

#### Reports to be made to Minister concerning use of listening devices

**219x. (1)** The Commissioner of Police shall furnish to the Minister a copy of each warrant issued under section 219B, a copy of all documents furnished to a Judge in connection with the issue of the warrant and each instrument issued under section 219E revoking the warrant as soon as practicable after the issue or revocation of a warrant.

(2) The Commissioner of Police shall furnish to the Minister, in respect of each warrant issued under section 219B, a report in writing with respect to the use made by members of the Australian Federal Police of information obtained by using a listening device in pursuance of the warrant and the communication of any information so obtained to persons other than members of the Australian Federal Police.

## PART XIII-PENAL PROVISIONS

### *Division 1-Forfeitures*

#### **Forfeited ships and aircraft**

228. The following ships or boats not exceeding 250 tons registered tonnage and the following aircraft shall be forfeited to the Crown:

- (1) Any ship or aircraft used in smuggling, or knowingly used in the unlawful importation, exportation, or conveyance of any prohibited imports or prohibited exports.
- (2) Any ship the master of which has refused to permit his ship to be boarded following a request properly made of him under sub-section 59 (1) or (2).

- (3) Any aircraft failing to land at an airport for boarding upon its pilot being properly requested under section 59 to land the aircraft.
- (4) Any ship or aircraft from which goods are thrown overboard staved or destroyed to prevent seizure by the Customs.
- (5) Any ship or aircraft found within any port or airport with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master or pilot of which is unable to lawfully account for the difference.
- (6) Any ship or aircraft which on being boarded in pursuance of section 59, 185 or 187 is found to be constructed, adapted, altered or fitted in any manner for the purpose of concealing goods.

The owner of a ship exceeding 250 tons registered tonnage which would be forfeited if the ship were less than 250 tons registered tonnage shall be liable to a penalty not exceeding \$10,000, and the ship may be detained until the penalty is paid or until security is given for its payment.

### **Forfeited installations**

228A. Any overseas installation that becomes attached to the Australian seabed without the permission of the Comptroller given under sub-section 5A (2) shall be forfeited to the Crown.

### **Forfeited goods**

- 229.** (1) The following goods shall be forfeited to the Crown:
- (a) All goods which are smuggled, or unlawfully imported, exported, or conveyed.
  - (b) All prohibited imports.
  - (ba) All goods the importation of which has been prohibited unless a licence or permission containing conditions or requirements has been granted and those conditions or requirements have not been complied with.
  - (bb) Any goods sold under section 207 or sold or otherwise disposed of under section 208D subject to a condition that has not been complied with.
  - (c) All goods imported or exported in any ship boat or aircraft in which goods are prohibited to be imported or exported.
  - (d) All dutiable goods found on any ship boat or aircraft being unlawfully in any place.
  - (e) All goods found on any ship or aircraft after arrival in any port or airport and not being specified or referred to in the Inward Manifest and not being baggage belonging to the crew or passengers and not being satisfactorily accounted for.
  - (f) All goods in respect of which bulk is unlawfully broken.
  - (g) All goods subject to the control of the Customs that are moved, altered or interfered with except as authorized by this Act.
  - (h) All goods which by this Act are required to be moved or dealt with in any way and which shall not be moved or dealt with accordingly.
  - (i) All goods in respect of which any entry invoice declaration answer statement or representation which is false or wilfully misleading in any particular has been delivered made or produced.
  - (j) Any carriage or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods.
  - (m) All goods not being passengers' baggage found on any ship or aircraft after clearance and not specified or referred to in the Outward Manifest and not accounted for to the satisfaction of the Collector.

- (n) All prohibited exports put on any ship boat or aircraft for export or brought to any wharf or place for the purpose of export.
- (o) All dutiable goods concealed in any manner.
- (p) Any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer.
- (q) All dutiable goods found in the possession or in the baggage of any person who has got out of, landed from or gone on board any ship boat or aircraft and who has denied that he has any dutiable goods in his possession, or who when questioned by an officer has not fully disclosed that such goods are in his possession or baggage.
- (r) All goods offered for sale on the pretence that the same are prohibited or smuggled goods.

(2)' Notwithstanding section 228, this section applies in relation to ships, boats and aircraft as well as other goods.

#### **Proceeds of drug trafficking liable to forfeiture**

229A. (1) In this section, unless the contrary intention appears-  
"cheque" includes a bill, promissory note or other security for money;  
"goods" includes cheques, but does not include moneys in the form of cash;

"moneys" means moneys in the form of cash.

(2) This section applies to-

- (a) moneys or goods in the possession or under the control of a person, being moneys or goods that came into his possession or under his control by reason of-
  - (i) his selling or otherwise dealing in, or his agreeing to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act;
  - (ii) his importing, or his agreeing to import, narcotic goods into Australia in contravention of this Act;
  - (iii) his exporting, or his agreeing to export, narcotic goods from Australia in contravention of this Act;
  - (iv) his keeping or having kept, or his agreeing to keep, in his possession narcotic goods imported into Australia in contravention of this Act;
  - (v) his conspiring with another person or other persons to import any narcotic goods into Australia in contravention of this Act or to export any narcotic goods from Australia in contravention of this Act; or
  - (vi) his aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia in contravention of this Act, the exportation of narcotic goods from Australia in contravention of this Act or the keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act;
- (b) moneys in the possession or under the control of a person that were paid to him for the sale of goods that were, immediately before the sale, goods to which this section applied; and
- (c) goods in the possession or under the control of a person that were purchased or otherwise acquired by him with or out of moneys to which this section applied.

(3) Where a person who obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in paragraph (2) (a) or (b) receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of sub-section (2), be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he obtained possession or control of the cheque, or was paid the moneys by the cheque.

(4) Where a person who purchases or otherwise acquires goods pays the whole or substantially the whole of the amount paid by him for the goods by means of a cheque that came into his possession or under his control as set out in paragraph (2) (a), the goods shall, for the purposes of sub-section (2), be deemed to have come into his possession or under his control in the circumstances in which the cheque came into his possession or under his control.

(5) For the purposes of paragraph (2) (c), goods shall not be taken to have been purchased with or out of moneys to which this section applied unless the whole, or substantially the whole, of the moneys paid for the goods were moneys to which this section applied.

(6) For the purposes of section 203, moneys or goods to which this section applies shall be deemed to be forfeited goods and, upon moneys or goods to which this section applies being seized in pursuance of section 203, they shall, for the purposes of sections 204 to 208E (inclusive) and Part XIV, be deemed to be forfeited goods, and those provisions apply accordingly.

