



# PARLIAMENT OF THE COOK ISLANDS

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## CUSTOMS REVENUE AND BORDER PROTECTION BILL

### EXPLANATORY NOTE

This note does not form part of the Bill but is intended to indicate the effect of the clauses.

The effect of this Bill is to repeal the Customs Act 1913.

- Clause 1** Short title
- Clause 2** Commencement- indicates the dates the Act and parts of it will come into force
- Clause 3** defines the purpose of the Customs Revenue and Border Protection Act. This is to reform and modernise Customs legislation.
- Clause 4** defines certain important terms used throughout the legislation.
- Clause 5** defines who are bound by the Act.
- Clause 6** outlines the application of the Act in certain cases. It outlines circumstances and conditions on which powers stipulated within the Act may be exercised. This is mainly in relation to Armed Forces and other crafts in the control of Armed forces responding to an emergency.
- Clause 7** establishes the Cook Islands Customs Services. It provides for the appointment of the Comptroller of Customs and also Customs officers.
- Clause 8** allows the Comptroller to appoint persons who are not customs officers to perform certain functions or exercise certain powers that may be performed or exercised by a customs officer.
- Clause 9** allows for the delegation of powers and functions of the Comptroller to any person. It also outlines that a delegation must be in writing and is given for a specific period and also revocable. The delegation does not affect the responsibility of the Comptroller for the actions of the person acting under the delegation.
- Clause 10** deals with Identity cards which are issued by the Comptroller, and upon the exercising of functions or powers of Customs officers of authorised persons,

the identity card is presented when requested. A person who ceases to be a Customs officer or an authorised person must return the identity card to the Comptroller.

- Clause 11** defines the Customs flag.
- Clause 12** deals with Customs places. It states the designation of a port or airport to be a Customs port or a Customs airport which must be known as Customs places. These places are subject to conditions and restrictions. It also states the ability of the Comptroller to revoke a designation or vary or revoke the conditions and restrictions to which the Customs places were subject to and impose new conditions and restrictions. This section also states certain people whom the Comptroller must consult with before exercising the powers under this section.
- Clause 13** deals with areas that are licensed as Customs controlled areas. These are areas used for the storage, keeping, and temporary holding of goods in which duty has not been paid or have yet to be examined. These areas also include areas used for the manufacturing of goods, areas used for the disembarkation, embarkation or processing of persons arriving in or departing from the Cook Islands, areas for the processing of crafts arriving or departing from the Cook Islands or the loading or unloading of good onto or from a craft, and other prescribed purposes.
- Clause 14** explains how people may apply for a licence for an area to be licensed as a Customs controlled area.
- Clause 15** outlines the process where a licence may be granted or refused. It also provides for the ability of the Comptroller to exercise his or her discretion in certain cases relating to the granting or refusal of a licence. It also allows for the person making the application to appeal the decision of the Comptroller.
- Clause 16** allows the Comptroller to vary or revoke terms, conditions or restrictions to which the licence is subject to and may also impose new terms, conditions or restrictions.
- Clause 17** allows the revocation or suspension of a licence issued by the Comptroller.
- Clause 18** provides for the surrender of licence by the licensee by giving one month notice in writing to the Comptroller.
- Clause 19** deals with the closing of Customs controlled areas. It stipulates where a licence issued under section 15 is revoked, suspended or surrendered, the goods within that Customs controlled area become subject to duty, unless approval is given for the goods to be removed to another Customs controlled area.
- Clause 20** deals with the liability of the licensee when they cease to act as licensee. It states that the liability of a licensee for any act or omission by the licensee while licensed is not affected by the surrender, suspension or revocation of the licence.

- Clause 21** provides that licensees of an area must provide and maintain facilities for the carrying out of the functions of Customs free of charge.
- Clause 22** applies to licensee of Customs controlled area and provides that no charges are to be made for the storage of imported goods in that area.
- Clause 23** deals with goods that are subject to the control of Customs. It outlines where goods become subject to the control of Customs, mostly during the importation and exportation of goods. It also provides for goods that are in Customs controlled areas and also goods in Customs storage areas to be goods subject to the control of Customs.
- Clause 24** deals with advice of arrival of a craft. It provides for the person in charge of the craft to provide Customs in advance notice details of arrival, voyage, passengers, crew, cargo and domestic cargo.
- Clause 25** deals with the requirement to answer questions asked by a Customs officer in relation to the craft and its voyage and any persons or goods carried on the craft. This requirement must be met by the owner of the craft, any member of the crew and any passenger on a craft.
- Clause 26** deals with the bringing to of ship where the person in charge of a ship arriving in the Cook Islands is directed by a Customs officer to do so. It also provides for the facilitation of Customs officer to board the ship and the ability of customs Officer acting with the authority of the Comptroller to cause the ship to leave the Cook Islands.
- Clause 27** indicates that a craft must arrive at a nominated Customs place. This section also goes to state that a person must not leave or board the craft unless authorised to do so by a Customs Officer.
- Clause 28** deals with a craft arriving at a place other than nominated Customs place. This refers to exceptions for a craft to arrive at a Customs place and this would only apply to instances where the Comptroller has authorised an arrival to a place other than a Customs place. It also provides for the Comptroller not to give an authorisation without consulting other Heads of Departments.
- Clause 29** refers to Inward report to be delivered to Customs when a craft is arriving in the Cook Islands from a point outside the Cook Islands. It also states the particulars to be included in the inward report and also the provision of supporting documents as the Comptroller may require.
- Clause 30** deals with persons arriving in the Cook Islands. This section states that they are required to report to a Customs officer or police station upon arrival. It also provides that where a person has reported to a Customs officer or police station, that person must remain in that place for enabling a Customs officer to exercise his or her power under this Act.

- Clause 31** deals with Disembarkation. It provides that a person on board a craft arriving within the Cook Islands must comply with directions given by a Customs officer concerning disembarkation.
- Clause 32** states that a person who has arrived in the Cook Islands from a point outside the Cook Islands must make available their baggage for examination by a Customs officer and also to comply with any directions given by a Customs officer in relation to the movement of the baggage within Customs place.
- Clause 33** states that a person departing from the Cook Islands must depart from a Customs place. However this is an exception in cases where it is authorised by Customs to depart from a place which is not a Customs place.
- Clause 34** states that a person preparing to board a craft for departure must comply with Customs direction relating to embarkation.
- Clause 35** deals with outgoing baggage. It states that outgoing baggage must be made available for examination by a Customs officer and that a person must comply with Customs direction relating to the movement of the baggage within the Customs place or Customs controlled area.
- Clause 36** deals with the prohibition on the use of electronic communicating devices in a certain area within a Customs place or a Customs controlled area. This section also defines what an electronic communicating device.
- Clause 37** of the Act establishes the obligation on the individual to remain in a designated place until Immigration Cook Islands or Biosecurity (as appropriate) processing is complete. Customs officers have been provided with the authority to ensure all border processing occurs prior to the person leaving that place. The provision facilitates "routine" border scrutiny by these other agencies of persons who may be of interest to, or in any other way require further processing by, the other agency.
- Clause 38** (cases requiring investigation for public health or law enforcement purposes) is similar to that which arises in the section 37, however, a different application/approach is required. The referral to Immigration Cook Islands or Biosecurity is clearly part of a "whole of border processing", whereas the referrals made under section 37 are based on the Customs officer forming a reasonable cause to suspect that further investigation is required for either public health or law enforcement purposes.
- Clause 39** refers to the clearance of craft. It provides that where a craft's destination is outside of the Cook Islands, a certificate of clearance must be received by the person in charge of a craft before that craft can depart from the Cook Islands. This section also states that a craft that has arrived in the Cook Islands from a place outside of the Cook Islands must not leave the Cook Islands without the permission of Customs and subject to the production of any documents that may be required by the Comptroller.

- Clause 40** refers to criteria to be met before a certificate of clearance is issued. These criteria include the delivery to Customs of an outward report, answering any questions relating to the craft, passengers, crew, cargo, stores and its intended voyage or journey, produce documents as may be required by Customs and comply with all requirements in the Act concerning the craft and its passengers, crew, cargo, stores and its intended voyage or journey.
- Clause 41** refers to the boarding of outward craft. This section provides that a person in charge of a craft departing from the Cook Island must if required by Customs, facilitate boarding by Customs officers.
- Clause 42** deals with the production of certificate of clearance. It provides that a person whom a certificate of clearance has been granted must produce the certificate of clearance for examination by the officer when required. It also provides that a person must answer questions put to him or her by the officer concerning passengers, crew, cargo, stores and its intended voyage or journey.
- Clause 43** refers to departure of a craft that has arrived from a point outside the Cook Islands to be from Customs place only. However it does not apply to a craft that is required by any other law in relation to navigation to depart from a place that is not a Customs place, a craft that is compelled by accident, stress of weather or other necessity or the Comptroller has given authorisation to depart from a place which is not a Customs place.
- Clause 44** deals with Regulations relating to stores for craft. This section empowers the Minister in consultation with the Comptroller to make regulations in relation to stores for craft.
- Clause 45** defines certain terms used in Part 5 of the Bill. Such terms include **Border crossing goods** which mean goods that are recorded by a person concerned in the movement of goods as having being, is being or as intended to be imported into or exported from the Cook Islands, **border crossing person or craft** meaning a person or craft that is recorded by a person concerned in the movement of goods, persons or craft as having or as intended to arrive in or departing from the Cook Islands, **person concerned in the movement of goods, persons or craft** means-
- a. an owner or operator of a craft that carries or transports goods or persons, or both from the Cook Islands from a point outside the Cook Islands, or from a point outside the Cook Islands for commercial purposes
  - b. a travel operator or the agent of a travel operator
  - c. an owner, occupier or operator of a Customs controlled area
  - d. an operator of a business that handles, packs, stores, or transports goods that are to be transported from the Cook Islands to a point outside the Cook Islands
  - e. any persons or classes of persons involved in the handling, carriage, or transportation of goods or persons to a point outside the Cook Islands or from a point outside the Cook Islands.
- Clause 46** defines the purpose of Part 5 of the Act. Part 5 enhances the ability of Customs to undertake such activities as cross-checking the accuracy of information provided by travellers, looking for possible suspicious patterns of behaviour

and assessing security and other risks that a particular person, good or craft may pose to the Cook Islands or to another country.

- Clause 47** deals with persons to whom section 48 or 49 applies to. This part only applies to a person concerned in the movement of goods, persons or craft and a person that has been required by the Comptroller to comply with that section.
- Clause 48** enables Customs to routinely access information about goods and craft travelling into or departing from the Cook Islands that is held by a person concerned in the movement of goods, persons or craft.
- Clause 49** enables Customs access to information about border crossing persons that is held by a person concerned in the movement of goods, persons or craft.
- Clause 50** is a further provision about giving Customs access to information. It provides that a person must give Customs access to the information in a form and manner prescribed for example, in an electronic form and manner.
- Clause 51** refers to the controlling of use of information by customs. This allows Customs to view all information given under section 48 without a warrant. It also provides that Customs may view information about border crossing persons in a way outlined in sections 52 to 55.
- Clause 52** refers to information about travel within 28 day period. This section allows Customs to view without a warrant information about travel within the 28 day period. This section also provides that access to other travel-related information about persons that relates to travel outside the 28 day period, such as prior travel movements, methods of payment etc can be obtained only under a search and viewing warrant, or under an emergency process that is subsequently validated by warrant. It also provides routine access to travel-related information held about persons crossing the Cook Islands borders 14 days before the border is crossed, at the time of crossing the border, and for 14 days after the border has been crossed.
- Clause 53** states that information about other travel may be searched for information relating to travellers within 28-day period. It allows for information about other specified travel that may be accessed pursuant to section 46 to be searched and for any information found to be viewed.
- Clause 54** allows for search and viewing warrants to be granted in specified circumstances.
- Clause 55** allows for the searching and viewing of certain information without a warrant in specified circumstances, described as emergencies.
- Clause 56** sets out the procedure that must be followed if viewing of information has not been authorised in a specified manner.

- Clause 57** requires that documents relating to applications for warrants that have been dealt with by a Judge must be sealed and may only be produced in the situations outlined in this provision.
- Clause 58** specifies the type of information, contained in applications for search and viewing warrants held by a Court, that a Judge may order not to be disclosed or produced.
- Clause 59** provides a rule for the disposal of information viewed under specified provisions or collected by Customs for a specified purpose.
- Clause 60** protects persons acting under the authority stipulated in this part of the Act.
- Clause 61** clarifies that provisions under Part 5 does not limit other powers and obligations relating to or use of information.
- Clause 62** deals with Entry of imported goods. It prescribes that imported goods must be entered by the importer in a form prescribed and within a prescribed time. This section also specifies details which are to be included in an entry and that the person making an entry must answer questions put to him or her by a Customs officer and upon a request by a Customs officer he or she must present the goods for examination. This section also allows the Comptroller to dispose of the goods if default is made in the entry and the goods are not claimed in the period prescribed.
- Clause 63** allows the Minister in consultation with the Comptroller to make regulations relating to entry of imported goods. These regulations can prescribe when an entry is deemed to have been made, the conditions under which an entry is deemed to have been passed, the exemptions on specified goods and prescribing goods or classes that are deemed to have been entered under section 62.
- Clause 64** deals with fees and charges relating to the importation of goods. It allows the Minister to make regulations prescribing fees or charges that are payable to Customs to meet or assist in meeting costs and expenses incurred by Customs in exercising their functions and powers or performing their duties under this Act that relate to importation of goods.
- Clause 65** states that where an entry is made and passed, goods must be dealt with immediately in accordance with the entry.
- Clause 66** deals with the cancellation and amendment of entries. It states that the Comptroller may cancel an entry to prevent the duplication of entries or amend an entry to correct it. The cancellation of the entry does not affect any liability incurred in respect of the entry by the person making it. A person not satisfied by the decision of the Comptroller may appeal to the Customs Appeal Authority.
- Clause 67** deals with the unloading of goods. It provides that a person cannot unload goods that are subject to the control of Customs unless authorisation has been

given by the Comptroller, or if the safety of the craft or goods is threatened by collision, fire, stress of weather or other circumstances that are prescribed.

