# AUSTRALIAN CUSTOMS NOTICE NO. 2008/40

**Amendments to the *Customs Act 1901***

# Duty Recovery and Payment Under Protest

This ACN supersedes ACN 2003/60.

The *Customs Act 1901* (Customs Act) has been amended to modernise provisions relating to customs duty recovery and payments under protest and to allow refunds to be applied against unpaid duty in some circumstances. These amendments are included in the *Customs Legislation Amendment (Modernising) Act 2008* (Modernising Act). A copy of this Act is available at [www.comlaw.gov.au](http://www.comlaw.gov.au/). The amendments commence on 9 August 2008.

## Duty recovery

Previously, duty recovery provisions were detailed in sections 153 and 165 of the Customs Act. The Modernising Act repeals sections 153 and 165 and replaces those provisions with a new section 165. In addition, the Modernising Act formalises the policy previously advised in ACN 2003/60.

The new section 165 provides that:

1. An amount of duty that is due and payable in respect of goods, is a debt due to the Commonwealth and is payable by the owner of the goods;
2. An amount of a drawback, refund or rebate of duty that is overpaid to a person is a debt due to the Commonwealth and is payable by the person.

### Demand for duty

Under new section 165, the Chief Executive Officer (CEO) may make a written demand for the payment of an amount of duty that is a debt due to the Commonwealth. The demand must specify the amount of the duty or overpayment being demanded and must include an explanation of how the amount has been calculated.

### Time limit for recovery of duty

New section 165 limits the time for recovery of customs duty to four years, except in the case of fraud or evasion where no time limit will apply. The time limits outlined below apply only

to situations that do not involve fraud or evasion.

For an amount of duty that is due and payable in respect of goods, a demand must be made within four years of the date the amount was to be paid under the Customs Act.

For example, in the case of goods entered for home consumption under section 71A of the Customs Act, duty is payable at the time of the entry of goods for home consumption (section 132AA of the Customs Act). Therefore, in this situation, a demand must be made within four years of the date of entry for home consumption.

For an amount of a drawback, refund or rebate of duty that is overpaid to a person, a demand must be made within four years of the date the amount was paid.

New section 165 brings the recovery of customs duty in line with the recovery of GST and other indirect taxes under the *Taxation Administration Act 1953.*



### Legal proceedings to recover duty

Customs may undertake legal proceedings to recover duty if the CEO has made a demand for payment under new section 165 or the CEO is satisfied that the debt arose as a result of fraud or evasion.

This means that if a valid demand is not made within four years from the relevant time, the debt is not recoverable. The exception to this is where the CEO is satisfied that the debt arose as a result of fraud or evasion, in which case there will be no time limit on the recovery of the debt.

## Application of drawback, refund or rebate against duty

A new provision, section 165A, has been inserted to allow the CEO to apply the amount of a drawback, refund or rebate in respect of goods, against the duty payable on the same goods. For section 165A of the Customs Act to apply, the goods must have been delivered into home consumption.

If the amount of drawback, refund or rebate of duty on the goods is less than the amount of duty payable on the goods, the balance of the duty payable will still be a debt due to the Commonwealth.

New section 165A of the Customs Act also provides that if the CEO applies a drawback, refund or rebate against an amount of duty payable, the CEO must provide to the person who would have been entitled to receive the amount of drawback, refund or rebate, written notice of the amount applied and, if applicable, the amount of duty that is still payable by the person.

## Payment under protest

The Modernising Act repeals subsections 167(3) and (3A) of the Customs Act, and substitutes new provisions.

Under the new provisions, a payment is taken to be made under protest where:

1. an owner of the goods or the agent of the owner gives Customs notice, by document or electronically, that the payment is being made under protest; and
2. Customs receives the notice no later than seven days after the day on which the payment is made.

When making a payment under protest, the notice to Customs must:

1. contain the words ‘paid under protest’;
2. identify the import declaration that covers the goods to which the protest relates;
3. if the protest does not relate to all goods covered by an import declaration, describe the goods to which the protest relates;
4. include a statement of the grounds on which the protest is made; and
5. be signed by the owner or the agent of the owner.

Inquiries concerning this notice may be directed to Manager Import/Export Compliance Policy by email to [Compliance1@customs.gov.au](mailto:Compliance1@customs.gov.au), by phone to 02 6279 3458 or by fax to 02 6275

6227.

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4 August 2008