(7) Where, in any proceedings for the condemnation or recovery of moneys or goods to which this section applies and which have been seized under section 203, the Court is satisfied that the relevant narcotic goods are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceedings, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

(8) Without limiting any powers that are conferred on a Court by the provisions of this Act specified in sub-section (6) and notwithstanding any other provision of this Act-

- (a) where moneys or goods in the possession or under the control of a person are seized under section 203, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall, if it is satisfied that the moneys or goods were, at the time when they were so seized, owned by another person who, when he became the owner of the moneys or goods, did not know, and had no reason to suspect, that the moneys or goods had come into the possession or under the control of the first-mentioned person in circumstances referred to in sub-section (2), direct that the moneys or goods be delivered to that other person; and
- (b), where moneys or goods in the possession or under the control of the licensee of a warehouse are seized under section 203, a Court in which proceedings are brought for the condemnation or recovery of the moneys or goods shall direct that the moneys or goods be delivered to the licensee if it is satisfied that-
  - (i) the moneys came into the possession or under the control of the licensee by reason of his storing in the warehouse narcotic goods imported into Australia in contravention of this Act or

by reason of his selling goods that were acquired by him with or out of any such moneys; or

(ii) the goods were purchased or otherwise acquired by him out of moneys that so came into his possession or under his control, as the case may be, and is also satisfied that the licensee did not know that the goods stored in the warehouse were narcotic goods or that they had been imported into Australia in contravention of this Act.

### **Forfeited packages and goods**

230. The forfeiture of any goods shall extend to the forfeiture of the packages in which the goods are contained and the forfeiture of any package under section 229 shall extend to all goods packed or contained in the package.

### ***Division 2-Penalties***

#### **Assembly for unlawful purposes**

**231. (1)** All persons to the number of 2 or more assembled for the purpose of-

- (a) importing prohibited imports; or
- (b) smuggling; or
- (c) preventing the seizure, or rescuing after seizure, of any prohibited imports or smuggled goods,

shall be guilty of an offence punishable upon conviction-

- (d) if the offence is committed in relation to goods that are not narcotic goods-by imprisonment for a period not exceeding 2 years; or
- (e) if the offence is committed in relation to goods that are narcotic goods-as provided by section 235.

(2) This section, in so far as it relates to prohibited imports, shall apply to all prohibited imports that are narcotic goods.

(3) An offence against this section to which paragraph (1) (d) applies is punishable upon summary conviction.

#### **Collusive seizures-penalty**

232.<sup>1</sup> Whoever-

- (a) being an officer of the Customs or Police makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any ship boat carriage or goods liable to forfeiture or conspires or connives with any person to import or export, or is in any way concerned in the importation or exportation of any goods for the purpose of seizing any ship boat carriage or goods and obtaining any reward for such seizure;

#### **Bribe offered to officer-penalty**

- (b) gives, or procures to be given, or offers or promises to give or procure to be given any bribe recompense or reward to, or makes any collusive agreement with any officer to induce him in any way to neglect his duty, or who by threats demands or promises attempts to influence any officer in the discharge of his duty,

shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding 5 years.

#### Rescuing goods and assaulting officers

232A.<sup>2</sup> Whoever-

- (a) rescues any goods which have been seized, or, before or at or after seizure, staves, breaks or destroys any goods or documents relating thereto to prevent the seizure thereof or the securing of the same or the proof of any offence; or
- (b) assaults, resists, molests, obstructs or endeavours to intimidate any officer, or any person assisting an officer, in the execution of his duty,

shall be guilty of an offence and shall be liable, upon summary conviction, to a fine not exceeding \$500 or to imprisonment for any period not exceeding 2 years.

232B.z

#### Smuggling and unlawful importation and exportation

233. (1) A person shall not-

- (a) smuggle any goods; or
- (b) import any prohibited imports; or
- (c) export any prohibited exports; or
- (d) unlawfully convey or have in his possession any smuggled goods or prohibited imports or prohibited exports.

(1AA) A person who contravenes sub-section (1) is guilty of an offence punishable upon conviction-

- (a) in the case of an offence against paragraph (1) (a) or an offence against paragraph (1) (d) in relation to smuggled goods-as provided by sub-section 233AB (1); or
- (b) in any other case-as provided by sub-section 233AB (2).

(2) It shall not be lawful for any person to convey or have in his possession without reasonable excuse (proof whereof shall lie upon him) any smuggled goods or prohibited imports.

(3) It shall not be lawful for any person to convey or have in his possession any prohibited exports with intent to export them or knowing that they are intended to be unlawfully exported.

(4) Merchandise on board a ship or aircraft calling at any port or airport in Australia, but intended for and consigned to some port or airport or place outside Australia, shall not be deemed to be unlawfully imported into Australia if the goods are specified on the ship's or aircraft's manifest and are not transhipped or landed in Australia or are transhipped or landed by authority.

(5) This section does not apply to, or in relation to, narcotic goods.

#### Master not to use or allow use of ship for smuggling

233.x\_ (1) The master of a ship or the pilot of an aircraft shall not use his ship or aircraft, or knowingly suffer her to be used, in smuggling, or in the importation of any goods in contravention of this Act, or in the exportation or conveyance of any goods in contravention of this Act.

(2) A person who contravenes sub-section (1) is guilty of an offence punishable upon conviction-

- (a) in the case of an offence committed in relation to goods that are narcotic goods-as provided by section 235;
- (b) in the case of an offence committed in relation to the smuggling of goods that are not narcotic goods-as provided by sub-section 233AB (1); or
- (c) in any other case-as provided by sub-section 233AB (2).

### **Penalties for offences against sections 233 and 233A**

**233AB. (1)** Where an offence is punishable as provided by this sub-section, the penalty applicable to the offence is-

- (a) where the Court can determine the amount of the duty that would have been payable on the smuggled goods to which the offence relates if those goods had been entered for home consumption on-
  - (i) where the date on which the offence was committed is known to the Court-that date; or
  - (ii) where that date is not known to the Court-the date on which the prosecution for the offence was instituted,a penalty not exceeding 5 times the amount of that duty and not less than 2 times that amount; or
- (b) where the court cannot determine the amount of that duty, a penalty not exceeding \$50,000.

(2) Where an offence is punishable as provided by this sub-section, the penalty applicable to the offence is-

- (a) where the Court can determine the value of the goods to which the offence relates, a penalty not exceeding-
  - (i) 3 times the value of those goods; or
  - (ii) \$50,000,whichever is the greater; or
- (b) where the Court cannot determine the value of those goods-a penalty not exceeding \$50,000.

