

No. 28 of 2006.

*Customs (2007 Budget Amendment) Act 2006.*

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No. of 2006.

AN ACT

entitled

***Customs (2007 Budget Amendment) Act 2006,***

Being an Act to amend the *Customs Act* (Chapter 101),

MADE by the National Parliament to come into effect on 01 January 2007.

**1. INTERPRETATION (AMENDMENT OF SECTION 1).**

Section 1 of the Principal Act is amended:-

- (a) by inserting in the definition of "Customs Controlled Area" the following new paragraph:-

“(da) a place approved under Section 21A as a depot, or”;  
and

- (b) by inserting after the definition of “declarant” the following new definition:-

“'depot' means a place approved by a Collector under section 21A to receive goods subject to the control of customs and a place appointed under Section 8(b) for the examination of goods.; and

- (c) by repealing the definition of “examination of goods” and replacing it with the following new definition:-

“examination of goods' means -

- (a) the physical inspection of goods by the Customs to satisfy themselves that the nature, origin, condition, quantity and value of the goods are in accordance with the particulars furnished in the Goods declaration; and

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- (b) where no goods declaration has been furnished, the physical inspection of goods by the Customs to determine the nature, origin, condition, quantity and value of the goods; and
- (c) for the purposes of this definition a physical inspection may be facilitated by any means whatsoever and includes, but is not limited to, the use of any chemical substance, x-ray or imaging equipment, or some other mechanical, electrical, or electronic device;"; and
- (d) by repealing the definition of "goods" and replacing it with the following new definition:-

"goods' includes movable personal property of any kind, and without limiting the generality of the expression, includes documents and conveyances;"; and

- (e) by inserting after the definition of "duty" the following new definition:-

"entry' means a goods declaration and any reference in this Act to an entry shall be deemed to mean a goods declaration;"; and

- (f) by inserting after the definition of "duty" the following new definition:-

"premises' includes –

- (a) any dwelling house, office, warehouse, store or shop; and
- (b) any building or structure; and
- (c) any factory, garage, workshop or hangar; and
- (d) any pavilion, tent, or caravan; and
- (e) any enclosed yard, garden or area; and

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- (f) any aircraft; and
- (g) any vehicle; and
- (h) any vessel,  
and any part of such premises;"; and

- (g) by inserting after the definition of "smuggling" the following new definitions:-

"tainted property" has the same meaning as that provided for in Section 3 of the *Proceeds of Crime Act 2005*;"; and

"the tribunal" means the Customs Review Tribunal established under Section 177 of this Act;"; and

- (h) by inserting after the definition of "time of importation" the following new definition:-

"unlawful activity" has the same meaning as that provided for in Section 3 of the *Proceeds of Crime Act 2005*;".

**2. DECLARATION OF PORTS, BOARDING STATIONS, ETC.,  
(AMENDMENT OF SECTION 7).**

Section 7 of the Principal Act is amended –

- (a) by repealing the word "Minister" in Subsection (1) and replacing it with the following:-

"Commissioner General"; and

- (b) by inserting after Subsection (2) the following new subsections:-

"(3) In deciding whether to appoint a port under this section, the Commissioner General may take into account whether the port or any part of the port is a security regulated port within the meaning of the *Merchant Shipping (Maritime Security) Regulations 2005*.

"(4) In deciding whether to appoint an airport under this section, the Commissioner General may take into account whether the airport is an airport designated as an international airport within the meaning of the *Civil Aviation Authority Act 2000*."



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**3. SUFFERANCE WHARVES AND PLACES FOR EXAMINATION OF GOODS (AMENDMENT OF SECTION 8).**

Section 8(b) of the Principal Act is amended by adding after the words "on landing" the following:-

"and such shed accommodation for the protection of goods as the Commissioner General declares to be necessary."

**4. REPEAL OF SECTION 10.**

Section 10 of the Principal Act is repealed.

**5. CUSTOMS CONTROL OF GOODS (AMENDMENT OF SECTION 16).**

Section 16 of the Principal Act is amended -

(a) in Subsection (1) by repealing Paragraph (e) and replacing it with the following:-

"(e) goods on board any conveyance from a place outside Papua New Guinea at all times that the conveyance is in Papua New Guinea."; and

(b) by inserting after Subsection (3) the following new subsections:-

"(4) The owner or operator of a place holding goods subject to the control of Customs, shall when requested by an authorised officer, account for those goods to the satisfaction of the Collector.

"(5) An owner or operator failing to account for goods when when requested to do so under Subsection (4), is guilty of an offence.

"Penalty: Subject to Sections 163, 164 and 165, a fine not less than K5,000.00 and not exceeding K50,000.00."

**6. POWER TO SEARCH AND SEIZE GOODS (AMENDMENT OF SECTION 16D).**

Section 16D of the Principal Act is amended -

(a) in Subsection (1) by repealing Paragraphs (a), (b) and (c) and replacing them with the following new paragraphs:-

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- "(a) any person or conveyance in a customs controlled area; or
  - "(b) within a reasonable time after that person or conveyance leaves the area, any person or conveyance that has had access to a customs controlled area; and
  - "(c) search that person or conveyance if the officer suspects on reasonable grounds that the person has secreted on or about his person or the conveyance has on it -"; and
- (b) by renumbering Paragraphs "(d)" and "(e)" to Subparagraphs "(i)" and "(ii)", respectively; and
  - (c) in Subsection (2) by inserting after the word "person" the following words:-

"or in the conveyance".

**7. POWER TO EXAMINE GOODS (AMENDMENT OF SECTION 17).**

Section 17 of the Principal Act is amended in Subsection (1) by inserting after Paragraph (c) the following new paragraph:-

- "(d) and may examine any goods subject to the control of Customs and detain such goods for any time reasonably necessary to examine them."