- Clause 68** deals with the importation of a craft into the Cook Islands. It states that where a craft is imported otherwise than as cargo, an entry must be made by public notice and where an entry has been made, the craft is deemed to have been imported as cargo and unloaded as such on its arrival.
- Clause 69** provides for samples or illustrations relating to the goods to be furnished when required by a Customs officer and must be free of charge. A sample furnished must be sufficient for the purpose for which it is taken.
- Clause 70** refers to the transportation of imported goods. This section prohibits the placing of goods under the control of Customs into a craft or vehicle or other conveyance for transportation within the Cook Islands until an entry has been made.
- Clause 71** prohibits the removal or delivery of goods that are subject to the control of Customs except when provided for in the Act or with the permission of a Customs officer or the Comptroller.
- Clause 72** states that the Comptroller may allow for goods to be temporarily removed from a Customs controlled area without the payment of duty for such time as the Comptroller approves. The goods that are removed remain subject to the control of Customs and they are deemed to be within a Customs controlled area.
- Clause 73** outlines the details that are to be included in an entry for goods to be exported. It also outlines the obligations of the exporter to Customs officers in relation to the goods that are to be exported. This section also deals with goods exported under drawback. This section also allows the Comptroller to revoke the permission of the goods to be exported under reasonable cause.
- Clause 74** gives the Minister the power to make regulations in relation to entry of goods for export.
- Clause 75** deals with the issuing of a Cook Islands certificate of origin in respect of goods for export to a party to a free trade agreement. It also explains that a certificate of origin is a document issued that identifies goods to which it relates and certifies that the goods originate in the Cook Islands. This section also provides that the Queens Representative may declare a party to PICTA as a specified PICTA party.
- Clause 76** allows the Comptroller to appoint a body as a certification body and the appointment of such body may be subject to terms and conditions the Comptroller thinks fit.
- Clause 77** allows the Cabinet to make regulations relating to the Cook Islands certificate of origin and certification bodies.

- Clause 78** refers to goods for export. It provides that goods for export must be dealt with according to entry. This section also states that where goods are entered for export and are not exported according to the entry, the person making the entry must notify Customs of the failure to export and the reasons for it. This section also provides that where a licence condition of a Customs controlled area allows, an export entry to be made for goods that have been removed from an area for sales made for delivery to persons upon their arrival in the Cook Islands from a point outside the Cook Islands.
- Clause 79** prohibits the landing of goods that were loaded for export without the permission of a Customs officer except at a point outside the Cook Islands.
- Clause 80** defines the time of exportation as the time when the exporting craft leaves the last Customs place to proceed to a point outside the Cook Islands.
- Clause 81** deals with the appointment of a Customs officer to apply a Customs seal to packages of goods for export.
- Clause 82** explains that a warning notice is to be attached to packages to which the Customs seal has been applied to. This warning notice explains that the goods are from the time the Custom seal is applied until exportation, are subject to the control of Customs, it also outlines the powers of detention, questioning and examination by Customs regarding the packages in which the Customs seal has been applied to.
- Clause 83** deals with approved secure export scheme. It allows for the Comptroller to approve a secure exports scheme upon receiving an application from an exporter. It also outlines the process regarding the approval or declining of an application.
- Clause 84** outlines the purpose of secure exports scheme. The purpose of this is to ensure that goods for export are packaged securely with no other goods and are delivered securely without interference to the place of shipment and shipped.
- Clause 85** outlines matters that need to be specified in secure exports scheme. Such matters include the secure package to be used, the seal or makings to be applied to the package. It also provides for the conditions that may be required by the Comptroller regarding a secure exports scheme and how the goods are to be delivered to the place of shipment.
- Clause 86** deals with matters that need to be acknowledged in secure export scheme. This is acknowledgment by the exporter that the goods are subject to the control of Customs and that the powers of detention, search, questioning and examination by Customs officers apply to a secure exports scheme.
- Clause 87** allows for goods exported under a Customs approved secure exports scheme to be exported under drawback. It also provides that goods exported under such scheme must satisfy all the conditions prescribed for allowing drawback of duty.

- Clause 88** deals with the use of Customs seals on goods exported under Customs-approved secure exports schemes. It also provides that the application of Customs seals does not invalidate the export of goods that are to be exported under the scheme.
- Clause 89** allows for the involvement of exporters in the carriage, handling, transportation or exportation of goods for export under a Customs-approved secure exports scheme.
- Clause 90** deals with prohibited imports. It refers to the types of goods and publications that are prohibited. It also allows for the imposition of a conditional prohibition in a form of a licence or permit on the importation of certain goods. This clause also provides that the importation of prohibited goods does not exempt the payment of duty on those goods.
- Clause 91** deals with prohibited exports. It prohibits goods referred to in the schedules and also goods that their exportation is prohibited under legislation. It allows the Minister to make regulations prohibiting the exportation of any specified goods. This clause also provides that a prohibition may be general or limited to the export of certain goods, and a conditional prohibition in the form of a licence or permit may allow the exportation of certain prohibited goods. This clause also provides that a prohibition does not apply to goods that have already been loaded into a ship or craft before the prohibition had come into force.
- Clause 92** deals with the production of a licence or permit for goods. This clause provides that where the importation or exportation of goods are prohibited, a Customs officer may refuse to pass an entry for the goods until the officer is satisfied that a licence or permit has been issued.
- Clause 93** refers to certain terms used in Part 8 of the Act. These terms are reference to the Customs Tariff Act 2012.
- Clause 94** requires importers to specify the Customs values of goods on an entry for the goods imported. It also requires the importer or agent of the importer to keep documents, records and information relating to that entry and must produce those documents when required by Customs.
- Clause 95** provides that an amendment of an assessment may be made by the Comptroller upon completion of an investigation or also as a result of an audit or examination. The amended assessment becomes the Customs value. This clause also requires notice to be provided in writing to be given to the importer regarding the amended assessment. The amendment of the assessment applies whether or not the goods have been released from the control of Customs whether or not any duty assessed has been paid. An importer who is unhappy with the decision of the Comptroller may apply to a Customs Appeal Authority.
- Clause 96** deals with Currency and exchange rate. It defined that the Customs value is declared in the Currency of the Cook Islands which is one Cook Islands dollar

equals to one New Zealand dollar. A fair exchange rate is to be used for the conversion of an amount where the amount for assessing duty is not an amount equivalent to the Cook Islands dollar. This clause also deals with how the rates are to be applied on entries.

- Clause 97** refers to the State's right of compulsory acquisition of goods. This clause protects the revenue from undervaluation of goods. It provides that where an entry is made for any goods, and the goods remain subject to the control of Customs, the goods can be acquired by the State. It also provides that the acquisition of the goods come into effect once a warrant is signed by the Comptroller. This clause also allows for the sale of the goods acquired if no appeal is made regarding the goods, and the proceeds of the sale become Customs revenue.
- Clause 98** determines the origin of fish or other produce of the sea. This clause states that fish or other produce of the sea, or any goods produced from fish or other produce of sea, produced or manufactured at sea on board a ship belonging to a country, are deemed to be products of that country and if brought into the Cook Islands are deemed to be imported into the Cook Islands from that country.
- Clause 99** refers to the power of the Minister to make regulations in relation to determining the country of produce or manufacture of a good. These regulations may prescribe goods manufactured or produced in a certain country, conditions that are required to be fulfilled before goods are declared produce of a certain country and also authorising the Comptroller to make determinations in relation to specific goods.
- Clause 100** deals with goods that are claimed to be entitled under legislation to be entered free of duty, or at a rate of duty lower than the rates prescribed under the Tariff. It states that such claim must be verified if required by the Comptroller. Where a claim is not verified to the satisfaction of the Comptroller, the goods which the claim has been made must not be entered.
- Clause 101** deals with unsubstantiated preference claims. This clause provides that in cases where an investigation is carried out in relation to the verification of entries or an audit or examination of records is carried out and no evidence is ascertained in relation to which country produced or manufactured the goods, the goods become subject to rates set out in the Normal Tariff.
- Clause 102** deals with the manufacture of excisable goods. It provides that the manufacture of alcohol and tobacco must only be done in areas licensed to do so or where an exemption has been allowed.
- Clause 103** exempts tobacco manufactured for personal use from the provisions of clause 102. This clause also outlines the conditions which the manufacture of tobacco for personal use is subject to. Such conditions include age restrictions, manufacturing tobacco in the individual's dwelling house and is not offered for sale or given to another person, the leaves or plants used are grown on the individuals land and the amount manufactured must not exceed 8 kilograms.

- Clause 104** exempts beer or wine manufactured for personal use from the provision of clause 102. It also defines personal use as used in this clause to mean, used only by the person who manufactured the wine or beer, the wine or beer is not for sale to another person and the restrictions on the amount of beer or wine that is manufactured.
- Clause 105** refers to goods that are deemed to have been manufactured. This clause refers to compressed natural gas as having been manufactured by a licensee of a manufacturing area when they supply natural gas to a facility that compresses natural gas into fuel used in motor vehicles. This clause also applies to goods on which work has been done by a contractor, the goods are deemed to have been manufactured by the contractor.
- Clause 106** deals with the entry of excisable goods. It provides that goods specified in Part A of Schedule 4 upon removal from a Customs controlled area must be entered by a licensee of that area. It also provides that entries are to be made in a prescribed form within a prescribed time. Where an entry is made in relation to goods that are dutiable in accordance to the volume of alcohol, the person making the entry must specify the volume of alcohol. This clause also provides that goods that have been entered and passed must be dealt with according to the entry.
- Clause 107** states that the Minister may make regulations relating to an entry or excisable goods. It states that the Minister may prescribe when entries of excisable goods are deemed to have been made, the conditions under which the entries are passed and also exemptions on specific goods.
- Clause 108** provides that goods are deemed to have been removed for home consumption when they are physically removed from a Customs controlled area. It does not include instances where the goods are moved to another Customs controlled area, temporarily removed or removed for export or to an export warehouse.
- Clause 109** provides that there must be levied, collected and paid excise duties, if any, on all goods that are manufactured in an area specified in Part A of Schedule 4 and that the duty rates specified in Part A of Schedule 4 must apply.
- Clause 110** provides that where goods are manufactured in an area not licensed as a manufacturing area, Part 9 and Part 10 of the Act applies as if it were a licensed area. It also provides that this clause does not apply to goods manufactured in an area the Comptroller directs is not required to be licensed, goods that are exempted under provisions of this Act and tobacco, beer or wine manufactured for personal use within the exemptions set out in clause 103 and 104.
- Clause 111** provides that excise equivalent duty at the appropriate rate in addition to any other duties or levies payable on imported goods must be levied, collected and paid on all goods specified in Schedule 5 that are imported. It also provides that where goods on which excise equivalent duty is payable in accordance to the volume of alcohol, the person making the entry must specify the volume of

alcohol. This clause also prescribes when excise equivalent duty become payable and that if the excise equivalent duty is an ad valorem duty, the value of goods for the excise equivalent duty must be determined in accordance to the Second Schedule of the Act.

- Clause 112** provides that the excise duty is a debt due to the State and is recoverable by suit of the Comptroller on behalf of the State. It provides that excise duty is payable by the licensee of a manufacturing area and a person who becomes owner of the goods before the excise duty is fully paid. It also provides that payment of excise duty must be made to Customs within a time prescribed.
- Clause 113** allows for the Minister to modify the rate of excise and excise equivalent duty from time to time. This allows the Minister to impose on any goods specified in Schedule 6 excise duty or excise equivalent duty as the Minister thinks fit. It also provides that the duties imposed on these goods must not exceed the rate set out in Schedule 6.
- Clause 114** gives the Minister the power to amend Schedule 3 for certain purposes. This clause allows the Minister to amend headings, subheadings, item or item number of the title of any Part, section, chapter or subchapter of the Tariff referred to in Schedule 3. The amendments made under this section do not alter duties or exemptions from duty applicable to goods under an item or heading amended.
- Clause 115** provides that the Minister may amend Schedule 6 to impose rates of excise duty and excise equivalent duty that the Minister thinks fit on all or any alcoholic beverages and tobacco products as defined in subsection 4 of this clause which refers to headings in the Tariff. The changes made by the Minister must be limited taking into account the movements in the Consumers Price Index all Groups excluding credit services. Where there is a change of rates for alcoholic beverages, the coming into force of those new rates will be on the 1<sup>st</sup> day of July every year. In the case of tobacco products, the coming into force of new rates will be on the 1<sup>st</sup> day of January every year. This clause also provides for the formula in calculating the excise duty and excise equivalent duty.
- Clause 116** provides for the power of the Minister to suspend, remit, refund, or create exemptions from excise duty and excise equivalent duties in relation to goods or classes of goods manufactured or imported into the Cook Islands that are supplied for use by organisations, expeditions or bodies approved by the Minister or organisation which the Cook Islands has entered into agreement with. It also allows the Comptroller to impose conditions in respect of the goods to which a regulation relates to.
- Clause 117** provides that duty is payable on goods consumed before removal from a manufacturing area as if they had been removed on the date they had been consumed. It also provides that duty is not payable on excisable products manufactured within a manufacturing area that are used in the manufacturing process in that area. It also provides that where an allowance of not more than 2 percent has been made for the quantity of spirits to be rectified and

compounded and it is found that the volume of alcohol rectified or compounded is less than the volume delivered, the full excise duty on the deficiency must be paid by the rectifier or compounder to the Comptroller.