### **Special provisions with respect to narcotic goods**

**233B. (1)** Any person who-

- (a) without any reasonable excuse (proof whereof shall lie upon him) has in his possession, on board any ship or aircraft, any prohibited imports to which this section applies; or
- (b) imports, or attempts to import, into Australia any prohibited imports to which this section applies or exports, or attempts to export, from Australia any prohibited exports to which this section applies; or
- (c) without reasonable excuse (proof whereof shall lie upon him) has in his possession, or attempts to obtain possession of, any prohibited imports to which this section applies which have been imported into Australia in contravention of this Act; or
- (ca) without reasonable excuse (proof whereof shall lie upon him) has in his possession, or attempts to obtain possession of, any prohibited imports to which this section applies which are reasonably suspected of having been imported into Australia in contravention of this Act; or
- (cb) conspires with another person or other persons to import into Australia any prohibited imports to which this section applies or to export from Australia any prohibited exports to which this section applies; or
- (d) aids, abets, counsels, or procures, or is in any way knowingly concerned in, the importation into Australia of any prohibited imports to which this section applies, or the exportation from Australia of any prohibited exports to which this section applies; or
- (e) fails to disclose to an officer on demand any knowledge in his possession or power concerning the importation or intended importation into Australia of any prohibited imports to which this section applies or the exportation or intended exportation from Australia of any prohibited exports to which this section applies,

shall be guilty of an offence.

(1A) On the prosecution of a person for an offence against the last preceding sub-section, being an offence to which paragraph (c) of that sub-section applies, it is not necessary for the prosecution to prove that the person knew that the goods in his possession or of which he attempted to obtain possession had been imported into Australia in contravention of this Act, but it is a defence if the person proves that he did not know that the goods in his possession or of which he attempted to obtain possession had been imported into Australia in contravention of this Act.

(1B) On the prosecution of a person for an offence against sub-section (1), being an offence to which paragraph (ca) of that sub-section applies, it is a defence if the person proves that the goods were not imported into Australia or were not imported into Australia in contravention of this Act.

(1c) Any defence for which provision is made under either of the last 2 preceding sub-sections in relation to an offence does not limit any defence otherwise available to the person charged.

(2) The prohibited imports to which this section applies are prohibited imports that are narcotic goods and the prohibited exports to which this section applies are prohibited exports that are narcotic goods.

(3) A person who is guilty of an offence against sub-section (1) of this section is punishable upon conviction as provided by section 235.

(4) This section shall not prevent any person from being proceeded against for an offence against any other section of this Act, but he shall not be liable to be punished twice in respect of any one offence.

### Customs offences

234. (1) A person shall not-

- (a) Evade payment of any duty which is payable;
- (b) Obtain any drawback, refund, rebate or remission which is not payable;
- (d) Make or give any entry which is false in any particular;
- (e) Make in any declaration or document produced, given, delivered or furnished to any officer any statement which is untrue in any particular or produce, give, deliver or furnish to any officer any declaration or document containing any such statement;
- (f) Mislead any officer in any particular likely to affect the discharge of his duty;
- (g) Refuse or fail to answer questions or to produce documents;
- (h) Sell or offer for sale, any goods upon the pretence that such goods are prohibited imports or smuggled goods.

(2) A person who contravenes sub-section (1) is guilty of an offence punishable upon conviction-

(a) in the case of an offence against paragraph (1) (a), by-

- (i) where the Court can determine the amount of the duty on goods the payment of which would have been evaded by the commission of the offence if the goods had been entered for home consumption on-

- (A) where the date on which the offence was committed is known to the Court-that date; or
- (B) where that date is not known to the Court-the date on which prosecution for the offence was instituted,

a penalty not exceeding 5 times the amount of that duty and not less than 2 times that amount; or

- (ii) where the Court cannot determine the amount of that duty, a penalty not exceeding \$50,000;
- (b) in the case of an offence against paragraph (1) (b), by a penalty not exceeding 5 times the amount of drawback, refund, rebate or remission that was obtained by the commission of the offence and not less than 2 times that amount;
- (c) in the case of an offence against paragraph (1) (d), (e) or (f), by a penalty not exceeding \$5,000; or
- (d) in the case of an offence against paragraph (1) (g) or (h), by a penalty not exceeding \$1,000.

Penalty: \$1,000.

Places set aside for **purposes** of Act

234AA. Where a place is to be used by officers-

- (a) for questioning, for the purposes of this Act or of any other law of the Commonwealth, passengers disembarking from or embarking on a ship or aircraft;
- (b) for examining, for such purposes, the personal baggage of such passengers; or
- (c) as a holding place for such passengers,

a Collector, or a person authorized by a Collector to do so, may cause signs to be displayed at or near the place that identify the place and state that entry into it by unauthorized persons is prohibited by this Act.

**Unauthorized entry to places and on ships, aircraft or wharves**

234A. (1) A person, other than a passenger disembarking from, or embarking on, a ship or aircraft, shall not, except by authority-

- (a) enter into, or be in, a place in relation to which a sign is displayed under section 234,x.4; or
- (b) enter on or be in or on-
  - (i) a ship;
  - (ii) an aircraft; or
  - (iii) the wharf at which, or the part of a wharf adjacent to which, a ship is berthed,

at a time when goods being the personal baggage of passengers disembarking from, or embarking on that ship or aircraft are being examined, for the purposes of this Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf.

Penalty: \$1,000.

(2) The last preceding sub-section does not prohibit a person-

- (a) who has, or is a member of an authority which has, the management or control of a wharf or wharves or an airport or airports; or
- (b) who is employed in connexion with the management or control of a wharf or wharves or an airport or airports,

from entering on, or being in or on, a place, ship, aircraft, wharf or part of a wharf for the purposes of that management or control.

(3) In any proceedings for the prosecution of a person for an offence against sub-section (1), evidence that a sign stating that entry into a place is prohibited by this Act was displayed at or near that place is *prima facie* evidence that the sign was so displayed in accordance with section 234,x.4.

Penalties for offences in relation to narcotic goods

235. (1) Where-

- (a) a person commits an offence against sub-section 50 (4) or sub-section 112 (2a); and
- (b) the offence is an offence that is punishable as provided by this section, the penalty applicable to the offence is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 2 years, or both.