**8. ENTRIES (AMENDMENT OF SECTION 19).**

Section 19 of the Principal Act is amended:-

- (a) by inserting after Subsection (3), the following new subsection:-

"(3A) The Collector may refuse to register an entry and state the reason for such refusal."; and

- (b) by repealing Subsection (4) and replacing it with the following new subsection:-

"(4) An entry made in respect of the goods may, with the consent of the Collector, be-

- (a) amended by the owner of the goods provided that when the request for amendment is received -

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- (i) the checking of the entry has not commenced and the goods are yet to be examined; or
  - (ii) if the request is received after the checking of the entry has commenced, the reasons given by the owner of the goods are deemed valid by the Collector; or
  - (b) withdrawn by the owner of the goods to apply for another customs procedure provided that-
    - (i) the request is made to the Collector before the goods have been released, and
    - (ii) that the reasons are deemed to be valid by the Collector; or
  - (c) withdrawn completely”; and
- (c) by inserting after Subsection (8) the following new subsection:-

"(9) Where the Collector is satisfied that an entry should not be registered or assessed, he may refuse to register or assess the entry and state the reasons to the owner.”.

**9. RELEASE OF GOODS WITHOUT ENTRY (AMENDMENT OF SECTION 19A).**

Section 19A of the Principal Act is amended by inserting after Subsection (3) the following new subsections: -

"(4) Notwithstanding this section or any other requirement of the Act, where the Commissioner considers that exceptional circumstances exists or that special treatment rules as prescribed apply, he may grant permission for the owner of goods to take delivery of them without first lodging a goods declaration and in doing so, the Commissioner may require the owner to provide sufficient information and abide with whatever conditions he may impose so as to ensure the protection of the revenue or compliance with the Act.

"(5) Goods released under Subsection (4) above must be entered for home consumption and any duties or taxes owing paid within whatever timeframe the Commissioner thinks is appropriate in the circumstances.

"(6) A person who has been given permission under Subsection (4) and refuses or fails to comply with any condition to which that permission is subject commits an offence against this Act.

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"Penalty: Subject to Sections 163, 164 and 165, a fine not less than K5,000.00 and not exceeding K50,000.00."

**10. AUTHORITY TO DEAL WITH ENTERED GOODS (AMENDMENT OF SECTION 20).**

Section 20 of the Principal Act is amended in Subsection (5) by inserting after the words "may cancel" or "that cancellation" wherever occurring the following:-

"or suspend" and "or suspension".

**11. REPEAL AND REPLACEMENT OF SECTION 21A.**

Section 21A of the Principal Act is repealed and replaced by the following new section:-

**"21A. DEPOTS.**

"(1) Where goods are subject to Customs control, application may be made to a Collector, by document or by computer, for permission to move those goods to a place specified in the application.

"(2) Subject to this section, a Collector may on application, grant an approval in writing to be known as a depot approval, to use the place described in the approval, to be known as a depot, for any one or more of the following purposes:-

- (a) the holding of imported goods that are subject to the control of customs; or
- (b) the unpacking of goods subject to customs control from containers; or
- (c) the holding of goods for export that are subject to the control of customs; or
- (d) the packing of goods subject to customs control into containers; or
- (e) the examination of goods subject to customs control by an officer.

"(3) When an application is communicated to Customs under Subsection (1), a Collector shall, in a form approved by the Commissioner General -

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- (a) give the applicant permission to move the goods either absolutely or subject to such conditions as are specified in the approval; or
- (b) refuse the application and set out in the notice the reasons for that refusal.

"(4) A Collector may refuse to grant a depot approval, where in the Collector's opinion -

- (a) the applicant is not a fit and proper person to hold a depot approval; or
- (b) the applicant would not be in a position to occupy and control the proposed depot if the approval were granted; or
- (c) the physical security of the proposed depot is not adequate having regard to -
  - (i) the nature of the place; or
  - (ii) the procedures and methods that would be adopted by the applicant to ensure the security of the goods in the proposed depot were not suitable; or
- (d) the records that would be kept in relation to the proposed depot would not be suitable to enable customs to adequately audit those records; or
- (e) the place in relation to which the approval is sought would be too remote from the nearest customs office.

"(5) Where a person moves goods otherwise than in accordance with an approval issued under Subsection (3), the goods are deemed to have been moved without authority.

"(6) If goods moved in accordance with an approval issued under Subsection (3) have not been entered for home consumption or further dealt with according to law within 30 days of their removal to a depot, the goods may be detained by the Collector and sold.

(7) An extension to the time prescribed in Subsection (6) may be granted by the Commissioner if reasonable grounds exist, which may prevent the goods from being dealt with within 30 days.

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"(8) Where a Collector has arranged for goods to be detained, customs has a lien on the goods for any expenses incurred in connection with its detention and for any rent and charges incurred in relation to those goods.

"(9) An approval for a depot comes into force on the date the approval is granted, and remains valid until the end of the calendar year in which it was granted.

"(10) If the holder of a depot approval fails to renew that approval during its period of validity, a Collector may refuse to permit goods that are subject to the control of customs to be received into the depot.

"(11) A Collector may give notice of intention to revoke a depot approval if the Collector is satisfied that the revocation is necessary for the protection of the revenue or for the purpose of ensuring compliance with any customs related law."

**12. ENTRY OF SHIPS, AIRCRAFT AND VEHICLES (AMENDMENT OF SECTION 25).**

Section 25 of the Principal Act is amended:-

- (a) in Subsection (6) by repealing the words "who and refuses" and replacing them with the following:

"and who refuses"; and

- (b) by inserting the following new subsections after Subsection (6):-

"(7) Where a conveyance arrives at a place other than a port, airport or port of entry a Customs officer may –

- (a) direct the conveyance to proceed to the nearest Customs Controlled Area, or any other place as the officer considers appropriate; or  
(b) direct that the conveyance remain where it is; and  
(c) in either case, may detain the conveyance and any goods or persons found on or in it for any time and for any purposes

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reasonably necessary to carry out an investigation into any offence against any Customs related law that has been, is being, or is about to be committed on or in that conveyance while it was or is within Papua New Guinea.