- Clause 118** provides that the comptroller may make an assessment of duty where there is reasonable cause that a person approved to manufacture excisable goods has not complied with the conditions set out in the approval. It provides that where an assessment is made, the rate of duty to be applied is the rate applicable if the ethyl alcohol or alcoholic beverage were entered for home consumption. This clause also provides that the duty assessed in this clause must be paid according to this section and where the Comptroller can remit or refund the duty paid if he or she is satisfied the non compliance was not intentional or negligent.
- Clause 119** provides that the comptroller may make an assessment of duty in an event that a quantity of beer or wine that has been exempted from excise duty has been dealt with in a manner that breaches the provisions of the Act. It also provides that the duty assessed in this section is payable by a licensee of a manufacturing area and the individual who manufactured the beer. It also stipulates the due date for the payment of such duty arising in this section.
- Clause 120** refers to duty credits. This allows licensees of manufacturing areas to claim as credit at the time of making an entry, duty paid on materials or goods purchased for use in manufacture. The amount of credit claimed is the amount of excise duty originally paid and does not include any additional excise duty imposed. It also provides that where an amount of credit exceeds the amount payable by the licensee in the home consumption entry, the amount of excess may be refunded at the discretion of the Comptroller to the licensee.
- Clause 121** provides that duty on all imported goods becomes a debt due to the State. This duty is owed by the importer of the goods and this debt becomes payable when goods have been entered for home consumption, entered for removal to a manufacturing area, wrongfully landed or wrongfully dealt with without having been entered and that an offence has been committed against this Act in relation to the goods. The debt is recoverable by suit of the Comptroller on behalf of the State. This clause also provides that the right to recover duty is not affected by the goods ceasing to be under the control of Customs, that a bond or security has been given for payment of duty or that no proper assessment of duty has been made. It also provides the ability of the Comptroller to allow any person to defer the payment of duty under certain conditions. It also provides that goods in an inward report of a craft are presumed to be actually imported unless the contrary is proven. A person dissatisfied by a decision of the Comptroller under this section may appeal to the Customs Appeal Authority.
- Clause 122** provides that where duty remains unpaid by the due date, additional duty is imposed. The amount of additional duty imposed is 5 per cent of the amount payable on the due date, 2 per cent of the amount of duty including additional duty unpaid after a month since the due date and 2 per cent of the amount of duty including additional duty unpaid at the end of each month. This clause

also allows the Comptroller to exercise his or her discretion on a refund of duty. It also provides that duty must be adjusted accordingly where an amendment has been made to an additional duty imposed. This clause also allows for an appeal to the Custom Appeal Authority by a person dissatisfied by the decision of the Comptroller in this section.

- Clause 123** provides that an entry for goods is regarded to be an assessment by the importer or licensee on the duty payable in respect of these goods. It also provides that where goods have not been entered and the Comptroller is satisfied that duty is payable on these goods, the Comptroller may assess the duty, and the person must be advised of the assessment by notice in writing. It also allows a person to appeal to the Customs Appeal Authority on a decision they are not satisfied with.
- Clause 124** allows the Comptroller to make amendments to an assessment of duty to ensure the correctness of duty even though the goods to which the duty relates are no longer subject to the control of Customs or that the duty originally assessed has been paid. It also provides that where an assessment has been made, a notice in writing must be given to a person liable for the payment of duty if a fresh liability arises from the assessment. This clause also allows an appeal to the Customs Appeal Authority on a decision made under this clause.
- Clause 125** refers to the due date for payment of duty. This clause states that due date for payment of duty assessed is after 20 working days after the date on which written notice of the assessment, amended assessment or demand is given by the Comptroller. It also states that the Comptroller may in some cases demand the payment of duty at an earlier date and duty becomes due and payable on a date fixed by the Comptroller. An appeal to the Customs Appeal Authority is also allowed under this clause. This clause also imposes additional duty where the amount of duty payable is outstanding.
- Clause 126** provides that every assessment including amended assessments is regarded as correct and duty is payable accordingly, unless on an appeal where a different amount of duty is determined to be the duty payable on the goods, and it is determined that no duty is payable. It also provides that where an appeal is pending, the Comptroller may, upon receiving security to cover the full amount of duty, release goods from the control of Customs.
- Clause 127** provides that the obligation to pay and the right to receive and recover duty is not suspended by appeal. It also provides that the Comptroller must refund any amount of duty in excess of the amount of duty payable determined by an appeal. The obligation of the Comptroller to refund duty can be suspended pending an appeal by the Comptroller against a decision requiring the duty to be refunded.
- Clause 128** provides for the limitation to the time for amendment of an assessment. This clause disallows the Comptroller to alter assessments after the expiration of 4 years. However, where an entry is made fraudulently or wilfully misleading, the Comptroller may amend the assessment at any time to increase the amount of the assessment.

- Clause 129** provides that every licensee, importer, exporter and certification body must keep records for a period of time not exceeding 7 years. It also provides that such person when required by Customs, must make the records available to Customs, provide copies of the records required and answer questions asked by an officer in respect of the records. This clause also provides that where records are in an electronic form, the person must make the information available to the Customs officer when requested.
- Clause 130** refers to persons that are required to give Customs access to business records. This includes not only licensees, importers, exporters and certification bodies, but also persons involved in the handling, carriage, transportation of goods and also a person that has been required by the Comptroller to give Customs access to such records. This clause also provides that a person must give Customs access to the records in a manner prescribed including records in electronic form within a timeframe prescribed in a notice by the Comptroller. The Comptroller may also exempt a person from complying with this section.
- Clause 131** provides for the meaning of **related**. It refers to a person being related to another person by blood relationship, marriage, or adoption or where a person is a trustee of which the other is a beneficiary. It also refers to related people in a company having the control over the affairs of the company one way or the other. It also defines that companies are related when one company is a subsidiary company of the other company, that either company owns or controls shares that carries 20 per cent or more of the voting power at meetings of the company and where both companies have the same holding company, or a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of each of them.
- Clause 132** provides that duty on any goods constitute a charge on those goods until the duty is fully paid. It provides that where a duty charged under any good is not paid, the Comptroller may take possession of the goods and sell them or any part of them to make up for the duty payable. The ability of the Comptroller to repossess goods does not apply to a purchaser of the goods who had no knowledge that there was still duty owing on the goods. This clause also provides that where there is a dispute in relation to the possession of the goods, the Comptroller may retain possession of the goods or direct the purchaser to retain possession of the goods pending the resolution of the dispute. Where goods are perishable or may lose its value if not sold immediately, the Comptroller or the person in possession of the goods with the consent of the Comptroller may sell the goods and the proceeds of the sale substitutes the goods. The Comptroller or the purchaser of the goods may apply to the courts for declaration on whether the goods were acquired by the purchaser without knowledge that duty still owed on the goods.
- Clause 133** refers to the application of section 134. It refers to the recovery of unpaid duty owing.

- Clause 134** refers to the ranking of duty. This clause sets out the rank of priority in recovering of duty. In the case of an individual, duty is a priority after claims for wages or sums payable to any worker and priority to all other claims except value added tax. In the case of a company or body or persons other than a company, duty ranks a priority after claims for wages or other sums payable to any worker.
- Clause 135** provides that unless approved by the Comptroller, no person is entitled to obtain release of goods from the control of Customs until the sum payable is paid in full. It also provides that a person cannot bring a suit against the State or the Comptroller or any Customs officer in relation to the detention of goods during a period before the payment of the full sum payable. The Comptroller may also release goods from the control of Customs in case where he or she determines that undue hardships would result from the payment of duty, and accept payment of duty in instalments over a specified period.
- Clause 136** provides that the licensee of a Customs controlled area is liable for duty payable on goods that have been wrongfully removed or are missing from that Customs controlled area. The licensee is also liable for duty as if entry has been made and passed for home consumption if dutiable goods are removed from a Customs controlled area without the authority of Customs, dutiable goods are not produced to Customs and are not accounted for as having been lawfully delivered from a Customs controlled area. The Comptroller may also demand from a licensee of an area payment for an amount owing under this section. The duty payable is a debt due to state and the licensee, importer of the goods and the owner of the goods are jointly liable for the payment of the duty. A person dissatisfied with a decision made under this clause may appeal to the Customs Appeal Authority.
- Clause 137** refers to the liability of owners of craft for duty on goods unlawfully landed. This clause provides that if cargo stores are unlawfully landed in the Cook Islands, the owner and person in charge of the craft are jointly liable for the payment of duty on the cargo stores or other goods as if they had been imported and entry had been made and passed for home consumption. The Comptroller may demand from the owner or person in charge of the craft payment on duty owing under this clause. In proceedings dealing with the recovery of duty, the sum demanded by the Comptroller is presumed to be due and payable unless otherwise proven.
- Clause 138** refers to the effect of payment of duty by one person on liability of other persons. The liability of a person for the payment of duty ceases by payment of that duty by another person.
- Clause 139** refers to incidence of altered duties. This provides that where an alteration has been made to the law relating to the liability of goods to duty or the rate of duty to which goods are liable, the liability or rate is determined by the law in force at the times the goods are dealt with.
- Clause 140** deals with the assessment of duty in particular cases. It provides that where duties are charged according to weight, size, quantity or value, the duties must

be charged proportionately on a greater or smaller weight, size, quantity or value. For assessing duty on alcoholic beverages, the duty is to be calculated in accordance with the alcohol content of the beverage.

- Clause 141** provides that goods exported may be reimported free of duty or at a rate not exceeding the duty that would be payable on the goods if imported for the first time, under conditions approved by the Comptroller. This clause applies to goods which reimported are in the same condition as when exported. It also provides that where a drawback of duty has been claimed on export, duty becomes payable upon reimportation.
- Clause 142** provides that an importer, exporter or licensee leaving the Cook Islands must satisfy the Comptroller that he or she is not liable for payment of duty, that all duty payable have been paid or that arrangements have been made for the payment of all duty that is payable by the person before the Comptroller issues a certificate stating that the person is not under any liability for duty owing. The Comptroller may also issue a certificate stating that a person is under a liability for duty and may serve such certificate to an international airline or to the person himself or herself prohibiting the person whose name appears on the certificate from leaving the Cook Islands.
- Clause 143** provides that the Comptroller may refund duty paid in error if he or she is satisfied that the duty has been paid in error either of law or of fact, unless there is a good reason not to. A refund of the duty may be made or upon an application has been made within 4 years after it has been paid.
- Clause 144** allows for refund of duty on goods under the Tariff Act. This provides that where the Minister approves for a lower rate of duty or exempts the goods from duty, the Comptroller must refund whole or in part the duty paid on the goods in accordance with the terms of the approval. A person may appeal to the Customs Appeal Authority if he or she is dissatisfied with a decision made under this clause.
- Clause 145** refers to the refund of duty paid on goods manufactured in the Cook Islands that have been damaged, destroyed, lost, pillaged, diminished in value or deteriorated in condition before their release from the control of Customs. It also applies to goods that are of faulty manufacture or goods that have been abandoned to the State for destruction or disposal.
- Clause 146** refers to the power of the Comptroller to apply refunds towards the payment of other duties.
- Clause 147** refers to the ability of the Comptroller to recover money refunded in error of fact or law by way of suit within 4 years after the date of its payment or anytime if the refund has been obtained by fraud.
- Clause 148** deals with goods temporarily imported. It provides that an amount equal to the duty payable on goods imported must be secured and on receipt of such security, the Comptroller may release the goods from the control of Customs without payment of duty. The security must be released if the Comptroller is

satisfied that the goods have been exported, shipped for export, packed for export, not deliberately destroyed and dealt with in a manner the Comptroller has allowed. It also provides that goods temporarily imported in accordance with a treaty, agreement or arrangement concluded by the government of the Cook Islands, is not subject to duty under conditions imposed by the Minister.

- Clause 149** allows for drawbacks of duty on certain goods. This can include goods that are imported and then later exported from the Cook Islands, goods that are manufactured in the Cook Islands that are later exported. It also includes imported parts and materials used for goods manufactured in the Cook Islands. It provides that where the Comptroller has allowed for a drawback on goods used in the manufacture of the goods, those goods are not to be unshipped, relanded or unpacked before their export. Where drawback has been paid in relation to these goods, the amount of drawback that was allowed for the goods unshipped, relanded or unpacked constitutes to a debt due to the State which is immediately payable upon the unshipment, relanding or unpacking of those goods.
- Clause 150** allows for the making of regulations that may prescribe minimum duty collectable or refundable and minimum drawback allowable.
- Clause 151** provides that a person may make an application to the Comptroller for a Customs ruling in relation to the Tariff classification, excise classification, whether or not goods are subject to a specified duty concession or whether or not goods are the produce or manufacture of a particular country or group of countries. The application for a Customs ruling may be made in relation to goods imported or goods manufactured in the Cook Islands. This clause also provides the guidelines of making an application for a Customs ruling.
- Clause 152** provides that the Comptroller must make a Customs ruling taking into consideration the information that has been provided under clause 151. This clause also provides that the Comptroller must make a ruling within the prescribed time and may also impose conditions on a Customs ruling. The Comptroller is also empowered to decline to make a Customs ruling in conditions where he or she believes the information provided is insufficient.
- Clause 153** provides that where an application has been made for a Customs ruling, the Comptroller must notify the applicant in writing on the ruling and the reasons and the conditions if any to which it is subject to. This also applies when a ruling is declined.
- Clause 154** provides that a Customs ruling is conclusive evidence under this Act and where it is applicable, under the Customs Tariff Act 2012 and also regulations on which the ruling was made in relation to the matter.
- Clause 155** provides that after a Customs ruling has been issued, the Comptroller may require the applicant to satisfy him or her within 20 days that the facts or information on which the Customs ruling was made remain correct and that the conditions of the ruling are complied with.