(2) Subject to sub-sections (3) and (7), where-

- (a) a person commits an offence against sub-section 231 (1), section 233A or sub-section 233E (1); and
- (b) the offence is an offence that is punishable as provided by this section, the penalty applicable to the offence is-

(c) where the Court is satisfied-

- (i) that the narcotic goods in relation to which the offence was committed consist of a quantity of a prescribed narcotic substance that is not less than the commercial quantity applicable to that substance; or
- (ii) that the narcotic goods in relation to which the offence was committed consist of a quantity of a narcotic substance that is not less than the trafficable quantity applicable to that substance and also that, on a previous occasion, a court has-

(A) convicted the person of another offence, being an offence against a provision referred to in paragraph (a) that involved other narcotic goods which consisted of a quantity of a narcotic substance not less than the trafficable quantity that was applicable to that substance when the offence was committed; or

(B) found, without recording a conviction, that the person had committed another such offence-

imprisonment for life or for such period as the Court thinks appropriate;

- (d) where the Court is satisfied that the narcotic goods in relation to which the offence was committed consist of a quantity of a narcotic substance that is not less than the trafficable quantity applicable to the substance but is not satisfied as provided in paragraph (c)-
  - (i) if the narcotic substance is a narcotic substance other than cannabis-a fine not exceeding \$100,000 or imprisonment for a period not exceeding 25 years, or both; or
  - (ii) if the narcotic substance is cannabis-a fine not exceeding \$4,000 or imprisonment for a period not exceeding 10 years, or both; or
- (e) in any other case-a fine not exceeding \$2,000 or imprisonment for a period not exceeding 2 years, or both.

(3) Where-

- (a) the Court is satisfied that the narcotic goods in relation to which an offence referred to in sub-section (2) was committed consist of a quantity of a narcotic substance that is not less than the trafficable quantity applicable to that substance, but is not satisfied as provided in paragraph (c) of that sub-section in relation to those narcotic goods; and

(b) the Court is also satisfied that the offence was not committed by the person charged for any purposes related to the sale of, or other commercial dealing in, those narcotic goods,

notwithstanding paragraph (d) of that sub-section, the penalty punishable for the offence is the penalty specified in paragraph (e) of that sub-section.

(4) An offence referred to in sub-section (1) or (2) may be prosecuted summarily or upon indictment or, where the law of the State or Territory in which the proceedings are brought makes provision for an offender who pleads guilty to a charge to be dealt with by the Court otherwise than on indictment, the Court may deal with an offender in accordance with that law.

(5) Nothing in sub-section (4) renders an offender liable to be punished more than once for the same offence.

(6) Where proceedings for an offence referred to in sub-section (1) or (2) are brought in a court of summary jurisdiction, the court may commit the defendant for trial or to be otherwise dealt with in accordance with law or, if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent to it doing so, may determine the proceedings summarily.

(7) Where a court of summary jurisdiction determines proceedings summarily in accordance with sub-section (6), it shall not impose a fine exceeding \$2,000 or sentence the defendant to imprisonment for a period exceeding 2 years, but may impose both a fine and a period of imprisonment in respect of the offence.

(8) For the purposes of sub-sections (2) and (3), the narcotic substance of which narcotic goods in relation to which an offence has been committed consist is the narcotic substance that is specified in the relevant information, complaint, declaration, claim or indictment as the narcotic substance of which those goods consist.

#### **Aiders and abettors**

**236.** Whoever aids abets counsels or procures or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Act shall be deemed to have committed such offence and shall be punishable accordingly.

#### **Attempts**

**237.** Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed.

#### **Penalties in addition to forfeitures**

**239.** All penalties shall be in addition to any forfeiture.

#### ***Division 3-Recovery of Pecuniary Penalties for Dealings in Narcotic Goods***

#### **Interpretation**

**243A.** (1) In this Division, unless the contrary intention appears-

"cheque" includes a bill, promissory note or other security for money;

"Court" means the Federal Court of Australia;

"moneys" means moneys in the form of cash;

"Official Trustee" means the Official Trustee in Bankruptcy;

"pecuniary penalty" means a pecuniary penalty referred to in section 243B;

"petition" means a petition under the *Bankruptcy Act 1966*;

"property" means real or personal property of every description, whether situated in Australia or elsewhere, and includes any estate, interest or profit, whether present or future, vested or contingent, arising out of or incident to any such real or personal property.

(2) Where a person who has obtained possession or control of a cheque, or was paid moneys by a cheque, in any of the circumstances set out in sub-section (3), receives, in respect of the cheque, moneys in the form of cash, the moneys so received shall, for the purposes of this Division, be deemed to be moneys that came into his possession or under his control, or were paid to him, in the circumstances in which he obtained possession or control of the cheque, or was paid the moneys by the cheque.

(3) For the purposes of this Division, a person shall be taken to engage in a prescribed narcotics dealing if-

- (a) he sells or otherwise deals in, or agrees to sell or otherwise deal in, narcotic goods imported into Australia in contravention of this Act;
- (b) he imports, or agrees to import, narcotic goods into Australia in contravention of this Act;
- (c) he exports, or agrees to export, narcotic goods from Australia in contravention of this Act;
- (d) he keeps, or agrees to keep, in his possession narcotic goods imported into Australia in contravention of this Act;
- (e) he conspires with another person or other persons to import any narcotic goods into Australia, or to export any narcotic goods from Australia, in contravention of this Act; or
- (f) he aids, abets, counsels or procures, or is in any way knowingly concerned in, the sale of, or other dealing in, narcotic goods imported into Australia in contravention of this Act, the importation of narcotic goods into Australia, or the exportation of narcotic goods from Australia, in contravention of this Act, or the keeping in the possession of any person of narcotic goods imported into Australia in contravention of this Act.

(4) A reference in this Division to the property of a person shall be read as a reference to the property in respect of which the person has a beneficial interest.

(5) Where, upon application being made to the Court under sub-section 243E (1) and supported by an affidavit made by a member of the Australian Federal Police or an officer of Customs stating that he believes that any property is the property of a person, the Court makes an order under that section directing the Official Trustee to take control of that property, for the purposes of this Division, the property shall, while that order applies to the property, be deemed to be the property of that person.

(6) A reference in this Division to a proceeding for the recovery of a pecuniary penalty shall be read as a reference to a proceeding instituted under section 243E for an order under sub-section (1) of that section.

(7) Where, by reason of a person's having been engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, benefits have been derived by another person at the request, or by the direction, of the first-mentioned person, those benefits shall, for the purposes of this Division, be deemed to have been derived by that first-mentioned person by reason of his having been engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be.

### **Pecuniary penalties**

**243B. (1)** Subject to sub-section (7), the Minister, the Commissioner of Police or the Comptroller may institute a proceeding in the Court, on behalf of the Commonwealth, for an order that a person pay a pecuniary penalty to the Commonwealth in respect of-

- (a) a particular prescribed narcotics dealing engaged in by him; or
- (b) prescribed narcotics dealings engaged in by him during a particular period.

(2) If, in a proceeding instituted under sub-section (1), the Court is satisfied that the person in relation to whom the order is sought-

- (a) has engaged in a particular prescribed narcotics dealing; or
- (b) has, during a particular period, engaged in prescribed narcotics dealings, the Court shall assess, in accordance with section 243c, the value of the benefits derived by the person by reason of his having engaged in that dealing, or in prescribed narcotics dealings during that period, as the case may be, and order the person to pay to the Commonwealth a pecuniary penalty equal to the value as so assessed.