"(8) A person in charge of a conveyance commits an offence against this Act if he attempts or threatens to cause the conveyance to depart from a place to which the conveyance has been directed to proceed or in which the conveyance has been directed to remain pursuant to Subsection (7) of this section without a certificate of clearance.

"Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00 or a term of imprisonment not exceeding 5 years, or both."

**13. REPEAL AND REPLACEMENT OF SECTION 30.**

Section 30 of the Principal Act is repealed and replaced by the following:-

**"30. REPORT OF CARGO PASSENGERS AND CREW.**

"(1) The person in charge of a conveyance arriving at a port, airport or port of entry in Papua New Guinea (whether the first port or any subsequent port on the same journey), shall report to Customs such advance notice and in such form as may be prescribed, of all the following matters:-

- (a) the impending arrival of the conveyance; and
- (b) its voyage, flight or travel itinerary; and
- (c) its crew; and
- (d) its passengers; and
- (e) its cargo for discharge in Papua New Guinea; and
- (f) its cargo not for discharge in Papua New Guinea; and
- (g) the time, date and port, airport or port of entry at which it will arrive; and
- (h) any other information that the Commissioner may require from time to time, to ensure compliance with this Act or any other Act of Parliament.

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- "(2) The person in charge of a conveyance arriving at a port, airport or port of entry in Papua New Guinea, shall on arrival:
- (a) report the arrival of the conveyance to Customs; and
  - (b) answer any questions relating to the conveyance and its cargo, crew, passengers, stores and voyage; and
  - (c) produce on demand any documents relating to the conveyance and its cargo, passengers or crew.

"(3) For the purposes of Subsections (1) and (2) the person in charge of a conveyance also includes the owner, operator or agent of the conveyance.

"(4) A person who contravenes Subsection (1) or (2) is guilty of an offence.

"Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00.

"(5) Notwithstanding Subsections (1) and (2), the owner, operator or agent of a conveyance shall, upon request, provide an authorised officer with any information that the owner, operator or agent holds or has access to relating to the passengers of the conveyance, including but not limited to:

- (a) the person's full name, date and place of birth, nationality, sex and passport details;
- (b) the person's contact details (including telephone numbers, address and email address);
- (c) any special conditions or arrangements the person has made regarding his or her travel;
- (d) where and on what date the person booked his or her travel;
- (e) whether the person has checked baggage; and
- (f) any associated bookings or travel companions.

"(6) A person who fails to comply with any of his obligations under Subsection (5) is guilty of an offence.

"Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00."



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**14. REPEAL AND REPLACEMENT OF SECTION 35).**

Section 35 of the Principal Act is repealed and replaced by the following new section:-

**"35. MAKING OF ENTRIES.**

"(1) Entries shall be made in accordance with this Act relating to the requirement to enter goods and within such period of time as is prescribed or such further time (if any) as the Collector allows.

"(2) The Collector may detain the goods if the owner fails to comply with Subsection (1).

"(3) If goods detained under Subsections (2) are not claimed within 30 days from the date of detention, the goods shall be deemed to be abandoned, forfeited to the State and sold by the Collector.

"(4) The proceeds of any sale of goods under Subsection (3) shall be applied to amounts owed by the owner, any expenses incurred by the State in respect of the goods sold, any duties on the goods, and the surplus, if any, shall be paid to the owner.

"(5) Where any goods detained under this section are of a perishable nature, they may be sold at any time before detention or after detention but within the 30 day period provided in Subsection (3), as the Collector thinks fit."

**15. ASSESSMENT OF DUTY (AMENDMENT OF SECTION 35A).**

Section 35A of the Principal Act is amended -

(a) in Subsection (1) by repealing the words and figures "Section 35(1)" and replacing them with the following:-

"this Act"; and

(b) in Subsection (2) by repealing the words "in writing of the assessment" and inserting after the word "payable" the following:-

"either in writing or electronic transmission,"; and

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(c) by inserting the following subsections after Subsection (2):-

"(3) In making an assessment under this section, the Collector may take such time as is reasonably necessary in the circumstances to ensure compliance with the Act, and in particular protection of the revenue.

"(4) Customs shall not be liable for any loss or damage occasioned by any delay in assessing an entry, in applying Subsection (3), otherwise then through neglect or a wilful act of an officer, the burden of proof of which shall rest with the owner or agent of the goods described in the entry."

**16. REPEAL AND REPLACEMENT OF SECTION 47.**

Section 47 of the Principal Act is repealed and replaced by the following:-

**"47. CERTIFICATES OF CLEARANCE.**

"(1) A person in charge of a conveyance who departs with his conveyance from a port or airport or port of entry without receiving from the Collector a Certificate of Clearance is guilty of an offence.

"Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K3,000.00 and not exceeding K50,000.00.

"(2) Before a Certificate of Clearance is granted to a conveyance -

- (a) the person in charge of the conveyance shall deliver to the Collector an outward manifest for its cargo, crew and passengers in such form and in such numbers as approved by the Commissioner General; and
- (b) the person in charge of the conveyance or the owner of the conveyance, shall—
  - (i) answer any questions asked by the Collector relating to the conveyance and her cargo, crew, passengers, stores and voyage; and
  - (ii) produce on demand documents relating to the conveyance and her cargo, passengers and crew.