- Clause 156** provides that the Comptroller may amend a Customs ruling to correct any error contained in the ruling. It also provides that the Comptroller must notify the applicant on the amendment to the ruling, and the amended ruling applies to the applicant on the date the notice of amendment was given to the applicant. Where the ruling increases the duty liability, then the duty must be applied to the goods on which the ruling was made on.
- Clause 157** provides the dates on which a Customs ruling may cease to have effect. It provides that a ruling ceases to have effect on a date where information used for a Customs ruling ceases to be correct, date where conditions provided in a ruling are not met or requirements under the Act are not satisfied. It also provides that a Customs ruling ceases to have effect 3 years from the date the ruling was made. Where a material change has occurred in any information or facts where a Customs ruling was made, the ruling does not come into effect.
- Clause 158** provides that an applicant for a Customs ruling who is dissatisfied with the decision of the Comptroller relating to a Customs ruling may appeal to the Customs Appeal Authority against the ruling or decision.
- Clause 159** provides that where an applicant has relied on a Customs ruling in relation to specific goods, and as a result of this ruling the applicant becomes liable for payment of duty, imposition of fines or seizure of goods then the amount of duty becomes irrecoverable and no penalty may be imposed and the goods are not liable to seizure.
- Clause 160** provides for the imposition of penalties. Where an amount of duty payable under the Act is not paid, or the entry is materially incorrect, the Comptroller may issue a penalty notice on that person to pay to the Comptroller a penalty payable under the Act unless the person satisfies the Comptroller that he or she is entitled to be exempt from the imposition of a penalty under section 162.
- Clause 161** provides that the obligation to pay penalty and the right to receive or recover penalty is not suspended by any appeal or legal proceedings. Where the appellant is successful in the appeal, the amount of penalty imposed must be refunded to the appellant by the Comptroller.
- Clause 162** refers to certain cases where no penalty is to be imposed. It provides that where a person has voluntarily disclosed an error or omission to Customs on goods and documentation, the person is not liable to the imposition of a penalty. It also provides that a person is not liable to imposition of a penalty if he or she satisfies the Comptroller that where the information was incorrect, the person formed a view that the relevant facts pertaining an entry was reasonable and also that the person acted in good faith on information provided and that the total value for duty of the goods to which the error was made is less than \$1,000.
- Clause 163** provides that only a person who is registered by the Comptroller as a user of the Customs computerised entry processing system may transmit or receive information from a Customs computerised processing system.

- Clause 164** refers to the registration of users on the Customs computerised processing system. It provides that a person who wishes to be a registered user must apply in writing to the Comptroller and the Comptroller may require information that he or she thinks necessary for the application.
- Clause 165** provides that a registered user of a Customs computerised entry processing system must be allocated with a unique user identifier for use of the system. It also provides that the user identification must only be used by the registered user for transmitting or receiving information from the system. The Comptroller may impose conditions on a particular user relating to the use and security of unique user identifiers.
- Clause 166** provides that where information is transmitted to a Customs computerised entry system using a unique user identifier by the Comptroller, the transmission of that information is sufficient evidence that the registered person to which the unique user identifier has been issued has transmitted the information. This does not apply to a registered user who has notified Customs that the unique user identifier is no longer secure.
- Clause 167** provides that the Comptroller may impose conditions on registered users. Where a condition is imposed, the Comptroller must notify the registered users in writing of the conditions and that they comply with the conditions. A registered user who is dissatisfied with the conditions may appeal to the Customs Appeal Authority within 20 working days after the date of notification of the conditions.
- Clause 168** provides that the Comptroller may cancel or suspend the registration of a registered user. It provides that the Comptroller must notify the registered user in writing stating the grounds for the cancellation or suspension of that user's registration. A registered user that is not satisfied with the decision of the Comptroller may appeal to the Customs Appeal Authority.
- Clause 169** provides that Customs must keep record of every transmission sent or received from a registered user using a Customs computerised entry processing system. The records are to be kept for a period of 7 years from the date of the sending or receiving such transmissions.
- Clause 170** provides the powers of Customs officer to patrol or use surveillance to detect any offending against the Act. It allows a Customs officer to patrol any part of the foreshore, shore, lake or lagoon, banks of any river or any part of the adjacent land or any Customs controlled areas. It also allows for the inspection of an aircraft landing strip, any building on it and the officer may remain in that area to carry out investigations or surveillance.
- Clause 171** provides that a Customs officer or another person in charge of any craft in the service of customs, may anchor, moor, berth, or land the craft, or haul the craft ashore at any place within the Cook Islands and in such case, no charge is to be levied against Customs.

- Clause 172** provides that a Customs officer may board a craft within the Cook Islands. This relates to a craft that, has arrived in the Cook Islands from a point outside the Cook Islands, is departing the Cook Islands to a point outside the Cook Islands, is carrying domestic or international cargo while the craft remains in the Cook Islands and also a craft that is carrying dutiable, uncustomed, prohibited or forfeited goods or a craft that has been or is about to be involved in the commission of an offence under the Act. Where a Customs officer is on board any craft, the owner of the craft must ensure that the officer is provided with suitable accommodation, safe access to any part of the craft and safe means of leaving the craft. No charge is to be levied against Customs for the carriage of an officer stationed on board a craft for his or her accommodation.
- Clause 173** provides that a Customs officer with the power to search a craft. This applies to a craft arriving in the Cook Islands from a point outside the Cook Islands, a craft departing the Cook Islands to a point outside the Cook Islands, a craft carrying domestic or international goods while the craft still remains in the Cook Islands and also a craft suspected of carrying dutiable, uncustomed, prohibited or forfeited goods or has been, is being or about to be involved in the commission of an offence under the Act. A Customs officer may use reasonable force in the exercising of his or her power under this clause.
- Clause 174** gives a Customs power to search goods on craft. Where a Customs officer is on board a craft, he or she may by appropriate means, secure goods on board that craft, or remove goods on board that craft to a secure place.
- Clause 175** provides the powers of Customs officers to fire on a ship. It provides that the commander or officer in charge of any craft in the State's services may chase and as a last resort, fire at or onto a ship to compel it to bring to any ship where the ship does not immediately bring to when signalled or required to do so or a ship that the master refuses to permit the ship to be boarded.
- Clause 176** refers to the detention of craft. This clause provides that a Customs officer may direct a craft to proceed to a nearest Customs place or detain a craft if the officer has reasonable cause to believe that an offence against this Act is about to be committed. Where a person in charge of a craft threatens or attempts to cause the craft to depart, a Customs officer may seize and detain that craft until a certificate of clearance has been obtained.
- Clause 177** provides a Customs officer or a member of the Police the power to search vehicles. This power applies to the searching, stopping and detention of vehicles in a Customs place suspected of carrying any dutiable, uncustomed, prohibited or forfeited goods, or there is evidence relating to such goods or there is any evidence relating to an offence under this Act.
- Clause 178** provides that a Customs officer may question a person in relation to goods and debt. This clause allows for Customs officer to question a person referred to in this clause in relation to any dutiable, uncustomed, prohibited or forfeited goods. Where a debt in relation to any duty or penalty is due to the State and payable by a person, a Customs officer may question that person.

- Clause 179** provides a Customs officer with a power to question persons about identity, address, travel movements and entitlement and other matters. This clause applies to persons who are about to depart or suspected of attempting to depart the Cook Islands. It also applies to a person who has arrived in the Cook Islands, but has failed to report to a Customs officer or police station. This clause does not apply to a person exempted under regulations, or under an authority of a Customs officer.
- Clause 180** provides a Customs officer with a power to question employees of airlines and shipping companies in relation to international and domestic cargo and also goods subject to the control of Customs. This clause also applies to people employed by a licensee of a Customs controlled area and the owner or operators of vehicles that have had or has in it goods subject to the control of Customs.
- Clause 181** refers to evidence of identity and entitlement to travel. It provides that a person who is an internationally ticketed passenger or a domestic passenger must, on demand by a Customs officer answer questions put to him or her by the officer in relation to identity and residential address and also produce on demand documents specified by an officer for inspection or a declaration if such documents cannot be produced.
- Clause 182** deals with evidence of answers to questions under section 179. It provides that a person must produce upon request by a Customs officer documents in the persons possession or control that relate to matters under section 179. Where documents have been produced, a Customs officer may inspect the document and return it to the person or retain the document or remove the document and make a copy of it.
- Clause 183** provides that a Customs officer may detain a person questioned about goods or debt. Where a Customs officer is not satisfied with the answers, reasons or explanations given to him or her in relation to goods or debt, and the officer has reasonable cause to suspect that an offence has been, is being, or is about to be committed, the officer may detain the person and any other persons associated with that person. The detention can only be allowed for the Customs officer to make further inquiries to establish whether the answer, reason or explanation is correct, or to obtain the attendance or make inquiries of another Customs officer or another person entitled to exercise any power to question, detain or arrest under the Act. The detention of a person must not exceed 4 hours.
- Clause 184** provides that a Customs officer has the power to detain a person questioned on his or her identity, address travel movements and other entitlements. This clause provides that where a Customs officer is dissatisfied with the answers given to him or her, he or she may detain the person to make further inquiries whether the answers given are correct, or seek assistance of another Customs officer or another person authorised under the Act or the Crimes Act 1969 to question, detain or arrest a person. A person detained under this section may only be detained for 12 hours. A Customs officer may detain a person for more than 12 hours if circumstances make it impossible for a Customs officer

to exercise his or her powers under this clause. Reasonable force may be used if necessary to detain a person.

- Clause 185** provides that a Customs officer or member of the Police may detain a person if he or she has reasonable grounds to believe an offence under sections 234 or 246 has been or is about to be committed. This clause provides the powers of detention to a Customs officer or member of police to ensure procedures upon arrival and departure of passengers, crew and craft are complied with. A person may be released from detention once they have complied with Customs requirements. An officer may continue to detain a person if the officer is not satisfied with the answers given by the person. Reasonable force may be used to detain a person.
- Clause 186** provides a Customs officer with the power to detain a person for public health or law enforcement purposes. The power of detention by a Customs officer under this section is similar to the previous sections. A Customs officer may further detain a person already detained under the above sections for the purposes of questioning the person under this section.
- Clause 187** refers to persons to whom sections 188, 189(1) and 190 apply. The persons referred to under this section is a person on board a craft that has arrived or is departing the Cook Islands, a person in the process of disembarking from or embarking onto a craft that has arrived or is about to depart the Cook Islands and a person having entered the Cook Islands at a Customs place, remains in that Customs place.
- Clause 188** provides that a preliminary search of a person by use of aids may be done. Preliminary search is also defined in this clause to mean no actual contact, search conducted by use of dogs, chemical substances, x-ray or imaging equipment or other mechanical, electrical or electronic device or other similar aid. A person may be detained if as a result of a preliminary search, the Customs officer has reasonable cause to suspect that the person has hidden on or about his or her person anything described in section 189.
- Clause 189** provides a Customs officer with the power to search and detain a person if he or she has reasonable cause that a person has hidden or about his or her person any, dutiable, uncustomed, prohibited or forfeited goods or evidence relating to such goods or any thing that is or might be evidence of the contravention or possible contravention of this Act. Where a person is detained and no suitable searcher is available at the place, the person detained may be taken to another place to be searched. A Customs officer may require another authorised person to assist him or her during the conducting of a search on a person.
- Clause 190** provides a Customs officer to search a person for dangerous items. This power of search only applies if a Customs officer has reasonable grounds to suspect that a person has a dangerous item hidden or in clear view on or about his or her person and that the item poses a threat to the safety of the officer or any other person and that a preliminary search would expose an officer to a greater threat. A report of a search conducted under this clause must within 3 working days be submitted to the Comptroller, if the search was conducted by a

Customs officer or the Commissioner of Police if the search was conducted by a Police officer.

- Clause 191** provides a Customs officer with a power to seize items found when carrying out the search. This clause allows for seizure by a Customs officer if he or she has reasonable believe that a person is carrying goods described in sections 189 (1), (2) or (3) or a dangerous item. Reasonable force may be used for seizure of goods described in 189 (1) (a) (b) or (c) or dangerous items.
- Clause 192** provides that a Customs officer may enter a Customs controlled area any time of the day or night and any part of the Customs controlled area to examine goods in that area and may enter any other area that is necessary to pass through.
- Clause 193** provides a Customs officer a power to examine goods that are subject to the control of Customs. Where an officer has reasonable cause to suspect that the goods are subject to the control of Customs, he or she may examine, weigh, analyse, test, open or cause to be opened any packages which the goods are contained or suspected to be contained. The powers under this clause extend to suitcases, pallet, bulk cargo container or other packages. The examination of the goods may include physical or chemical testing or may be facilitated by whatever means necessary. A Customs officer is allowed free access to all lands, buildings and places and to all goods in or on any lands, building or places in respect of goods that are or suspected to be subject to the Control of Customs and in a Customs approved secure package, or package to which a Customs seal has been applied.
- Clause 194** provides a Customs office a power to examine goods that are no longer subject to the control of Customs. This clause applies to goods in respect of which an offence against this Act has been committed or goods that are forfeited to the State under 285. The Comptroller may require a person in possession of such goods to produce the goods to Customs for inspection. Where goods are under an investigation under this section, a Customs officer may take and retain possession of such goods until the completion of the investigation.
- Clause 195** provides that the Comptroller may require the licensee of a Customs controlled area to account immediately for goods that the Comptroller believes have been entered into that Customs controlled area and produce any documents relating to the movement of goods into and out of that Customs controlled area.
- Clause 196** provides that a Customs officer may require a licensee of a Customs controlled area to produce to the officer goods that are shown in any record as being within that area.
- Clause 197** provides that the Comptroller may require verification of entries. Where a person makes an entry, the Comptroller has the power to require proof by declaration or the production of documents of the correctness of the entry and may refuse to deliver the goods or to pass the entry unless proof has been provided. Where the Comptroller is not satisfied with the correctness of an

entry, he or she may detain such goods for a reasonable period to enable the examination of the goods or an investigation into the importation or exportation of the detained goods.