(3) The Court may order a person to pay a pecuniary penalty under sub-section (2) in relation to a particular prescribed narcotics dealing, or prescribed narcotics dealings during a particular period, whether or not the person has been convicted of an offence, or proceedings have been instituted in respect of any offence, committed in relation to that dealing or any of those dealings and whether or not any moneys or other goods have been seized under section 229A in relation to that dealing or any of those dealings.

(4) An amount payable by a person to the Commonwealth in accordance with an order made under sub-section (2) shall, for all purposes, be deemed to be a civil debt due by the person to the Commonwealth.

(5) An order made by the Court under sub-section (2) may be enforced as if it were an order made by the Court in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.

(6) This section applies to and in relation to moneys that come, or other property that comes, into the possession or under the control of a person either within or outside Australia, and to benefits that are provided for a person either within or outside Australia.

- (7) A proceeding under sub-section (1) may be commenced-
- (a) if the proceeding relates to a particular prescribed narcotics dealing engaged in by a person after the commencement of this section-within 6 years after that dealing took place; or
  - (b) if the proceeding relates to prescribed narcotics dealings during a particular period, being a period that commenced after the commencement of this section-within 6 years after the end of that period.

### **Assessment of pecuniary penalty**

**243c. (1)** In this section, a reference to the defendant in relation to a proceeding under section 243E shall be read as a reference to a person against whom an order is sought in that proceeding.

(2) In a proceeding under section 243B, the value of the benefits derived by the defendant by reason of his having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period shall be assessed by the Court having regard to the evidence before the Court concerning all or any of the following matters:

(a) the moneys, or the value of the property other than moneys, that came into the possession or under the control of-

(i) the defendant; or

(ii) another person at the request or by the direction of the defendant,

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

(b) the value of any benefit, other than a benefit of the kind referred to in paragraph (a) that was provided for-

(i) the defendant; or

(ii) another person at the request or by the direction of the defendant,

by reason of the defendant's having engaged in that dealing or in prescribed narcotics dealings during that period;

(c) in the case of a prescribed narcotics dealing that consisted of selling or otherwise dealing in narcotic goods-the market value, at the time of the dealing, of similar or substantially similar narcotic goods;

(d) in the case of a prescribed narcotics dealing that consisted of the doing of any act or thing other than selling or otherwise dealing in narcotic goods-the amount that was, or the range of amounts that were, at the time the dealing occurred, ordinarily paid for the doing of a similar or substantially similar act or thing; and

(e) the value of the defendant's property before and after he engaged in that dealing, or before and after the end of that period, as the case may be.

(3) Where evidence is given in a proceeding under section 243E that the value of the defendant's property after he engaged in a particular prescribed narcotics dealing, or after the end of a particular period during which he engaged in prescribed narcotics dealings, exceeded the value of the defendant's property before he engaged in that dealing, or before the commencement of that period, then, for the purposes of sub-section (2) of that section, the Court shall, subject to sub-section (4), treat the value of benefits derived by the defendant by reasons of his having engaged in that dealing or in prescribed narcotics dealings during that period as being not less than the amount of the excess.

(4) Where, after evidence has been given in a proceeding under section 243B that the value of the defendant's property after he engaged in a particular prescribed narcotics dealing, or after the end of a particular period, exceeded the value of the defendant's property before he engaged in that dealing, or before the commencement of that period, the defendant satisfies the Court that the whole or a part of the excess was due to certain causes, being causes unrelated to his having engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be-

(a) if **the defendant so satisfies the Court in respect of the whole of the excess-sub-section (3) does not apply to the excess; or**

(b) if the defendant so satisfies the Court in respect of a part of the excess-sub-section (3) applies to and in relation to the excess as if it were reduced by the amount of that part.

(5) In a proceeding under section 243B, a member of the Australian Federal Police or an officer of Customs who is experienced in the investigation of narcotics offences may testify-

- (a) with respect to the amount that, to the best of his information, knowledge and belief, was the market value of narcotic goods at a particular time or during a particular period; or
- (b) with respect to the amount, or the range of amounts, that, to the best of his information, knowledge and belief, was the amount, or range of amounts, ordinarily paid at a particular time or during a particular period for the doing of an act or thing (not being the selling or other dealing in narcotic goods) comprising a prescribed narcotics dealing,

notwithstanding any rule of law or practice relating to hearsay evidence, and his testimony is *prima facie* evidence of the matters testified to.

(6) In calculating, for the purposes of a proceeding under section 243B, the value of benefits derived by the defendant by reason of his having engaged in a particular prescribed narcotics dealing, or in prescribed narcotics dealings during a particular period, any expenses or outgoings of the defendant in connection with that dealing, or those dealings, shall be disregarded.

### **Presumption of illegality of importation**

243D. Where, in a proceeding under section 243E against a person, the Court is satisfied that the narcotic goods in relation to which the person is alleged to have engaged in a prescribed narcotics dealing or in prescribed narcotics dealings are goods reasonably suspected of having been imported into Australia in contravention of this Act, the Court shall, for the purposes of the proceeding, treat the narcotic goods as narcotic goods which have been imported into Australia in contravention of this Act unless it is established to the satisfaction of the Court that the narcotic goods were not imported into Australia or were not imported into Australia in contravention of this Act.

### **Court may direct the Official Trustee to take control of property**

243E. (1) Where the Minister, the Commissioner of Police or the Comptroller has instituted a proceeding under section 243a for an order that a person (in this section referred to as the "defendant") pay a pecuniary penalty in relation to a particular prescribed narcotics dealing, or in relation to prescribed narcotics dealings during a particular period, the Minister, the Commissioner of Police or the Comptroller may make application to the Court, *ex parte*, for an order directing the Official Trustee to take control of property specified in the application or of all the property of the defendant.

(2) Where-

(a) an application under sub-section (1) is supported by-

(i) an affidavit of a member of the Australian Federal Police or an officer of Customs stating that he believes that-

(A) the defendant has engaged in the prescribed narcotics dealing to which the proceeding under section 243E relates, or in prescribed narcotics dealings during the period to which that proceeding relates; and

(B) benefits were derived by the defendant by reason of the defendant's having engaged in that prescribed narcotics dealing, or in prescribed narcotics dealings during that period, as the case may be,

and setting out the grounds on which he holds those briefs;  
and

(ii) if the application seeks an order directing the Official Trustee to take control of specified property-an affidavit of a member of the Australian Federal Police or an officer of Customs stating that he believes that the property is the property of the defendant and setting out the grounds on which he holds that belief; and

(b) the Court considers that, having regard to the matters contained in that affidavit or those affidavits, there are reasonable grounds for holding those beliefs,

the Court-

(c) shall make an order directing the Official Trustee to take control-

(i) if the application seeks an order with respect to specified property-of all that property or such part of that property as the Court thinks fit; or

(ii) in any other case-of all the property of the defendant; and

(d) may, subject to sub-section (3), include in the order such provision (if any) in relation to the operation of the order as the Court thinks fit.