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"(3) A Certificate of Clearance shall not be granted for a conveyance unless –

- (a) all her inward cargo and stores have been accounted for to the satisfaction of the Collector; and
- (b) all the other requirements of the law in regard to her and to her inward and outward cargo, passengers and crew have been complied with.

"(4) Where the Collector has refused to grant a Certificate of Clearance, the owner of the conveyance is entitled to recover, in any court of competent jurisdiction, damages against the State in respect of the refusal to grant the Certificate of Clearance if the court is satisfied that the refusal was without reasonable and probable cause.

"(5) Except as provided in Subsection (4), proceedings do not lie against the State or an officer because of the refusal to grant a Certificate of Clearance.

"(6) For the purposes of this section the person in charge of a conveyance also includes the owner, operator or agent of the conveyance.

**17. LICENSING OF WAREHOUSES (AMENDMENT OF SECTION 54).**  
Section 54 of the Principal Act is amended by repealing Subsection (2).

**18. DATE OF PAYMENT OF DUTIES (AMENDMENT OF SECTION 80A).**  
Section 80A of the Principal Act is amended:-

- (a) in Subsection (1) by inserting after the words “the issue of the notice of assessment” the following:-

“or a date not less than 5 clear working days after the inwards report of the conveyance, whichever is the later date”; and

- (b) by inserting after Subsection (2), the following new subsection:-

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"(2A) The payment of any duties or interest under this section shall be made -

- (a) in the case of an entry lodged by electronic transmission to the customs computer service- at any customs office directly connected to the customs computer service; or
- (b) in the case of a manual entry – at any customs office; or
- (c) in the case of any dispute, at a place nominated by the Commissioner General.”; and

- (c) in Subsection (3) by inserting after the words “payable under this section” the following:-

“, on the basis of a written application made by the owner or agent of the goods within 30 days after the due date of an assessment and upon payment of the duty and interest, to remit the whole or any part of the interest within 30 days after the due date of an assessment and upon payment of the duty and interest.”; and

- (d) by inserting after Subsection (3) the following new subsections:-

“(3A) In considering whether to remit the whole or a part of the interest, the Commissioner General may consider the following matters:-

- (a) the capacity of the owner or his agent to have avoided making late payment and the extent to which that capacity was exercised; and
- (b) the history of the owner or his agent resulting in previous late payment, revenue loss or any Customs prosecution instituted against the applicant or his agent.

“(3B) The Commissioner General shall inform the applicant of the decision to remit within 30 days after receiving the application for remission of interest.

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"(3C) Any remission of interest may be applied to offset other debts as provided under Section 194 of this Act."

**19. CURRENCY OF PAYMENT (AMENDMENT OF SECTION 81).**

Section 81 of the Principal Act is amended by inserting after the words "currency" the following:-

"and the method of payment shall be as prescribed."

**20. GOODS IN MANIFEST BUT NOT PRODUCED, ETC., (AMENDMENT OF SECTION 84).**

Section 84 of the Principal Act is amended -

- (a) by repealing the words "ship or aircraft" and replacing them with the following:-

"conveyance"; and

- (b) by repealing the words "the master or owner of the ship, or the pilot or owner of the aircraft," and replacing them with the following:-

"the owner in respect of those goods while under customs control,".

**21. PRODUCTION OF GENUINE INVOICE (AMENDMENT OF SECTION 97).**

Section 97 of the Principal Act is amended -

- (a) in Subsection (2) by inserting after the word "request" the following:-

"and within 5 working days of that request"; and

- (b) by inserting after Subsection (5) the following new subsection:-

"(6) A person who fails to provide the information in accordance with Subsection (2), is guilty of an offence.

"Penalty: Subject to Sections 163, 164 ad 165, a fine of not less that K500.00 and not exceeding K2,000.00."

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**22. REPEAL AND REPLACEMENT OF SECTION 104.**

Section 104 of the Principal Act is repealed and replaced with the following:-

**"104. REFUNDS OF DUTY AND ABANDONMENT OF GOODS TO THE STATE.**

"(1) Refunds, rebates and remissions of duty may be made in respect of goods generally or in respect of the goods included in a class of goods, and in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed.

"(2) The owner of goods that have been imported but have not been released from Customs Control may, subject to the Collector's approval and subject to such conditions and restrictions (if any), as are prescribed, abandon the goods to the State for destruction or other form of disposal.

"(3) Where circumstances exist that render it difficult to determine the exact amount of any refund, rebates or remission that should be granted in respect of goods under this Section, the Collector may grant to the applicant, in lieu thereof, a specific sum, the amount of which shall be determined by the Collector.

"(4) Where the Collector is satisfied that for some genuine and sufficient reason an application under this Section was not made within the time prescribed, and in his opinion the circumstances are such that it is equitable that the time prescribed should be extended, he may extend the prescribed time period for a further period reasonably necessary for the application to be made, and in any case for a period not exceeding 30 days.

"(5) Applications made under this section shall be made in a form approved by the Commissioner General and shall be lodged with the Collector together with the processing fee and shall contain sufficient information to prove to the satisfaction of the Collector that the owner purchased and intended to, or did, take delivery of the goods in good faith and without any knowledge that the goods were in a condition or of a type or number other than that ordered, the burden of proof of which shall rest with the owner.

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"(6) A Collector must refuse to consider an application under this Section in respect of any goods if the fee, as prescribed, payable in respect of the application has not been paid or if the applicant has not met one or all of the conditions or restrictions (if any), as are prescribed.

"(7) No refund, rebate or remission shall be granted under this Section in respect of a claim unless the person making the claim affords an officer reasonable opportunity to examine the goods in respect of the claim is made or otherwise verify the reason for the claim and an application for the refund, rebate or remission, including such evidence in support of the application as may be prescribed is made to an officer in the prescribed manner and within the prescribed time period.