- Clause 198** provides that the Comptroller may require and take securities of such kind for payment of duty. Where a security is required, the Comptroller may refuse to pass an entry or do any other act in relation to the matter until security has been provided. A security may be required in relation to a particular transaction or transactions generally or a class of transactions for such a period and amount and on conditions and penalty as the Comptroller may direct. Where a person has satisfied the Comptroller that the obligations for which a security was given have been fulfilled, the Comptroller may release the person from the conditions of the security.
- Clause 199** provides that the Comptroller may require new securities. Where the Comptroller is dissatisfied with the sufficiency of any security, he or she may require a new security in place of or an addition to the existing security. If a new security is not given, the Comptroller may refuse to pass entry or do anything in relation to any matter in respect of which the security is required.
- Clause 200** provides a Customs officer with a power to request a written authority of agents. Where a person holds himself or herself out as an agent of another person a Customs officer may require that person to produce a written authority form his or her principal and where an authority is not produced, the officer may refuse to recognise the agency.
- Clause 201** provides a Customs officer with a power to audit or examine records. A Customs officer may enter any premises or places where records are kept and audit or examine those records in either in relation to specific transactions, or to the adequacy or integrity of the manual or electronic system or systems by which records are kept. A Customs officer has full and free access to any land, building and places and to all books, records, documents, whether in the custody or under the control of any other person, for the purpose of carrying out any function lawfully conferred on the officer and the records are likely to provide information required for the purposes of the Act. The officer may make extracts from or copies of any books or documents at no cost to Customs.
- Clause 202** provides a Customs officer with a power to require the production of documents. Where an officer has reasonable cause to suspect that goods have been unlawfully imported, exported, manufactured, undervalued, entered, removed or otherwise unlawfully dealt with by any person contrary to the Act, or goods have been seized under the Act, the Comptroller by a notice in writing, may require a person or persons whom the officer suspects as being the owner, importer or exporter, manufacturer of those goods or agent to produce and deliver to the officer all books of account, invoice books, records or documents of account in relation to the purchase, importation, exportation, manufacture, cost or value of, or payment for the goods and any other goods so imported or exported for, the goods and otherwise dealt with in a period of 7 years preceding the date of the notice.

- Clause 203** provides further powers of a Customs officer in relation to documents. The Comptroller may require any person including an officer employed in or in connection with a Government department, Corporation, local authority or any bank, to produce for inspection any specified documents or records necessary or relevant to an investigation or audit under the Act and to allow the Customs officer to make copies or to take extracts from such documents, or to appear before a Customs officer to answer any questions concerning any goods or transactions relating to those goods that are subject of investigation.
- Clause 204** refers to privilege and confidential communications between legal practitioners and between legal practitioners and their clients. This clause provides that any information or document for the purposes of legal profession privilege, is privileged from disclosure under certain circumstances. Where a person refuses to disclose privileged information under this clause, a Customs officer may apply to the High Court for an order determining whether or not the claim of privilege is valid and for the purposes of determining the validity of the claim, the judge may request the document or information to be produced to him or her.
- Clause 205** provides that where a document presented to a Customs officer is in foreign language, that officer may require the person who presented the document to supply an English translation of the document prepared by a person approved by the officer and at the expense of the person who presented the document.
- Clause 206** provides that the Comptroller may take and retain possession of a document or record presented in connection with an entry or required to be produced under the Act. Where a person is entitled or makes a request to the Comptroller in relation to such document, the Comptroller must provide that person with a copy of the document certified by or on behalf of the Comptroller under the seal of Customs as a true copy. A certified copy is admissible as evidence as if it were the original.
- Clause 207** provides a Customs officer with a power to copy documents. Where an officer carries out a lawful search, inspection, audit, or examination under the Act, and has reasonable cause to believe that documents coming into his or her possession are evidence of the commission of an offence against the Act, the officer may remove the documents for the purpose of making copies.
- Clause 208** provides a Customs officer with a power to retain documents and goods. Where an officer carries out a lawful search, inspection, audit, or examination under the Act, and has reasonable cause to believe that any documents or goods coming into his or her possession are evidence of the commission of an offence against the Act, or are intended to be used for the purpose of committing an offence against the Act, the officer may take possession of and retain the documents or goods. This section also sets out procedures to apply once the documents or goods have been retained.
- Clause 209** sets down the basis for the tainted property regime. A Customs officer may seize and detain goods if the officer is satisfied that the goods are to be

imported into, or exported from, the Cook Islands, and the officer has good cause to suspect that the goods are tainted property. The definition of tainted property is linked to the definition in the Proceeds of Crime Act 2003. Tainted property is property that is used or intended to be used in connection with a serious offence whether in the Cook Islands or elsewhere, or proceeds of that offence.

- Clause 210** provides that if the tainted property that is seized is cash, then Customs must if practicable return cash if satisfied that the cash is necessary to satisfy essential human needs.
- Clause 211** sets down further provisions in respect of tainted property. An officer may use reasonable force if it is necessary to seize or detain the goods. If the person from whom the goods have been seized and detained is not present then Customs may make reasonable efforts to notify that person of the seizure and detention as soon as practicable.
- Clause 212** requires goods seized as tainted property to be returned to the person from whom they were seized as soon as practicable after either the completion of all relevant investigations or the expiry of the investigation period. The investigation period is the period of 7 days after the date on which the goods were seized and detained, and includes any extension granted by the High Court.
- Clause 213** allows the 7 day period, for investigating the circumstances surrounding tainted property, to be extended by up to a further 14 days by the High Court if the Court is satisfied that good cause to suspect exists and the extension is necessary to enable investigations to be completed.
- Clause 214** states that a Customs officer may leave tainted property in the custody of certain persons if the goods are a craft, vehicle, or animal. The person must hold the goods in safe-keeping without charge to the State and in accordance with any conditions imposed by Customs.
- Clause 215** allows a High Court, Justice of the Peace, or Registrar to issue a search warrant if satisfied, on application by a Customs officer in writing, that there are reasonable grounds to believe that there is in or on any place or thing, any that that is reasonably believed to be evidence of the commission of an offence against the Act, intended to be used for the purpose of committing an offence against the Act, or any thing that is liable to seizure under the Act.
- Clause 216** provides that every search warrant authorises the Customs officer executing the warrant to enter and search the specified thing or place once within 10 working days of the date of issue of the warrant, to use reasonable assistance, and to use reasonable force to make entry. Every warrant also authorises the officer to detain and search a person who is at the place referred to in the warrant, or who arrives when the officer is executing the warrant, and the warrant also requires a person who is at the place to remain until the search of the place is completed or the officer permits the person to leave. If a person

doesn't comply with the requirements, the officer may arrest the person without warrant.

- Clause 217** provides further powers in relation to search warrants. An officer may immediately detain and search any person at the place referred to in the search warrant if the officer reasonably believes that the person has dangerous item on them, the item poses a threat to safety, and there is a need to act immediately in order to address that threat. Reasonable force may be use to detain and search the person, and to seize any dangerous item found.
- Clause 218** states that an officer may detain any goods seized in the course of exercising powers of search during the execution of a search warrant. The officer must deliver those goods into Police custody or may retain the goods if the goods are required for proceedings under the Act.
- Clause 219** requires a Customs officer to produce a search warrant for inspection in response to any reasonable request made, and when requested by or on behalf of the owner of occupier of the property subject to the warrant. An officer must provide a copy of the warrant no later than 5 working days after the making of the request. If a person is not present during the execution of a search warrant, then the Customs officer must leave in a prominent position a written notice stating the date and time of the execution of the warrant, unless the officer believes that to leave such a warrant would unduly prejudice subsequent investigations.
- Clause 220** states that a Customs officer must, within 5 working days after seizing any thing in the course of a search warrant, inform the owner or occupier of the place searched of the fact of the seizure. A person affected by the execution of a search warrant may apply to a Judge for an order for the disclosure of the application for the warrant, and any documents submitted in support of the application.
- Clause 221** provides for emergency warrants. A High Court or a Registrar, on application made by a Customs officer, orally or in writing grant an emergency warrant if satisfied that the urgency of the situation requires that the search should begin before a warrant could with all practicable diligence be obtained. A Customs officer must provide a written report to the High Court or the Registrar who granted the emergency warrant, setting out the manner in which the emergency warrant has been executed and the results obtained by the execution of the warrant.
- Clause 222** allows a Customs officer to use aids while exercising any power of boarding, entry, examination, or search conferred by the Act. An aid is a dog, a chemical substance, x-ray or imaging equipment, or some other mechanical, electrical or electronic device.
- Clause 223** sets down conditions applying to powers to enter any building, whether under the authority of warrant or otherwise. The conditions are that reasonable notice to enter must be given, entry must be made at a reasonable time except where it would frustrate the purposes of the entry, identification must be produced on

entry, and the authority to entry must be clearly stated to the owner or occupier of the premises.

- Clause 224** provides Customs officer with the power to arrest a person where there is reasonable cause to suspect that a person has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against the Act which is punishable by imprisonment, while that cause to suspect continues and before the end of the seventh day after the date on which it arose. The arrest power also extends to offences relating to migrant smuggling, defrauding the revenue, resisting or obstructing an officer, failing to remain at a place being searched under warrant, and the importation and exportation of prohibited goods.
- Clause 225** provides officers with a statutory immunity against liability for loss or damage to any document, goods, vehicle, or craft occasioned by anything done or omitted to be done by any officer exercising powers under the Act, unless the officer has not acted in good faith or has acted without reasonable care.
- Clause 226** allows a Customs officer to seized and detain goods that are dangerous civil aviation goods proposed to be carried by an operator. The officer must deliver the goods into the custody of the Director of Civil Aviation.
- Clause 227** provides powers to seize and detain unlawful travel documents. Unlawful travel documents are documents such as passports, permits, and certificates of identity that are false, forged, or missed. An officer may exercise powers in respect of the unlawful travel documents as if the documents are prohibited goods under the Act.
- Clause 228** provides powers to seize and detain goods that are risk goods within the meaning of the Biosecurity Act 2008, or evidence of the commission of an offence under section 109 of the Crimes Act 1969 or Part 3 of the Marine Resources Act 2005. A Customs officer must deliver the seized goods into the custody of either a Police officer or an appropriately authorised officer holding office under the specified Act, as the case may be.
- Clause 229** This section makes it an offence to threaten or resist a Customs officer. The penalty is imprisonment for a period not exceeding 2 years or a fine not exceeding \$5000.
- Clause 230** provides that is an offence to obstruct a Customs officer otherwise by force, or intentionally interfere with Customs property such as equipment, a vehicle, a craft, a dog, or a communications system. The penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000.
- Clause 231** makes it an offence to make a false allegation or report to a Customs officer, or does so with the intention of causing wasteful deployment of or diverting deployment of Customs personnel or resources. The penalty is imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

- Clause 232** makes it an offence to pretend to be a Customs officer, or to represent any craft, vehicle, or conveyance as being in the service of Customs. The penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$20,000.
- Clause 233** makes it an offence to, without lawful authority or excuse, have in possession, make, or use, any counterfeit seal, stamp, marking, substance or device closely resembling any such item used by Customs for the purposes of the Act. The penalty in the case of an individual is a fine not exceeding \$30,000, and in the case of a body corporate a fine not exceeding \$50,000.
- Clause 234** makes it an offence to fail to comply with obligations imposed by the Act in respect of arriving in or departing from the Cook Islands. A person is liable on conviction to a fine not exceeding \$10,000.
- Clause 235** makes it an offence to enter, without permission of a Customs officer, or remain when directed to leave, a Customs controlled area licensed for the temporary holding of imported goods for the purposes of examination, the processing of persons arriving in or departing from the Cook Islands, or the processing of craft arriving in or departing from the Cook Islands. The penalty is a fine not exceeding \$3,000.
- Clause 236** makes it an offence to knowingly and without authority use a Customs computerised entry processing system, disclose information obtained from such a system, or received information obtained from such a system. The penalty in the case of an individual is a term of imprisonment not exceeding 2 years or a fine not exceeding \$30,000 and in the case of a body corporate a fine not exceeding \$80,000.
- Clause 237** makes it an offence to interfere with a Customs computerised entry processing system by falsifying records or information, or by damaging or impairing any system, or by damaging or impairing any duplicate tapes or discs on which information obtained from the system is held. The penalty is imprisonment to a term not exceeding 3 years or a fine not exceeding \$30,000.
- Clause 238** makes it an offence for a registered user of a Customs computerised entry processing system to fail to comply with any condition imposed by the Comptroller relating to the security of that registered user's unique identifier. The penalty is a fine not exceeding \$10,000.
- Clause 239** makes it an offence to fail, without reasonable excuse, to answer any question asked by a Customs officer under the Act. It is not a reasonable excuse if a person fails to answer on the grounds that to answer would tend to incriminate that person. It is a defence if the person provides that he or she did not have the information required to answer the question. The penalty in the case of an individual is a fine not exceeding \$3,000 or in the case of a body corporate a fine not exceeding \$5,000.