(3) Paragraph (2) (d) does not authorize the Court to include in an order directing the Official Trustee to take control of property a provision postponing the operation of the order.

(4) Without limiting the power of the Court under paragraph (2) (d), an order directing the Official Trustee to take control of property-

(a) may set out conditions subject to which the order is to apply to all of that property, or to a specified part of that property;

(b) may make provision for a review of the operation of the order by the Court; and

(c) may make provision for meeting the reasonable living and business expenses of the defendant out of that property, or out of a specified part of that property.

(5) The Court may refuse to make an order under sub-section (2) directing the Official Trustee to take control of property if the Commonwealth refuses or fails to give to the Court such undertakings as the Court deems appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

(6) For the purposes of an application under sub-section (1), the Minister, the Commissidner of Police or the Comptroller may, on behalf of the Commonwealth, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

(7) Notwithstanding anything contained in the *Bankruptcy Act 1966*, moneys that have come into the possession, or under the control, of the Official Trustee in accordance with an order made under sub-section (2) shall not be paid into the Common Investment Fund established in pursuance of section 20B of that Act.

#### **Court may make further orders**

243F. (1) Where the Court makes, or has made, an order (in this section referred to as the "original order") under sub-section 243E (1) directing the Official Trustee to take control of specified property, or all of the property, of

a person (in this section referred to as the "defendant"), the Court may, at the time it makes the original order or at any subsequent time, make such orders in relation to that property as the Court considers just and, without limiting the power so conferred on the Court, the Court may, at any time or from time to time, make an order-

- (a) varying the original order in respect of the property to which it relates or any provision included in the original order by virtue of paragraph 243E (2) (d);
  - (b) regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the original order;
  - (c) determining any question relating to the property to which the original order relates, including any question relating to the liabilities of the defendant, and the exercise of the powers, or the performance of the duties, of the Official Trustee, with respect to the property to which the original order relates;
  - (d) directing the defendant to furnish to the Official Trustee, within a time specified in the order, a statement, verified by the oath or affirmation of the defendant, setting out such particulars of the property of the defendant as the Court deems proper;
  - (e) for the examination of the defendant or another person before the Court or the Registry of the Court concerning the nature and location of the property of the defendant; or
  - (f) with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the original order.
- (2) An application for an order under sub-section (1) may be made-
- (a) by the Official Trustee;
  - (b) by the Minister, the Commissioner of Police or the Comptroller;
  - (c) by the defendant; or
  - (d) with the leave of the Court, by any other person.

(3) Where the defendant or another person is examined before the Court or the Registrar of the Court in pursuance of an order under sub-section (1), a statement or disclosure made by him in answer to a question put to him in the course of the examination is not admissible against him in any civil or criminal proceedings except-

- (a) in a proceeding for giving false testimony in the course of the examination; or
  - (b) in a proceeding for the recovery of a pecuniary penalty for the purpose only of facilitating the assessment of the amount of the pecuniary penalty.
- (4) In this section, unless the contrary intention appears-
- (a) references to the original order shall be read as including references to the original order as varied under this section; and
  - (b) references to the Registrar of the Court shall be read as including references to a Deputy Registrar of the Court, a District Registrar of the Court and a Deputy District Registrar of the Court.

Official Trustee to discharge pecuniary penalty

243G. (1) Where an order (in this section referred to as the "first order") is in force under section 243E directing the Official Trustee to take control of specified property, or of all of the property, of a person who has been ordered to pay a pecuniary penalty to the Commonwealth, the Court may, on application made by the Minister, the Commissioner of Police or Comptroller, make an order (in this section referred to as the "second order") directing the Official Trustee to pay to the Commonwealth, out of the property of the person that has come into its possession or under its control by virtue of the first order, an amount equal to the amount of the liability of the person in respect of that pecuniary penalty.

(2) For the purpose of enabling the Official Trustee to comply with the direction contained in the second order, the Court may, by the second order or by a subsequent order, direct the Official Trustee to sell or dispose of such of the property that is subject to the charge that was created by sub-section 2431(1) upon the making of the first order as is specified in the second order or in the subsequent order, as the case may be.

(3) As soon as practicable after the making of the second order, the Official Trustee-

(a) shall apply the moneys which have come into its possession or under its control by reason of the sale or disposition of any of the property specified in the second order, or the subsequent order, or otherwise in the course of performing its duties in respect of the property to which the first order relates, in payment of the fees payable in connection with, and the expenses incurred by it in or in connection with, its performance of the duties imposed on it under the first order, including the expenses incurred by it in or in connection with the sale or disposition of any of the property to which the first order relates; and

(b) shall, subject to sub-section (4), pay the remainder of the moneys referred to in paragraph (a), after the payments referred to in that paragraph have been made, to the Commonwealth.

(4) Where the moneys to which paragraph (3) (b) applies exceed the liability of the person in respect of the pecuniary penalty payable by him to the Commonwealth, the Official Trustee shall-

(a) pay to the Commonwealth, out of those moneys, an amount equal to the amount of that liability; and

(b) pay the balance of those moneys to the person.

(5) Where the Official Trustee pays, in accordance with the second order, moneys to the Commonwealth in respect of the liability of a person to pay a pecuniary penalty to the Commonwealth, the liability of the person in respect of the pecuniary penalty shall, to the extent of the payment, be deemed to be discharged.

Revocation of order **under section 243E**

243H. (1) Where, after an order under section 243E has been made in relation to a proceeding for the recovery of a pecuniary penalty-

(a) no pecuniary penalty is imposed upon the determination of that proceeding;

(b) the pecuniary penalty imposed upon the determination of that proceeding is paid; or

(c) the Court is satisfied that it is, in all the circumstances, proper to do so,

the Court may, upon application being made to it by a person authorized to make an application under section 243F, revoke that order.

(2) The revocation of an order under section 243E that was made in relation to a proceeding for the recovery of a pecuniary penalty does not prevent the Court from making a further order under section 243E in relation to that proceeding.

(3) Without limiting the powers of the Court to make an order under sub-section (1), the Court may revoke an order under section 243E upon the applicant-

- (a) giving security satisfactory to the Court for the payment of any pecuniary penalty that may be imposed on him in the relevant proceeding; or
- (b) giving undertakings satisfactory to the Court concerning the property of the applicant.