"(8) The determination of the amount of refund, rebate or remission under this section and whether it is fair or accurate is non-justiciable.

"(9) Nothing in the section shall prevent the Customs from enforcing the terms of any security given for the protection or custody of goods that are subject to the control of the Customs."

**23. REPEAL AND REPLACEMENT OF SECTION 125.**

Section 125(3) of the Principal Act is repealed and is replaced with the following:-

"(3) For the purposes of Subsection (1)(a), an officer may detain the goods without seizure for any time and for any purposes reasonably necessary to determine if they are forfeit"

"(4) In the application of this section, Commissioner General and the State shall not be liable for any loss or damage occasioned by the detention of any goods, otherwise then through the neglect or a wilful act of an officer, the burden of proof of which shall rest with the owner of the goods detained."

**24. NOTICE OF SEIZURE (AMENDMENT OF SECTION 126).**

Section 126 of the Principal Act is amended in Subsection (2) by repealing the word "month" and replacing it with the following:-

"30 days".

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**25. OWNER OR IMPORTER OF GOODS TO KEEP RECORDS  
(AMENDMENT OF SECTION 131A).**

Section 131A of the Principal Act is amended -

- (a) in Subsection (3) by repealing the word "owner's" and replacing it with the following:-

"person's"; and

- (b) by repealing the words "one year" in the penalty provision to Subsection (6) and replacing them with the following:-

"three years"; and

- (c) by repealing the words "one year" in the penalty provision to Subsection (5) and replacing them with the following:-

"three years".

**26. AUTHORISED OFFICER MAY REQUIRE A PERSON TO PRODUCE DOCUMENTS (AMENDMENT OF SECTION 131B).**

Section 131B(2) of the Principal Act is amended by repealing the words "or imprisonment for a period not exceeding one year" and replacing them with the following:-

"and not exceeding K25,000.00, or a term of imprisonment not exceeding three years, or both."

**27. ACCESS, ETC., TO BOOKS ETC., (AMENDMENT OF SECTION 131C).**

Section 131C of the Principal Act is amended by repealing the words "a fine not exceeding K5,000.00." and replacing them with the following:-

"a fine of not less than K5,000.00 and not exceeding K25,000.00."

**28. REPEAL AND REPLACEMENT OF SECTION 135.**

Section 135 of the Principal Act is repealed and is replaced by the following:-

**"135. CUSTOMS SAMPLES.**

"(1) Samples of any goods under the customs control may, for the purpose deemed necessary by the Collector to establish -

- (a) the tariff description; or



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(b) value of the goods declared; or  
(c) application of other customs requirements,  
be taken, used and disposed of by an officer in the prescribed manner.

"(2) Before the lodging of a customs entry, the owner of the goods may inspect and draw samples of the goods imported with prior approval from the Collector.

"(3) Where the owner requests to inspect and draw samples, the inspection and drawing of the samples shall be carried out under customs supervision.

"(4) Samples drawn by the owner shall be included in the entry lodged with the Collector.

"(5) The quantity of samples taken shall only be in such amount as the circumstances require."

**29. FORFEITED GOODS (AMENDMENT OF SECTION 146).**

Section 146(1) of the Principal Act is amended –

(a) in Paragraph (e) by inserting after the word "airport" the following words:-

"or a port of entry,"; and

(b) in Paragraph (a) by repealing the word "and"; and.

(c) in Paragraphs (a) to (s) by repealing the word "and" occurring at the end of each paragraph and replacing it with the following word:-

"or"; and

(d) by repealing the word "and" at the end of Paragraph (s); and

(e) in Paragraph (t) by deleting the full-stop after the word "packages" and replacing it with the following word:-

"or," and

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(f) by inserting after Paragraph (t) the following new paragraphs:-

"(u) tainted property imported into Papua New Guinea that has been acquired in a country outside Papua New Guinea, whether by the owner or some other person, through any unlawful activity; or

"(v) tainted property exported, or in respect of which an attempt to export has been made, that has been acquired in Papua New Guinea, whether by the owner or some other person, through any unlawful activity."

**30. DISPUTES AS TO THE APPLICATION OF THIS DIVISION  
(AMENDMENT OF SECTION 147G).**

Section 147G of the Principal Act is amended in Subsection (5)(b) by, repealing the words "of the Commissioner General or".

**31. NEW DIVISION XII.2A.**

Part XII of the Principal Act is amended by inserting after Division 2 the following new Division:-

*"Division 2A. - Offences related to the Computer Service .*

**"159A. EVADING DUTY BY UNAUTHORISED MODIFICATION OF  
COMPUTER PROGRAM OR DATA.**

"(1) Any person who, without the authority of the Commissioner General –

(a) destroys, alters, erases, renders meaningless, useless or ineffective or otherwise manipulates data stored in, or used in connection with, a computer;

(b) introduces into, or records or stores in, a computer by any means data for the purpose of –

(i) destroying, altering, erasing or rendering meaningless, useless or ineffective or otherwise manipulating other data stored in that computer; or

(ii) interfering with, interrupting or obstructing the lawful use of, that computer or the data stored in that computer; or

(c) otherwise uses a computer,

the purpose or effect of which is to reduce, avoid or evade any liability to customs

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duty, excise duty or tax imposed or which would otherwise have been imposed by any customs related law, or to defeat any provision of any customs related law, is guilty of an offence.

"Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5, 000.00 and not exceeding K50,000.00 or imprisonment for a period not exceeding 10 years, or both.

"(2) In this section "data" includes any computer program or part of a computer program being a program, whether or not approved by the Commissioner General, for use in relation to the computer service established under Section 195.