- Clause 240** makes it an offence to fail to produce evidence of identify, entitlement to travel or other matters demanded under sections 181 or 182. The penalty is a fine not exceeding \$5,000.
- Clause 241** makes it an offence to fail or refuse to produce or account for any goods when required to do so. It is a defence if a person proves that he or she did not have possession or control of the goods, or was otherwise unable to comply with the Comptroller's requirements. The penalty is a fine not exceeding \$20,000.
- Clause 242** makes it an offence to fail or refuse to comply with a requirement of the Comptroller in respect of requisitions. It is a defence if the defendant proves that he or she did not have possession or control of the related documents or information or did not have knowledge of the relevant documents, books, or records. The penalty on conviction in the case of an individual is a fine not exceeding \$50,000, or in the case of a body corporate a fine not exceeding \$80,000.
- Clause 243** makes it an offence to fail or refuse to remain at a place being searched under search warrant. The penalty is a term of imprisonment not exceeding 2 years, or a fine not exceeding \$50,000 or both.
- Clause 244** makes it an offence to contravene the Act by using an area without the required Customs Controlled Area licence. The penalty for an individual is a fine not exceeding \$50,000 and for a body corporate a fine not exceeding \$100,000.
- Clause 245** makes it an offence to fail to comply or act in contravention of any term, condition, or restriction subject to which a Customs Controlled Area licence has been issued. The penalty in the case of an individual is a fine not exceeding \$50,000 and in the case of a body corporate a fine not exceeding \$100,000.
- Clause 246** makes it an offence to fail to comply with obligations under the Act in relation to the arrival of craft in the Cook Islands, by failing to comply with advance notice of arrival requirements, failing to answer questions, failing to comply with directions concerning arrival of a craft, failing to arrive at the nominated place of arrival, and failing to comply with requirements in respect of making an inward report on arrival. The section provides a range of penalties depending on the specific offence, and includes penalties up to 2 years imprisonment and \$50,000, and in the case of a body corporate fines not exceeding \$50,000 or \$100,000 as the case may be.
- Clause 247** makes it an offence to deliver an erroneous or defective inward report, or to deliver an erroneous or misleading supporting document. The penalty in the case of an individual is a fine not exceeding \$30,000 and in the case of a body corporate a fine not exceeding \$50,000.
- Clause 248** makes it an offence to contravene certain requirements in relation to departure of craft. This includes failing to provide an outward report, failing to answer questions or produce documents, failing to allow an office to board a craft,

failure to produce a certificate of clearance, and failure to depart from a Customs place. The section provides for penalties of a fine up to \$20,000 or \$30,000 depending on the particular offence.

- Clause 249** This section provides that it is an offence to make an erroneous or misleading outward report, or to deliver a supporting document that is not genuine or is erroneous or misleading. The penalty is a fine not exceeding \$30,000 or in the case of a body corporate a fine not exceeding \$50,000.
- Clause 250** makes it an offence to fail to comply with a requirement to cease using an electronic communication device in a Customs Controlled Area that used by persons arriving in or departing from the Cook Islands. The penalty is a fine not exceeding \$10,000.
- Clause 251** provides for defences to prosecution for offences relating to the arrival and departure of craft and persons. The defences provided for are that the defendant proves he or she took all reasonable steps to ensure that anything required under the Act was done or not done, as the case may be.
- Clause 252** makes it an offence if any craft comes to or is found within the Cook Islands having any part or place adapted for smuggling goods or persons. The penalty is a fine not exceeding \$100,000.
- Clause 253** provides that it is an offence to interfere with any fastening, lock, mark or seal that has been placed by a Customs officer on any goods or on a hatchway, opening or other place on any craft, without the authority of a Customs officer. The penalty is a fine not exceeding \$50,000.
- Clause 254** makes it an offence to use, without lawful justification or excuse, a Customs seal in relation to a package of goods, or alter, remove, damage or interfere with a Customs seal or use a seal in relation to a Customs-approved secure package otherwise than in accordance with the relevant Customs-approved secure exports scheme. This section also makes it an offence to tamper or interfere with a package, by adding other goods, that has been sealed by a Customs seal or is a Customs-approved secure package. The penalty in the case of an individual is a fine not exceeding \$15,000 and in the case of a body corporate a fine not exceeding \$25,000.
- Clause 255** makes it an offence to interfere with goods carried by a craft that has arrived within the Cook Islands, before an inward report has been made. The interference may be by way of altering the storage of the goods, removing, destroying or throwing overboard any package. It is not an offence if the act was authorised by the Comptroller or a Customs officer, was required by a statutory requirement, or was compelled by necessity. The penalty is a fine not exceeding \$50,000.
- Clause 256** makes it an offence to unload goods without authorisation. The penalty is a fine not exceeding \$100,000.

- Clause 257** provides for offences in relation to the manufacture, the movement and storage of goods. It is an offence to transport or remove goods from a Customs controlled area without permission, and to manufacture excisable goods other than in a manufacturing area. The penalty on conviction in the case of an individual is a fine not exceeding \$100,000, and in the case of a body corporate a fine not exceeding \$200,000. In respect of unlawfully manufacturing excisable goods, the penalty may also include a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- Clause 258** makes it an offence to interfere with goods by making any alteration in the condition of goods subject to Customs control, or adding to or taking away from those goods, or unpacking or repacking such goods or removing such goods from any place in which a Customs officer has directed that the goods are to be stored. The penalty on conviction in the case of an individual is a fine not exceeding \$80,000 and in the case of a body corporate a fine not exceeding \$150,000.
- Clause 259** provides that it is an offence to act in contravention of a direction given by the Comptroller under section 132(5). Section 132(5) allows the Comptroller to allow a purchaser of goods, where it is in dispute as to whether they were a purchaser for valuable consideration and without knowledge that duty is owing but has not been paid, to retain possession of the goods subject to any conditions imposed, until the dispute is resolved. A contravention of any conditions may result on conviction in a fine in the case of an individual not exceeding \$80,000, and in the case of a body corporate a fine not exceeding \$150,000, and in certain cases a penalty not exceeding 3 times the value of the goods to which the offence relates.
- Clause 260** makes it an offence to fail to make an entry when required, or to make an erroneous or defective entry. It is a defence if the person proves that they took all reasonable steps to ensure that an entry was made, or was not erroneous or defective. The section provides for related penalties in the case of a body corporate to a fine not exceeding \$5,000 or \$50,000 as the case may be, and in the case of an individual to a fine not exceeding \$1,000 or \$30,000 or imprisonment for a term not exceeding 6 months, as the case may be. In either case the section also provides for a further penalty of an amount not exceeding 3 times the value of the goods to which the offence relates.
- Clause 261** provides for offences in relation to declarations and documents. It is an offence to make a declaration or written statement under the Act that is erroneous, or produce or deliver a document that is not genuine, or produce or deliver a document that is erroneous. It is a defence if a person proves that they took all reasonable steps to ensure that the declaration or document was not erroneous, or that the document was genuine. The section provides for strict liability and mens rea offences, and therefore provides for differing penalties. In the case of an individual the penalty is a fine not exceeding \$3,000 or a fine not exceeding \$30,000 or a term of imprisonment not exceeding 6 months, as the case may be, and in the case of a body corporate the penalties range from fines not exceeding \$5,000 or \$50,000 as the case

may be. The section also provides for a fine to be imposed of an amount not exceeding 3 times the value of the goods to which the offence relates.

- Clause 262** makes it an offence to fail to keep business records that are required to be kept under section 129, to fail to make those records available to Customs on request, or to fail to operate any device on which those records are stored for the purpose of enabling a Customs officer to obtain those records. The section also provides that it is an offence to destroy, alter, or conceal records with intent to defeat the purposes of the Act. Penalties provided depend on the nature of the offending and range from a fine not exceeding \$2,000, to a fine not exceeding \$50,000 or a term of imprisonment not exceeding 2 years, in the case of mens rea offending. The section also provides for graduated fines depending on whether the person is being convicted for the first, second, or subsequent times.
- Clause 263** makes it an offence to fail to give Customs access to information under section 48, 49, or 130. Those provisions relate to giving Customs access to information about border-crossing craft, goods, and persons, and access to business records. It is an offence to not give Customs access to that information in the prescribed form and manner. The section provides for related penalties of a fine not exceeding \$10,000 in the case of an individual, and a fine not exceeding \$15,000 in the case of a body corporate.
- Clause 264** provides that it is an offence for a person concerned in the movement of goods, persons, or craft as defined in section 45 to disclose to another person whether the person has been required by the Comptroller to comply with the Act by providing access to that information, or whether they have been exempted. The person is liable to a fine not exceeding \$15,000 in the case of an individual, or to a fine not exceeding \$25,000 in the case of a body corporate.
- Clause 265** makes it an offence for a person to have in his or her possession or bring into the Cook Islands any uncompleted document or form capable or being used for any purpose under the Act if the document is signed or certified or bears any mark to indicate that it is correct or authentic. A person committing an offence against this section is liable to a fine not exceeding \$5,000.
- Clause 266** applies to goods which are entered for a particular purpose or under any condition imposed by the Minister exempting the goods from duty or to a lower rate of duty. It is an offence to use or deal with goods for a purpose other than that for which they have been entered, or fail to comply with a condition imposed in respect of the goods entered. The related penalty is a fine not exceeding an amount equal to 3 times the amount of duty that would have been payable if the goods had been entered otherwise than under the provisions under which they were entered, or a fine not exceeding \$5,000, whichever is the greater sum.
- Clause 267** relates to provisions relating to offences against sections 243 to 247. It provides that every document required to be made by a person making an

entry, is deemed to form part of that entry, and that every amendment of an entry is deemed to form part of the entry.

- Clause 268** provides for offences in relation to the importation or exportation of prohibited goods. It is an offence to import or export prohibited goods, or to be knowingly concerned in the importation or exportation of prohibited goods, or to unlawfully remove such goods from a Customs controlled area. The section provides for related penalties of a fine not exceeding \$300,000 in the case of an individual, or a fine not exceeding \$500,000 in the case of a body corporate. The section also provides for a term of imprisonment not exceeding 10 years in respect of the knowledge offences.
- Clause 269** provides for offences in relation to the exportation of goods. It is an offence to comply with obligations in respect of making an export entry, or to fail to deal with the goods according to the entry, or to land goods for export against statutory requirements, or to breach requirements in respect of drawback of duty on goods. Penalties provided are fines of up to \$30,000 and \$20,000 and imprisonment for a term not exceeding 2 years in the case of an individual, and a fine not exceeding \$50,000 in the case of a body corporate. The section also provides for a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- Clause 270** makes it an offence to defraud the revenue. Every person who evades duty or enables another person to evade duty, obtains a drawback or refund of duty that they are not entitled to or enables another person to, conspires to defraud the revenue, or defrauds the revenue of Customs in any other manner, commits an offence. The section provides for penalties of a fine not exceeding \$300,000 or imprisonment to a term not exceeding 5 years in the case of an individual, and a fine not exceeding \$500,000 in the case of a body corporate, and in either case to a fine not exceeding 3 times the value of the goods to which the offence relates.
- Clause 271** makes it an offence to knowingly and without lawful justification have in possession goods that a person knows are uncustomed or prohibited goods. The section provides for a fine not exceeding \$300,000 or imprisonment for a term not exceeding 2 years in the case of an individual, and a fine not exceeding \$500,000 in the case of a body corporate. The section also provides for a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- Clause 272** makes is an offence to knowingly purchase, sell, exchange, or dispose of goods that the person knows are uncustomed goods or prohibited goods, without lawful justification. The penalty is a term of imprisonment not exceeding 2 years or a fine not exceeding \$300,000 in the case of an individual, and a fine not exceeding \$500,000 in the case of a body corporate. The section also provides for a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.
- Clause 273** makes it an offence to knowingly conceal goods that the person knows are dutiable or prohibited goods. The penalty in the case of an individual is a term

of imprisonment not exceeding 2 years or a fine not exceeding \$300,000, and in the case of a body corporate a fine not exceeding \$500,000. The section also provides for a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.

- Clause 274** makes it an offence to have custody of seized goods and act in breach of any imposed requirement. It is also an offence to take or convert goods that have been seized as forfeited. Penalties are a fine not exceeding \$10,000, a term of imprisonment not exceeding 2 years, or a fine not exceeding 3 times the value of the goods to which the offence relates.
- Clause 275** makes it an offence to have custody of goods under section 214(1) (which relates to goods that are tainted property) and to act in breach of any requirements imposed in respect of the custody of the goods. The related penalty is a fine not exceeding \$5,000. It is also an offence to take or convert those goods without permission of the Comptroller. The related penalty is imprisonment to a term not exceeding 12 months, or a fine not exceeding an amount equal to 3 times the value of the goods to which the offence relates.
- Clause 276** provides for offences in relation to Customs Appeal Authorities. It is an offence to make false or misleading statement in any information given to the Customs Appeal Authority or the purposes of the Act. The related penalty is a fine not exceeding \$30,000 in the case of an individual, and \$50,000 in the case of a body corporate. It is also an offence to fail to attend to give evidence when required, to refuse to be sworn or give evidence, or to fail to produce any paper or document. The section provides for further offences for wilfully obstructing an Authority, and failing to comply with any requirements of an Authority. A person committing such offences is liable on conviction to a fine not exceeding \$10,000.
- Clause 277** makes it an offence for an employee or ex-employee of the Cook Islands Customs Service to disclose or use any information gained or conveyed to the person through the person's connection with the Cook Islands Customs Service, except in the course of the person's official duties or authorised by the Comptroller or Minister. The penalty is a term of imprisonment not exceeding 12 months or a fine not exceeding \$5,000.
- Clause 278** provides that if a corporation commits an offence against any provision of the Act, every director, manager, secretary, officer, or agent of the corporation also commits an offence against that provision. Every individual who commits an offence is liable on conviction to the penalty prescribed in respect of any individual who is convicted of the offence, and if no penalty is prescribed in respect of an individual, to the penalty prescribed for the offence.
- Clause 279** provides that every declaration made or other act done by any agent is deemed to have been done by the agent's principal, and the principal is liable accordingly to the penalties imposed by the Act. The section also provides that the knowledge or intent of the agent is imputed to the principal in addition to the principal's own knowledge or intent.