(4) Where the Court revokes or has revoked, an order under section 243E, the Court may make such order or orders as it deems proper for or in relation to the discharge of the Official Trustee concerned from all liability in respect of the exercise by it of the powers conferred on it, and the performance by it of the duties imposed on it, under this Division in respect of the property of the person to whom the order under section 243E related.

#### **Pecuniary penalty a charge on property**

243j. (1) Where the Court makes, in relation to a proceeding (in this section referred to as the "relevant proceeding") for the recovery of a pecuniary penalty from a person, an order under section 243E directing the Official Trustee to take control of specified property, or of all of the property, of the person, upon the making of the order, there is created, by force of this section, a charge, on all the property to which the order relates, to secure the payment to the Commonwealth of any pecuniary penalty that the person may be ordered to pay in the relevant proceeding.

(2) Where a charge is created by sub-section (1) on any property of a person upon the making of an order under section 243E, the charge ceases to have effect in respect of the property-

- (a) upon the order ceasing to apply to the property by reason of the variation or revocation of the order;
- (b) upon the determination of the relevant proceeding by way *of* the refusal of the Court to make an order for the payment of a pecuniary penalty by the person;
- (c) upon payment by the person of any pecuniary penalty that he has been ordered to pay in the relevant proceeding;
- (d) upon the person becoming a bankrupt;
- (e) upon the sale or other disposition of the property-
  - (i) in pursuance of an order made by the Court under section 243G; or
  - (ii) by the owner of the property with the consent of the Court or of the *Official Trustee*; or

(1) upon the sale of the property to *a bona fide* purchaser for value who, at the time of purchase, has no notice *of* the charge,

whichever first occurs.

(3) The charge created on property by sub-section (1) by reason of the making of an order directing the Official Trustee to take control of the property-

- (a) is subject to every charge or encumbrance to which the property was subject immediately before the order was made;
- (b) has priority over all other encumbrances whatsoever; and
- (c) subject to sub-section (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by sub-section (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the Official Trustee may cause the charge so created to be registered under the provisions of that law and, if the Official Trustee does so, a person who purchases or otherwise acquires the property after the registration of the charge shall, for the purposes of sub-section (2), be deemed to have notice of the charge.

#### **Penalty for selling, &c., property subject to the control of Official Trustee**

**243K.** A person shall not, without the consent of the Court or of the Official Trustee, sell, or otherwise dispose of, or purport to sell or otherwise dispose of, any property that is, to his knowledge, subject to a charge under section 2431.

Penalty: \$2,000 or imprisonment for 2 years, or both.

#### **Sale of property before bankruptcy**

**243L. (1) Where-**

- (a) the Commonwealth has, within 6 months before the presentation of a petition, or after the presentation of a petition, against a person, received moneys from the Official Trustee or an Official Receiver in pursuance of an order under section 243G in relation to the liability of the person to pay a pecuniary penalty; and
- (b) the person subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition,

the Commonwealth shall pay to the trustee in the bankruptcy an amount equal to the amount paid to the Commonwealth in accordance with the order, less the taxed costs of the Minister, the Commissioner of Police or Comptroller in respect of the making of the order under section 243G.

(2) Where the Commonwealth has paid to the trustee in bankruptcy an amount in accordance with sub-section (1), the Commonwealth may prove in the bankruptcy for its debt as an unsecured creditor as if the order under section 243c had not been made.

(3) Notwithstanding anything contained in the *Bankruptcy Act* 1966, a person who purchases in good faith, property of a person who, after the purchase, becomes a bankrupt, under a sale of the property in pursuance of a direction given under section 243G acquires a good title to it as against the trustee in the bankruptcy.

#### **Duties of the Official Trustee after receiving notice of presentation of creditor's petition, &c.**

**243M. (1)** Where, after the Official Trustee has been directed by an order under sub-section (1) of section 2436 to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the presentation of a creditor's petition against the person is given to the Official Trustee, the Official Trustee-

- (a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and
  - (b) shall not pay to the Commonwealth any moneys in pursuance of the direction to do so contained in the first-mentioned order,
- until the petition has been dealt with by a bankruptcy court or has lapsed.

(2) Where, after the Official Trustee has been directed by an order under sub-section (1) of section 243G to pay an amount to the Commonwealth in relation to the liability of a person to pay a pecuniary penalty, notice in writing of the reference to a bankruptcy court of a debtor's petition against the person is given to the Official Trustee, the Official Trustee-

- (a) shall refrain from taking action to sell property of the person in pursuance of any direction to do so contained in an order under that section; and
  - (b) shall not pay to the Commonwealth any moneys in pursuance of the direction to do so contained in the first-mentioned order,
- until a bankruptcy court has dealt with the petition.

(3) Where a person who is liable to pay a pecuniary penalty becomes a bankrupt (whether on a creditor's petition or otherwise), any property of the person in the possession, or under the control, of the Official Trustee in accordance with an order made under this Division shall be deemed to be in the possession, or under the control, of the Official Trustee as, or on behalf of, the trustee of the estate of the bankrupt, and not otherwise.

(4) In this section, "bankruptcy court" means a court having jurisdiction in bankruptcy under the *Bankruptcy Act 1965*.

#### **Protection of Official Trustee from personal liability in certain cases**

##### **243N. (1) Where-**

- (a) the Court has made an order under section 243E directing the Official Trustee to take control of all the property of a person;
- (b) the Official Trustee has taken control of any property in the possession, or on the premises, of the person without notice of any claim by another person in respect of that property; and
- (c) the person did not, at the date of the order, have any beneficial interest in the property referred to in paragraph (b),

the Official Trustee is not personally liable for any loss or damage arising from its having taken control of the property sustained by a person claiming the property or an interest in the property, or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of control of the property.

(2) Where the Official Trustee has, in accordance with an order under section 243E, taken control of property of a person specified in the order, the Official Trustee is not personally liable for any loss or damage arising from its having taken control of the property (being loss or damage sustained by some other person claiming the property or an interest in the property), or for the cost of proceedings taken to establish a claim to the property, or to an interest in the property, unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of control of the property.

(3) The Official Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory upon or in respect of property of which it has been directed by an order under section 243E to take control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of that order, except to the extent, if any, of the rents and profits received by the Official Trustee in respect of that property on or after the date of that order.

(4) Where the Official Trustee who has been directed by an order under section 243E to take control of a business carried on by a person carries on that business, the Official Trustee is not personally liable for any payment in respect of long service leave for which the person was liable or for any payment in respect of long service leave to which a person employed by the Official Trustee in its capacity of manager of the business, or the legal personal representative of such a person, becomes entitled after the date of that order.