**"159B. UNAUTHORISED DISCLOSURE OF ACCESS CODE.**

"(1) Any person who without authority discloses directly or indirectly any password, access code or any other means of gaining access to any program or data held in any computer to any person other than a person to whom he is duly authorised to disclose such information, is guilty of an offence.

"Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K500.00 and not exceeding K25,000.00 or imprisonment for a period not exceeding 5 years, or both.

"(2) This section applies to any computer program or part of a computer program being a program, whether or not approved by the Commissioner General, for use in relation to the computer service established under Section 195.

**"159C. UNAUTHORISED ACCESS TO COMPUTER MATERIAL.**

"(1) Any person who -  
(a) causes a computer to perform any function so as to secure access to any program or data held in any computer; and  
(b) such access is unauthorised; and

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(c) the person knows at the time when he causes the computer to perform the function that such access is unauthorised,  
is guilty of an offence.

"Penalty Subject to Sections 163, 164 and 165, a fine of not less than K500.00 and not exceeding K25,000.00 or imprisonment for a period not exceeding 3 years, or both.

"(2) The intent a person has to have to commit an offence under this section need not be directed at -

- (a) any particular program or data; or
- (b) a program or data of any particular kind; or
- (c) a program or data held in any particular computer.

"(3) This section applies to any computer program or part of a computer program being a program, whether or not approved by the Commissioner General, for use in relation to the computer service established under Section 195.

**"159D. ENHANCED PUNISHMENT FOR OFFENCES AGAINST SECTIONS 159B AND 159C.**

"(1) Any person who commits an offence referred to in Section 159B or 159C so as -

- (a) to commit an offence against Section 196; or
- (b) to facilitate the commission of such an offence whether by himself or by any other person,

shall, in lieu of the punishment prescribed in those sections, be liable on conviction and subject to Sections 163, 164 and 165, to a fine of not less than K5,000.00 and not exceeding K50,000.00 or imprisonment for a period not exceeding 10 years, or both.

"(2) For the purposes of Subsection (1), it is immaterial whether the offences to which this subsection applies are to be committed at the same time when the unauthorised access is secured or on any future occasion.

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**"159E. PRESUMPTION.**

"For the purposes of this Division, any person who has in his custody or control any program, data or other information which is held in any computer or retrieved from any computer that he is not authorised to have in his custody or control shall be deemed to have obtained unauthorised access to such program, data or information unless the contrary is proved."

**32. INTERPRETATION OF PART XIII (AMENDMENT OF SECTION 166).**

Section 166 of the Principal Act is amended by inserting after Paragraph (a) the following new paragraph:-

"(ab) for the prosecution of any offence under this Act or any customs-related law; or".

**33. INSTITUTION OF PROSECUTIONS (AMENDMENT OF SECTION 167).**

Section 167 of the Principal Act is amended in Subsection (1):-

(a) by repealing and replacing Paragraph (b) with the following new paragraph:-

"(b) if the penalty does not exceed K50,000.00 or the excess is abandoned in a District Court, or"; and

(b) by inserting the following new paragraph:-

"(c) if the maximum penalty for a customs offence is a term of imprisonment not exceeding two years, in the District Court."

**34. PRACTICE IN PROSECUTIONS (AMENDMENT OF SECTION 168).**

Section 168 of the Principal Act is amended by inserting after the words "National Court" the following words:-

"or District Court".

**35. REPEAL AND REPLACEMENT OF PART XIV.**

Part XIV of the Principal Act is repealed and is replaced with the following:-

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**"PART XIV. - DISPUTES AS TO DUTY AND RULINGS.**

*"Division 1. - Disputes as to duty.*

**"176. PAYMENT UNDER PROTEST.**

"(1) If a dispute arises as to -

- (a) the amount or rate of duty on any goods; or
- (b) the liability of any goods to duty under any Customs tariff,

the owner of the goods may pay under protest the sum demanded by the Collector as the duty payable in respect of the goods.

"(2) If a documentary entry has been made in respect of goods, a protest under this section is taken to have been made if, and only if, the owner of the goods or the agent of the owner before making payment in respect of those goods -

- (a) writes on the entry the words 'paid under protest'; and
- (b) adds to the entry a description of the goods to which the protest relates (where the protest does not relate to all the goods covered by the entry); and
- (c) a statement of the grounds on which the protest is made, and
- (d) signs the statement.

"(3) If a computer entry has been made by a registered user in respect of goods, a protest under this section is taken to have been made where the registered user transmits a communication to Customs before making payment in respect of those goods containing -

- (a) the entry number; and
- (b) the words 'paid under protest'; and
- (c) a description of the goods to which the protest relates (where the protest does not relate to all the goods covered by the entry) and a statement of the grounds on which the protest is made.

"(4) The sum paid under Subsection (1) shall, as against the owner of the goods, be deemed to be the amount of the proper duty unless the contrary is determined in an action brought in pursuance of this section.

"(5) The owner of goods may appeal in writing to the Customs Appeals Tribunal against the assessment stating the grounds of his appeal, if, and only if, payment has been made under protest in pursuance of this section and the appeal is lodged within 30 days from the date of the assessment.

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"(6) The fact that an appeal is pending does not in the meantime interfere with or affect the decision of the Commissioner General and it shall apply as if no appeal is pending.

"(7) Nothing in this section affects the rights of a person to bring proceedings in a Court of competent jurisdiction against the Collector for the recovery of the whole or any part of the sum paid, but proceedings do not lie under this section unless the administrative appeal processes described in this Division XV of the Act have first been exhausted.

"(8) This section does not affect any rights or powers under Section 104.