- Clause 280** provides that an attempt to commit an offence against the Act is punishable in the same manner and gives rise to the same cause for seizure as if the offence attempted had been committed.
- Clause 281** provides that except where otherwise provided in the Act, every offence against the Act is punishable on summary conviction.
- Clause 282** relations to the laying of an information. It provides that every information for an offence against this Act must be laid by the Comptroller, a Customs officer nominated by the Comptroller, or any person who is an agent or employee of the Minister of Finance and Economic Management nominated by the Comptroller.
- Clause 283** relates to payment of money in respect of duty. It states that where any person is convicted for offending against section 229, 230, 241, or 242 and the Court is of the opinion that the offence has been committed for the purpose of enabling the destruction or concealment of evidence that would support a claim for duty under the Act, the Court may, in addition to any other penalty, order the defendant to pay to the State such further sum in respect of that claim as it thinks fit.
- Clause 284** provides the Comptroller with a power to deal with petty offences. The power applies to offences that are committed in relation to goods, in circumstances that the Comptroller is satisfied would not amount to more than minor offending, and that are not punishable by imprisonment. Before an information is laid, the Comptroller may accept from a person written admission that he or she committed the offence, and a request that the offence be dealt with summarily by the Comptroller, payment of an amount not exceeding the limit set down in the section, that the Comptroller thinks just in the circumstances of the case. The limit is a limit that does not exceed one-third of the maximum total monetary penalty to which the person would be liable if the person were convicted of the offence by a court. If the Comptroller accepts payment the offender is not liable to be prosecuted. If the Comptroller declines to exercise this discretion, the admission in writing made by the offender is not admissible as evidence in any prosecution for that offence.
- Clause 285** states that this part applies to all forfeitures that arise under the Act.
- Clause 286** sets down the grounds on which goods are forfeited to the State. Goods are forfeited if they are goods in respect of which certain offences have been committed, including the importation or exportation of prohibited goods, the provision of erroneous declarations or documents, defrauding the revenue of Customs, and being in possession of uncustomed goods or concealed goods. The section also provides that certain other goods are forfeited to the State, including dutiable or prohibited goods found in the possession of a person who when questioned failed to disclose possession of the goods, dangerous items found as a result of a search of a person, goods that are found so packed as to be likely to deceive a Customs officer, all goods unlawfully imported into or exported from the Cook Islands, and any goods or equipment used or intended to be used to unlawfully manufacture excisable goods. Every craft or vehicle

used in the carriage, handling, deposit, or concealment of the goods is also forfeited to the State.

- Clause 287** sets down the procedure for seizure. A Customs officer may seize any forfeited goods, or goods that the officer suspects are forfeited. The goods may be seized wherever found in the Cook Islands. Prohibited goods may be seized at any time after forfeiture has arisen. Other goods may be seized within 2 years after the forfeiture has arisen. An officer may use reasonable force to effect the seizure of the goods. The section also states that the officer may leave the goods in the custody of any person from whom the goods have been seized, or any other person authorised by the officer. A person who has the goods in custody must hold them in safekeeping, without charge to the State, and make the goods available on request.
- Clause 288** requires that a notice of seizure must be given as soon as is reasonably practicable after goods have been seized. The notice must be in writing and must give reasons for the seizure. It must be in the prescribed form and be given to any person known or believed to have an interest in the goods. A seizure is not invalidated by failure to give notice, if reasonable steps were taken to give the notice.
- Clause 289** states that where goods are forfeited and the goods seized, the forfeiture relates back to the date of the act or event from which the forfeiture arose.
- Clause 290** provides that the Comptroller may allow delivery of seized goods on deposit of value. Where goods have been seized the Comptroller may at any time before condemnation, deliver the goods to the owner or person from whom the goods were seized, on deposit of a cash sum equal to the value of the goods (if the goods are imported goods) or the value of the goods determined in accordance with Schedule 4 (if the goods are excisable goods). The money deposited is substituted for the goods seized.
- Clause 291** allows the Comptroller to sell certain seized goods before condemnation. This power applies to a living creature, any thing that is perishable in nature, any thing that is like to diminish in value or deteriorate, and any thing that in the opinion of the Comptroller it is desirable to sell. The net proceeds of sale are deemed to be substituted for the thing sold.
- Clause 292** provides for a review of seizure, and any person who has an interest in goods that have been seized under section 287 may within the specified time apply in writing to the Comptroller for a review of seizure. The specified time is 20 working days after the date on which a seizure notice has been given, or any further time the Comptroller allows. A review can be made on the grounds that there was no legal basis for the seizure of the goods and that the applicant should in all the circumstances be granted relief. An application may be made on either or both grounds.
- Clause 293** states that the Comptroller must conduct the review on the papers unless the Comptroller directs otherwise. The Comptroller must consider any written submissions made, and may consider any other information that in the opinion

of the Comptroller may assist to deal effectively the subject of the review. The applicant must establish on the balance of probabilities that the applicant has an interest in the seized goods and has acquired that interest in good faith.

- Clause 294** sets down how the Comptroller must dispose of the application for review. The Comptroller may make one of the following decisions; to dismiss the application, to return the goods in whole or in part, or to grant relief by making any determination described in section 296. The Comptroller may extend the period in which a decision is required to be made, and after making a decision must give written notice of the decision.
- Clause 295** sets down the matter the Comptroller may take into account when deciding whether or not to grant relief. The matters include without limitation the following; the seriousness of any act or omission giving rise to the seizure, whether or not the person has engaged in any similar conduct, whether there was a deliberate breach of the law, the nature and value of the goods, the nature of any loss suffered by any person, whether granting relief would undermine the purpose of any import or export prohibition, and the effect of any other action that has been taken or is proposed to be taken in respect of related offending.
- Clause 296** sets down the determinations the Comptroller may make when making a decision in respect of granting relief from seizure. The Comptroller may determine that the goods be given to the person who but for the seizure is entitled to their possession, and that the goods be sold and the proceeds be paid to 1 or more persons. The Comptroller may impose any conditions he or she thinks just. The Comptroller may also determine that there be paid to Customs any costs or expenses incurred, any duty not already paid, any duty refunded, or the value of the goods detained as determined by the Comptroller.
- Clause 297** relates to condemnation of seized goods. If the Comptroller dismisses an application for review, the dismissal is deemed to be an order for condemnation of the goods to the State. The order takes effect 20 working days after the date on which the Comptroller gives a decision, unless an appeal to the Customs Appeal Authority is lodged before then. If no application for review is made, the seized goods are condemned to the State.
- Clause 298** provides a person who is dissatisfied with a decision of the Comptroller made under section 294 with a right to appeal to the Customs Appeal Authority.
- Clause 299** states that seized goods are condemned to the State if the appeal is discontinued or the decision of the Customs Appeal Authority neither disallows the seizure nor grants relief.
- Clause 300** is a general provision as to forfeiture. It provides that where the Act provides that on the commission of any offence any goods are forfeited, the conviction of any person for the offence has effect as condemnation of the goods without suit or judgment. Where the Court imposes a sentence on a person on conviction for an offence to which the seized goods relate the Court may order restoration of the goods to the person from whom the goods were seized. This

does not apply where the goods have, before the conviction, been sold, or restored to the person from whom they were seized, or otherwise disposed of by the Comptroller.

- Clause 301** states that the State has the property in forfeited goods or in any deposit made under section 290 or in the proceeds of sale under section 291, as the case may be. Goods may be sold, used, destroyed, or otherwise disposed of after their condemnation as the Comptroller may direct.
- Clause 302** provides that all the provisions of the Act with respect to forfeiture extend and apply to any craft, vehicle, or other thing forfeited under the Act.
- Clause 303** relates to burden of proof in any proceedings under the Act. Allegations made on behalf of the state in respect of the nature of goods, the value of goods for duty, the country or time of exportation, the fact or time of importation, the place of manufacture, or the payment of any duty on goods, is presumed to be true unless the contrary is proved. This presumption is not excluded by the fact that evidence is produced on behalf of the State in support of any such allegations.
- Clause 304** applies to documents made overseas, and states that in any proceedings under this Act (other than a prosecution for an indictable offence) the Court may admit in evidence as proof of any fact in issue, a document made in a country outside the Cook Islands.
- Clause 305** provides that a hearsay statement is admissible in any proceeding if there is reasonable assurance that the statement is reliable, and either the maker of the statement is unavailable as a witness or the Judge considers that there would be undue expense or delay if the maker of the statement were required to be a witness.
- Clause 306** provides that a hearsay statement contained in a business record is admissible if the person who supplied the information is unavailable as a witness, or the Judge considers no useful purpose would be served by requiring that person to be a witness, or the Judge considers that undue expense or delay would be caused if that person were required to be a witness.
- Clause 307** provides interpretations for the subpart for important terms such as business, business record, and when a person is considered to be unavailable as a witness.
- Clause 308** relates to admissibility of expert opinion evidence. Expert evidence is admissible if the fact finder is likely to obtain substantial help from the opinion in understanding other evidence.
- Clause 309** related to proof of rules made. The production of a copy of a public notice purporting to contain a copy of any rule made that is required to be published in a public notice is, in all courts and proceedings, sufficient evidence until the contrary is proved of the existence, publication, and provisions of the rule and of the date of the rule coming into force.

- Clause 310** provides that in any proceedings under the Act or any other Act, a computer printout of a record kept by Customs under section 169, certified by or on behalf of the Comptroller as a true copy, is admissible in all Courts as evidence of the electronic message received or sent.
- Clause 311** provides that there is a presumption of authenticity of documents signed by or on behalf of the Comptroller, in all courts and in all proceedings under this or any other Act.
- Clause 312** is the first in the part of the Act that deals with Customs Appeal Authorities. It establishes the Customs Appeal Authority, and provides for who is qualified for appointment as a Customs Appeal Authority. A person is not qualified unless the person holds or has held office as a Cook Islands Judge, or holds or has held office as a Judge in the Commonwealth or a designated country, or is a barrister and solicitor of the High Court with no less than 7 years practice or the person has been in practice as a barrister or solicitor in the Cook Islands or any other part of the Commonwealth or designated country for a period amounting in aggregate to not less than 7 years. The Queen's Representative may declare designated countries for the purposes of this section. An authority is appointed by the Queen's Representative on the joint recommendation of the Ministers of Finance and Justice. The Authority is administered by the Ministry of Justice.
- Clause 313** provides for the term of office of the Authority. Every person appointed as an Authority must be appointed for a term not exceeding 5 years, and may be reappointed. Any person appointed may be suspended or removed from office by the Cabinet for engaging in occupation for reward outside the duties of his or her office, for inability to perform the duties, for bankruptcy, neglect of duty or misconduct.
- Clause 314** requires that before entering exercise of duties, a person appointed as an Authority must take an oath before a Judge of the High Court.
- Clause 315** provides for remuneration and travelling expenses for any person appointed as an Authority. There must be paid out of money appropriated by Parliament remuneration as may be fixed from time to time by the Queen's Representative by Order in Executive Council. Remuneration may include sitting fees, salary, and allowances.
- Clause 316** provides that in the event of sickness or incapacity of an Authority, the Ministers of Finance and Justice may appoint a qualified person to act in the place of that Authority.
- Clause 317** provides that no appointment of a person as an Authority and no act done by a person by virtue of such an appointment may be questioned in any proceedings on the ground that the occasion of the appointment had not arisen or had ceased.

- Clause 318** provides that no person appointed as an Authority is personally liable for an act done or omitted to be done by him or her in good faith in pursuance of his or her powers and authorities under the Act.
- Clause 319** states that there must be a Registrar of the Authority from time to time appointed under the Public Service Act 2009.
- Clause 320** provides that every Authority must have a seal which must be judicially noted in all courts.
- Clause 321** sets down that the functions of an Authority is to sit as a judicial authority for hearing and deciding such appeals as are authorised by the Act or any other Act against assessments, decisions, ruling, determination and directions of the Comptroller.
- Clause 322** states that the procedure of an Authority must be in accordance with the Act. Proceedings must be commenced by the lodging of an application in the prescribed form, together with the prescribed fee. If the applicant is successful in his or her appeal, then that applicant is entitled to a refund of the prescribed fee.
- Clause 323** states that appeals must be by way of a hearing *de novo*. An Authority has all the powers, duties, function, and discretions of the Comptroller in making the assessment, ruling, determination, or direction appeal from.
- Clause 324** provides that an Authority may extend the time within which an appeal may be brought.
- Clause 325** sets down provisions in respect of hearings. As soon as an Authority considers that an appeal is ready to be heard, the Authority must fix a date, time, and place for the hearing of the appeal and must notify the appellant and the Comptroller of the date, time, and place fixed. At the hearing the appellant and the Comptroller may call evidence and must be given an opportunity to be heard. The hearing before an Authority must be in public.
- Clause 326** provides that an Authority may decide an appeal without holding an oral hearing if it thinks fit and if both parties consent.
- Clause 327** provides that an Authority may hold the hearing by way of telephone or video conferencing call if the Authority thinks fit and if both parties consent.
- Clause 328** states that for the purposes of dealing with the matters before it, an Authority has the powers of a High Court Judge in the exercise of its civil jurisdiction.
- Clause 329** relates to evidence. An authority may received as evidence any statement, document, information or matter that in the opinion of the Authority may assist it to deal effectually with proceedings. An Authority may take evidence on oath, and may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Authority thinks fit, verifying it by oath.