(5) In this section, "interest", in relation to property, means-

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege over, or in connection with, the property.

#### Fees payable to Official Trustee

243P. Where the Official Trustee takes control of property by virtue of an order of the Court under section 243E, the Official Trustee is entitled to receive fees, in respect of the exercise of its powers and the performance of its duties in relation to the property, equal to the fees that it would be entitled to receive if it were exercising the powers or performing the duties in consequence of its having taken control of the property by virtue of a direction given under section 50 of the *Bankruptcy Act 1966*.

#### Notices

243Q. Where the Court makes an order under section 243E or 243F in relation to property, the Official Trustee shall give or publish such notices (if any) of, or in respect of, the order as are required by the regulations or as the Court directs.

#### Reduction of pecuniary penalty

**243R. (1)** Where, before the Court makes an order directing a person to pay a pecuniary penalty in respect of a particular prescribed narcotics dealing engaged in by him, or of prescribed narcotics dealings engaged in by him during a particular period, any property of the person to which section 229A applied by reason of that prescribed narcotics dealing, or of a prescribed narcotics dealing during that period, had been seized as forfeited goods-

- (a) if, before the imposition of the penalty, the property had been condemned or was deemed to have been condemned-the penalty shall be deemed to be reduced by an amount equal to the value of the property at the time when it was seized;
- (b) if, after the imposition of the penalty and before the penalty is paid, the property is condemned or is deemed to be condemned or the person consents to the forfeiture of the property-the liability of the person in respect of the penalty shall be deemed to be reduced by an amount equal to the value of the property at the time when it was seized; and
- (c) if the penalty is paid before the property is condemned or is to be deemed to be condemned-the Commonwealth is liable to pay to the person an amount equal to the value of the property at the date of its seizure.

(2) After a pecuniary penalty is imposed on a person in respect of a particular prescribed narcotics dealing engaged in by the person, or of prescribed narcotics dealings engaged in by him during a particular period, property of the person to which section 229A applies by virtue of that dealing, or of such a dealing during that period, shall not be seized as forfeited goods.

(3) The Court may make an order, in respect of property to which section 229A applies, being property that has been seized as forfeited goods, determining the value, at the time when it was seized, of that property for the purposes of this section.

**Jurisdiction of the Court**

**243s.** Jurisdiction is conferred on the Court to hear and determine applications under this Division.

**SCHEDULE VI**

Section 4

Column I Name of substance	Column 2 Trafficable quantity
	Grams
Acetorphine ..	2.0
Acetylcodeine. .	2.0
Acetyldihydrocodeine ..	2.0
Acetylmethadol	2.0
Allylprodine ..	2.0
Alphacetylmethadol	10.0
Alphameprodine	0.2
Alphamethadol	0.2
Alphaprodine..	25.0
Amphecloral . .	2.0
3-(2-Aminopropyl) indole	2.0
Amphetamine	2.0
Anileridine	25.0
Barbiturates	50.0
Benzethidine ..	10.0
Benzylmorphine	5.0
Betacetylmethadol	5.0
Betameprodine	5.0
Betamethadol . .	5.0
Betaprodine ..	5.0
Bezitramide	5.0
4-Bromo-2, 5-dimethoxyamphetamine	0.5
Bufotenine	2.0
Cannabinoids. .	2.0
Cannabis . . .	100.0
Cannabis Resin	20.0
Chlorphentermine	2.0
Clonitazene	5.0
Cocaine	2.0
Codeine	10.0
Codeine-N-oxide	10.0
Codoxime	10.0
Desomorphine	2.0
Diampromide. .	5.0
Diethylpropion	5.0
Diethylthiambutene	5.0
N,N-Diethyltryptamine	2.0
Dihydrocodeine	10.0
Dihydromorphine	10.0
Dimenoxadol . .	10.0
Dimepheptanol	10.0
2, 5-Dimethoxy-4-methylamphetamine	2.0
Dimethylthiambutene . .	20.0
N,N-Dimethyltryptamine	2.0
Dioxaphetyl butyrate . .	2.0
Diphenoxylate	2.0
Dipipanone	10.0

SCHEDULE VI-continued

Column I Name of substance	Column 2 Trafficable quantity
	Grams
Ecgonine	10.0
Ethylmethylthiambutene	10.0
Ethylmorphine	2.0
Etonitazene	5.0
Etorphine	5.0
Etoperidine	5.0
Fentanyl	0.005
Furethidine	1.0
Harmaline	2.0
Harmine	2.0
Heroin	2.0
Hydrocodone ..	2.0
Hydromorphenol	2.0
Hydromorphone	2.0
Hydroxyamphetamine ..	2.0
Hydroxypethidine	5.0
Ketobemidone	2.0
Levorphanol ..	1.0
Lysergamide ..	0.1
Lysergic acid ..	0.002
Lysergide	0.002
Mescaline	7.5
Metazocine	7.0
Methodone	2.0
Methaqualone	50.0
Methorphan ..	2.0
Methylamphetamine ..	2.0
3,4-Methylenedioxyamphetamine	0.5
Methyldesorphine	2.0
Methyldihydromorphine	2.0
Methylphenidate	2.0
Metopon ..	2.0
Monoacetylmorphines. .	2.0
Moramide	2.0
Morpheridine ..	2.0
Morphine	2.0
Morphine-N-oxide	2.0
Myrophine	20.0
Nicocodine	2.0
Nicodicodine ..	2.0
Nicomorphine	2.0
Noracymethadol	2.0
Norcodeine	2.0
Norlevorphanol	2.0
Normethadone	5.0
Normorphine ..	20.0
Norpipanone ..	10.0
Opium	20.0
Oxycodone	5.0
Oxymorphone	2.0
Pentazocine	20.0
Pethidine	10.0
Phenadoxone ..	10.0
Phenamproside	10.0
Phenazocine ..	1.0
Phendimetrazine	5.0
Phenmetrazine	5.0
Phenomorphane	5.0
Phenoperidine	1.0
Pholcodine	5.0
Piminodine	10.0
Pipradrol	1.0
Piritramide	1.0
Proheptazine ..	1.0
Propoperidine	25.0
Psilocin	0.1
Psilocybin	0.1
Tetrahydrocannabinols	2.0
Thebacon	2.0
Thebaine	2.0
Trimeperidine	10.0

SCHEDULE VIII

Section 4

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Column I Name of substance	Column 2 Commercial quantity
	Kilograms
Cannabis	100.0
Cannabis Resin	50.0
Cocaine	2.0
Heroin	1.5
Lysergic Acid .	0.002
Lysergide	0.002
Morphine	1.5
Opium	20.0
Tetra hydrocannabinols	5.0

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