*"Division 2. - Rulings.*

**"176A. APPLICATION FOR A RULING.**

"(1) A person may make an application, in respect of particular goods specified in the application, to the Commissioner General for a ruling in respect of any one or more of the following matters:-

- (a) the tariff classification of those goods under the *Customs Tariff Act 1990*;
- (b) whether or not those goods are, for the purposes of the tariff and in accordance with any applicable regulations made under this Act, the produce or manufacture of a particular country or group of countries, referred to in the application;
- (c) whether or not those goods are subject to a specified duty concession under the *Customs Tariff Act 1990* referred to in the application.

"(2) An application under Subsection (1) may be made -

- (a) in respect of imported goods -
  - (i) at any time before the date of importation into Papua New Guinea of the goods that are the subject of the application; or
  - (ii) at any later time, if the Commissioner General's discretion permits; or
- (b) in respect of goods manufactured in a manufacturing area -
  - (i) at any time before the date of manufacture of the goods; or
  - (ii) at any later time, if the Commissioner General's discretion permits.

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"(3) A person may make an application in relation to a particular matter specified in the application, to the Commissioner General for a ruling as to the correct application of any provision contained in the *Customs Tariff Act 1990*.

"(4) Every application under Subsection (1) or Subsection (3) of this section must be in the approved form and comply with such conditions as prescribed, and shall –

- (a) state the name and address of the applicant; and
- (b) in the case of an application under Subsection (1) of this section –
  - (i) specify the particular goods that are the subject of the application; and
  - (ii) specify, in respect of those goods, the matter or matters listed under Subsection (1) of this section on which the applicant requests a ruling and the applicant's opinion as to what the ruling should be; and
  - (iii) unless the Commissioner General agrees otherwise, be accompanied by the goods or a sample of the goods; and
- (c) contain, or have attached, all information that is relevant to a proper consideration of the application; and
- (d) be accompanied by the fee approved by the Commissioner General.

"(5) The Commissioner General may, at any time, request further information from an applicant if the Commissioner General considers that the information is relevant to the application.

**"176B. MAKING OF RULINGS.**

- "(1) Subject to Subsection (4), the Commissioner General shall –
- (a) in the case of an application made under Section 176A (1) of this Act, make a ruling in respect of any particular goods specified in the application and in respect of the matter or matters on which the ruling is sought; or
  - (b) in the case of an application made under Section 176A (3) of this Act, make a ruling in respect of the particular matter specified in the application.



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"(2) The Commissioner General must make a ruling under Subsection (1) of this section within such time or times as may be prescribed after receipt of -

- (a) in the case of an application under Section 176A(1) of this Act -
  - (i) a properly completed application in respect of particular goods; and
  - (ii) the goods or a sample of the goods, unless the Commissioner General has agreed not to require receipt of the goods; and
- (b) all information that the Commissioner General considers relevant to a proper consideration of the application; and
- (c) all information that the Commissioner General requests under Section 176A(5); and
- (d) payment of the prescribed fee.

"(3) The Commissioner General may decline to make a ruling if, in the Commissioner General's opinion, there is insufficient information to do so.

**"176C. NOTICE OF RULINGS.**

"The Commissioner General shall promptly give notice in writing to the applicant of -

- (a) a ruling, together with the reasons for the ruling, to which it is subject; or
- (b) a decision to decline to make a ruling, together with the reasons for that decision.

**"176D. EFFECT OF RULINGS.**

"(1) Subject to Section 176G of this Act, a ruling in respect of particular goods is conclusive evidence for the purpose of this Act and, where applicable, the *Customs Tariff Act 1990* that the goods -

- (a) have a particular tariff classification in the *Customs Tariff Act 1990*; or
- (b) may be in accordance with applicable regulations made under this Act, the produce or manufacture of a particular country, or group of countries, for the purposes of the *Customs Tariff Act 1990*; or

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- (c) maybe subject to a specified duty concession under Part IV of the *Customs Tariff Act 1990*.

"(2) Subject to Section 176G of this Act, a ruling in respect of a particular matter in respect of which a ruling has been given under Section 176 B(1)(b) of this Act is conclusive evidence for the purposes of this Act and where applicable, the *Customs Tariff Act 1990*, of the application of the regulation or regulations on which the ruling was made in relation to that matter.

**"176E. CONFIRMATION OF BASIS OF RULINGS.**

"At any time after a ruling is made, the Commissioner General may, by notice in writing, require the applicant to satisfy the Commissioner General in such manner and within 30 days or such longer period as the Commissioner General considers appropriate –

- (a) that the facts or information on which the ruling was made remain correct; and  
(b) that any conditions on which the ruling was made have been complied with.

**"176F. AMENDMENT OF RULINGS.**

"(1) The Commissioner General may from time to time amend a ruling to correct any error contained in that ruling.

"(2) The Commissioner General shall, promptly after making the amendment, give notice in writing to the applicant of the amended ruling and, subject to Subsection (3) of this section, the ruling as amended shall be applied to that applicant as from the date on which notice of the amendment was given to the applicant.

"(3) Notwithstanding Subsection (2), if the amendment to the ruling has the effect of increasing any duty liability in respect of any goods –

- (a) where the goods are imported within 90 days of the date notice of the amendment is given, pursuant to a binding contract entered into before that date; or  
(b) where the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Papua New Guinea at the date notice of the amendment of the ruling is given; or

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- (c) where the goods are imported on or before the date notice of the amendment is given but have not been entered for home consumption then the ruling as given prior to amendment under this section shall be applied to those goods.

"(4) Notwithstanding Subsection (2) of this section, if the amendment to the ruling has the effect of decreasing any duty liability in respect of any goods, then the provisions of Section 104 shall apply.