- Clause 330** provides an Authority with powers of investigation. An Authority, or any person authorised by the Authority in writing may inspect and examine documents or things, and require any person to produce for examination any documents or things in that person's possession, and require any person to furnish any information in a form approved or acceptable to the Authority.
- Clause 331** gives an Authority the power to issue in writing a summons requiring any person to attend at the time and place specified in the summons and give evidence, and produce any documents or things in that person's possession that are relevant to matters before the Authority.
- Clause 332** provides how a summons to a witness may be served. It may be delivered by delivering it to the person summonsed, or by posting it the person by registered letter. The summons must be served within 72 hours before the attendance of the witness is required if being served by delivery, or at least 10 days before the date on which attendance is required if being delivered by post.
- Clause 333** provides that a witness giving evidence, and every counsel or agent appearing before the Authority has the same privileges and immunities as witnesses and counsel in courts of law.
- Clause 334** provides for witnesses allowances. Every witness attending the hearing to give evidence under a summons is entitled to be paid fees, allowances, and travelling expenses according to the scales prescribed under the Judicature Act 1980-81. The Authority must fix an amount that must be paid or tendered to the witness. Where a party to the proceedings has requested the issue of a witness summons, that party is liable for payment of the witness's fees and expenses. Where the Authority has of its own motion issued the witness summons, the Authority may direct that the amount of those fees, allowances, and expenses must be paid by the Crown.
- Clause 335** states that in an appeal the appellant is limited to the grounds stated in the appellant's notice of appeal, and the burden of proof is on the appellant. The Authority may amend the grounds stated in the notice of appeal.
- Clause 336** sets down provisions relating to the sittings of an Authority. Sittings may be held at such times and places as the Authority appoints. An Authority may adjourn a sitting. During the absence of the Authority, the Registrar has the same powers as the Authority to adjourn a sitting.
- Clause 337** states that an Authority may dismiss an appeal if satisfied it is frivolous or vexatious.
- Clause 338** states that every decision of an Authority must be in writing, with a statement of reasons. A copy must be given to the appellant and the Comptroller.
- Clause 339** states that an Authority may award costs and expenses, and may apportion costs between parties as it thinks fit.

- Clause 340** provides for appeals to the High Court. A party who is dissatisfied with a decision of an Authority under this Act as being erroneous in point of law or fact may appeal to the High Court.
- Clause 341** provides that any party who is dissatisfied with a decision of the High Court on any case on appeal as being erroneous in point of law may appeal to the Court of Appeal.
- Clause 342** provides that an Authority may state a case for the opinion of the High Court on any question of law arising in respect of any appeal before the Authority. The Authority must give notice to the Comptroller and the appellant of its intention to state a case to the High Court.
- Clause 343** provides that the Comptroller may incur expenses without further appropriation than this section to pay all lawful refunds of duty, all lawful drawbacks of duty, and all lawful refunds of administrative penalties.
- Clause 344** states that the Act applies to postal articles and to goods contained in postal articles in the same manner as those provisions apply to other goods. It also provides that the Minister may make regulations for providing that any separate postal articles may be treated as a single postal article consigned to a single person, and for prescribing the persons who are to be deemed for the purposes of this Act to be the importers or exporters of such postal articles or goods.
- Clause 345** requires that every declaration that is required under the Act must be made in the prescribed form. Where a declaration must be made before any person, the declaration may be made before a Customs officer, or before a person authorised under the Cook Islands Act 1913.
- Clause 346** states that the Comptroller may determine any seal, stamp, or mark for the use of Customs.
- Clause 347** provides Customs with powers to collect and use information about craft, persons, and goods arriving in or departing from the Cook Islands. The information may include details of craft movements, and personal information including name, date of birth, gender, passport number, nationality, travel movements or any other relevant matter. Customs may collect and use the information for the purposes of facilitating the exercise or performance of powers, functions, or duties under the Act, the prevention, detection, and prosecution of Customs offences, the monitoring and processing of border-crossing persons, goods and craft, and the protection of border security.
- Clause 348** gives the Comptroller the power to supply any information specified in section 347 to any agency, body, or person, whether overseas or otherwise whose functions include the prevention, detection, and prosecution of Customs offences or offences punishable by imprisonment, the processing of international passengers at the border, border security, protection of public health and safety, the protection of the public revenue, or any other prescribed

purpose. The disclosure must be in accordance with an agreement, and the section sets down requirements in respect of agreements. However, the Comptroller may disclose the information without a written agreement on specified grounds if the Comptroller keeps a record of the information that was disclosed, the agency or body to which it was disclosed, and the conditions subject to which it was disclosed.

- Clause 349** provides that the Comptroller must give written reasons for decisions open to appeal to the Customs Appeal Authority.
- Clause 350** sets down requirements in respect of giving notice under the Act. It sets down how a notice by the Comptroller or an officer of Customs is to be given in the case of an incorporated company, an overseas company, a body corporate, or to an individual including a trustee. The section provides for a notice to be delivered by physical delivery, by post, by facsimile, or by electronic transmission.
- Clause 351** sets down additional provision relating to the giving of notice under the Act relating to when a notice delivered by the methods of delivery set down in section 350 is deemed to have been received.
- Clause 352** provides the Minister with a power to make regulations, in consultation with the Comptroller, for a range of reasons. The reasons include purposes in respect of which areas are required to be licensed as Customs controlled areas, the content of notice required to be given to Customs in advance of arrival, the time within which inward report must be made, the form and manner in which certain information must be given to Customs, the time within which import and export entries must be made, records that are required to be kept under the Act, restrictions and conditions in respect of the Comptroller's power to refund or remit duty, prescribing the working hours of Customs, and providing for such other matters as are necessary for giving full effect to the provisions of the Act and for its due administration.
- Clause 353** provides that Regulations made under the Act may incorporate by reference any provisions set out in an international trade agreement, or another document made to give effect to such an agreement. Provisions may be incorporated in whole or in part, and the incorporated provisions form part of the regulations for all purposes and have legal effect.
- Clause 354** provides that an amendment to or replacement of provisions incorporated by reference has legal effect as part of the regulations only if regulations state that the particular amendment or replacements has that effect.
- Clause 355** a copy of the provisions incorporated by reference under section 351 must be certified as a correct copy by the Comptroller, and be retained by the Comptroller.
- Clause 356** relates to access to provisions incorporated by reference. The Comptroller must ensure that copies of provisions incorporated by reference are available for inspection during working hours, ensure that copies are published on an

Internet site that is so far as practicable publicly available free of charge, ensure that copies are available for purchase at a reasonable price, and give notice by Public Notice stating that the provisions are incorporated in particular regulations and stating where copies can be inspected or purchased.

- Clause 357** states that the Regulations Act 1970-71 does not apply to provisions incorporated by reference or to an amendment to or replacement of, those provisions.
- Clause 358** provides that the Minister may, in consultation with the comptroller, make regulations including prescribing the amounts of fees and charges payable under the Act, prescribing rates for the attendance of Customs officers for the purposes of the Act, and prescribing the person or persons by whom charges must be paid. Different rates may be prescribed in respect of different classes of person, different types of Customs controlled areas, or any other differential basis.
- Clause 359** provides the Comptroller with a power to make rules for a range of purposes including prescribing the form and content of inward reports, the form of certificates of clearance, the form and manner in which import and export entries must be entered, and the form of application for a Customs ruling.
- Clause 360** provides that where a Customs officer uses reasonable force under any provision of the Act, the officer must within 5 working days give the Comptroller a written report on the use of the force and the circumstances in which it was used.
- Clause 361** sets down a regime to enable the Comptroller to disclose specified information to an overseas agency, body, or person whose functions include the prevention, detection, and prosecution of Customs offences or offences punishable by imprisonment, the processing of international passengers at the border, border security, and the protection of public revenue. The disclosure must be in accordance with an agreement, and the section sets down requirements in respect of agreements. However, the Comptroller may disclose the information without a written agreement on specified grounds if the Comptroller keeps a record of the information that was disclosed, the agency or body to which it was disclosed, and the conditions subject to which it was disclosed.
- Clause 362** specified the information that may be disclosed under section 362 and includes information about airline passenger and crew lists, craft movements, previous convictions and travel movements of specified people, modus operandi of specified people, intelligence analysis assessments, details of mail interceptions, and details of known or suspected involvement of persons in illicit activities.
- Clause 363** applies to information viewed by Customs under sections 48 or 49 and to information to which Customs is given access to under section 117. It sets down purposes for which Customs may collect, use, or disclose the information including for the prevention, detection, and prosecution of

Customs offences or offences punishable by imprisonment, the processing of international passengers at the border, border security, and the protection of public health and safety. The section also sets down avoidance of doubt provisions in respect of personal information that Customs has disclosed to another agency or person, and that agency or person is authorised to obtain and collect that information and may keep, use, or disclose that information to another enforcement agency with the approval of Customs. It also provides that section 325 applies with all necessary modifications.

- Clause 364** states that certain Acts and Regulations are amended.
- Clause 365** states that certain enactments, regulations, orders, and notices are repealed or revoked.
- Clause 366** validates any act done under and in accordance with any Inter-governmental Agreement regulating to Customs duties suspensions before the commencement of this section as always having been validly done.
- Clause 367** provides for savings for proceedings and other matters. It states that the repeal of the Customs Act 1913 does not affect any civil proceedings commenced in the High Court, administrative decisions or tariff classification opinions, any right or proceeding relating to a refund, remission or drawback under the Customs Act 1913, any application made for waiver of forfeiture, or condemnation of goods in accordance with the Customs Act 1913.
- Clause 368** provides transitional provisions relating to terminology. Every reference in any enactment to the Customs Department must, on and after commencement of this section, be read as a reference to the Cook Islands Customs Service established by this Act. Similar transitional provisions are provided for terminology in respect of Customs officer, and the Comptroller of Customs.
- Clause 369** provides transitional provisions concerning assessment and payment of duty. It states that the provisions of the Customs Act 1913 and all regulations, Orders in Council, warrants, and acts of authority under that Act continue in force and apply to the payment and assessment of duty payable before the commencement of this section, as if this Act had not been passed.
- Clause 370** states that examination stations appointed in accordance with the Customs Act 1913 are deemed for the purposes of this Act to be a Customs controlled area.
- Clause 371** provides that certain places that exist under the Customs Act 1913 (including a wharf, and a sufferance wharf) are deemed to be Customs controlled areas licensed under section 12 of this Act.
- Clause 372** provides that any place that was immediately before the commencement of this section staff accommodation or a transit building in accordance with the Customs Act 1913 is deemed to be a Customs controlled area licensed for the purposes of this Act. Any charges that are exempt will continue to be exempt until an application in respect of the area has been made and dealt with in accordance with this Act.

- Clause 373** provides that any place that was an export warehouse immediately before the commencement of this section under the Customs Act 1913, is deemed for the purposes of this Act to be a Customs controlled area.
- Clause 374** provides that any place that was a manufacturing area immediately before the commencement of this section under the Customs Act 1913, is deemed for the purposes of this Act to be a Customs controlled area.
- Clause 375** provides for transitional provisions relating to conditions of appointment or licence. Any specification, limitation, condition, or restriction that applied under the Customs Act 1913 immediately before the commencement of this section in respect of examining places, container bases, wharves, export warehouses, or manufacturing areas continues to apply despite the passing of this Act until an application in respect of the area has been made and dealt with in accordance with this Act.
- Clause 376** provides that not later than 40 working days after the commencement of this section the owner or occupier of an area to which sections 370 to 374 apply must make an application in accordance with this Act for the area to be licensed as a Customs controlled area.
- Clause 377** provides that transitional status is to continue until application made and disposed of. An area that is deemed to be a Customs controlled area under section 370 to 343 of this Act continues to be such an area until an application has been made and dealt with in accordance with this Act. Where no application is made in accordance with section 376 the area ceases to be a Customs controlled area.
- Clause 378** relates to transitional provisions relating to persons approved to defer payment of duty. Every person who immediately before the commencement of this section was approved under the Customs Act 1913 to defer the payment of duty is deemed to be an approved person under this Act for deferment of payment of duty purposes. The Comptroller must as soon as practicable after the commencement of this section issue a notice to the person specifying the applicable terms and conditions.
- Clause 379** provides transitional provisions relating to businesses not required to be licensed. Where immediately before the commencement of this section a person carrying on a business as a manufacturer of excisable goods was not required to be licensed under the Customs Act 1913, the area in which that person carries on the business is deemed to be an area in respect of which the Comptroller has given a direction under this Act that is impracticable or unnecessary to be licensed as a Customs controlled area. A person to whom this section applies must make an application under this Act for the area to be licensed as a Customs controlled area.
- Clause 380** provides transitional provisions relating to any civil or criminal investigations under the Customs Act 1913. A person who may exercise certain powers under this Act for the purpose of investigating offences suspected of having

been committed against this Act may also exercise those powers for the purpose of investigating offences suspected of having been committed against the Customs Act 1913.

**Clause 381** provides that the Queen's Representative may by Order in Executive Council prescribe transitional and savings provisions concerning the coming into force of this Act, which may be in addition to or in place of transitional and savings provisions of this Part. This ability expires 2 years after the commencement of this section.

**Clause 382** provides that references in any enactment or document at the commencement of the Bill to a provision to the Customs Act 1913, must be read and construed as a reference to the corresponding provision of the Customs Revenue and Border Protection Act 2012

## **SCHEDULES**

1. Provides that false or counterfeit coins or banknotes, and goods manufactured or produced wholly or in part by prison labour are prohibited imports under this Act.
2. Provides a mechanism for the valuation of goods for the purposes of the Tariff.
3. Provides a mechanism for the valuation of goods for the purposes of excise.
4. Sets down Acts which are amended by way of this Act.
5. Sets down Regulations which are amended by way of this Act.
6. Sets down enactments that are repealed.
7. Sets down regulations, orders, and notices that are revoked.