**"176G. CESSATION OF RULINGS.**

"(1) A ruling ceases to have effect on the earliest to occur of the following dates:-

- (a) the date on which any information on which the ruling was made ceases to be correct in all material respects; or
- (b) the date of a material change in any of the information or facts on which the ruling was made; or
- (c) the date of a material change in the *Customs Tariff Act 1990*, or to any applicable regulations made under this Act or the *Customs Tariff Act 1990*, if that date occurs prior to importation or manufacture of the relevant goods, as the case may be; or
- (d) the date on which any of the conditions to which the ruling was made subject ceases to be met or complied with; or
- (e) the date of a failure to satisfy the requirements of the Commissioner General under Section 176E of this Act; or
- (f) the date of expiry of 3 years from the date that notice of the ruling, or any amendment to that Customs ruling under Section 176F, is given to the applicant.

"(2) A ruling shall not come into effect if -

- (a) information on which it was made was not correct in all material respects; or
- (b) a material change has occurred in any information or facts on which it was made.

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**"176H. APPEAL FROM THE RULING OF THE COMMISSIONER GENERAL.**

"An applicant who is dissatisfied with a ruling, or a decision to decline to make a ruling, or a decision to amend a ruling may within 30 days after the date on which notice of the ruling or decision is given, appeal to the Customs Review Tribunal against that ruling or decision.

**"176I. NO LIABILITY WHERE RULING RELIED ON.**

"(1) Where an applicant or any other person has relied on a ruling in relation to specific goods or a specific matter, and, as a result –

- (a) the applicant or person has not paid the amount of duty that, but for this section, is payable on the goods; or
- (b) the applicant or person would, but for this section, be liable to the imposition of a penalty under Sections 147B of this Act; or
- (c) goods, but for this section, would be liable to seizure under this Act,

the amount of the duty otherwise payable is not recoverable as a debt due to the state and no penalty shall be imposed under Section 147B of this Act and the goods shall not be liable to seizure under this Act, as the case may be.

"(2) Subsection (1) of this section applies only in relation to a matter on which the Customs ruling was given and where the ruling has not ceased under Section 176G of this Act, and in accordance with any amendment to a ruling that the applicant has received notice under Section 176F of this Act."

**36. REPEAL AND REPLACEMENT OF PART XV.**

Part XV of the Principal Act is repealed and is replaced with the following:-

**"PART XV. - APPEALS.**

*"Division 1. - Customs Review Tribunal.*

**"177. INTERPRETATION.**

"In this Part, unless the contrary intention appears -

"decision of the Commissioner General" means a decision of the Commissioner General –

- (a) relating to the liability of any goods to duty; or
- (b) relating to the amount or rate of customs duty on any goods; or

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- (c) a dispute under Section 176 that has resulted in the owner of the goods paying the duty under protest; or
- (d) under this Act or the *Excise Act 1956* relating to the issue, suspension or cancellation of a licence; or
- (e) a ruling issued pursuant to Part XIV of this Act; or
- (f) relating to the imposition of interest under Section 80A; or
- (g) the imposition of administrative penalties under this Act,

but does not include a decision in relation to the detention or seizure of forfeited goods.

**"177A. ESTABLISHMENT OF THE CUSTOMS REVIEW TRIBUNAL.**

"A Customs Review Tribunal is hereby established to hear applications for review of a decision of the Commissioner General.

**"177B. APPOINTMENT OF THE MEMBERS OF THE CUSTOMS REVIEW TRIBUNAL.**

"(1) The Customs Review Tribunal shall be constituted by three members appointed by the Minister.

"(2) Subject to Subsection (3) and (4), a person who has special knowledge, experience or skill relevant to the functions of the Tribunal, may be appointed as a member of the Tribunal.

"(3) The following persons shall not be appointed as a member of the Tribunal –

- (a) a customs officer or an officer employed with the Internal Revenue Commission; or
- (b) a licensed customs broker or a member of a customs broker association; or
- (c) a person who has been convicted of a Customs offence or any other offence under any law; or
- (d) an undischarged bankrupt.

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"(4) The members of the Tribunal are appointed for a period of three years and are eligible for re-appointment.

"(5) A member holds office on such terms and conditions including in relation to remuneration, as the Minister determines.

"(6) The Minister shall terminate the appointment of a member of the Tribunal, by notice in writing, who-

- (a) becomes an undischarged bankrupt; or
- (b) is convicted of a customs offence or any other offence under any law; or
- (c) is unable to perform the duties of the office or has engaged in misconduct; or
- (d) resigns as a member of the Tribunal.

*"Division 2. - Review and Appeals.*

**"178. RIGHT TO APPEAL.**

"(1) A person who is dissatisfied with the decision of the Customs, may in the first instance appeal to the Commissioner General for a review of the decision within 30 days of the notice of the decision.

"(2) The appeal shall be in writing, and shall state fully and in detail the grounds upon which it relies on to appeal.

"(3) A person may apply, in writing, to the Commissioner General for an extension of time to appeal and the Commissioner General may, if satisfied there is a reasonable cause, grant an application under this Section and shall serve notice of the decision on the applicant.

"(4) The Commissioner General may, where he considers it necessary, require the applicant in writing to furnish information or evidence relating to his appeal, before making a decision on the appeal.

"(5) The Commissioner General shall after consideration of the appeal, allow the appeal in whole or in part or disallow the appeal.

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"(6) The Commissioner General shall serve notice of the decision in writing to the applicant as soon as practicable after making the decision.

"(7) Where the decision of the Commissioner General is to disallow the appeal the Commissioner General shall state the reasons in writing and give notice to the applicant of his rights to lodge a further appeal to the Customs Review Tribunal.

**"178A. REVIEW OF DECISION BY CUSTOMS REVIEW TRIBUNAL.**

"(1) A person dissatisfied with a decision of the Commissioner General may apply for a review of that decision to the Customs Review Tribunal within 30 days of the notice of a decision.

"(2) The Review Tribunal may, in reviewing the decision of the Commissioner General exercise all the powers of the Commissioner General.

"(3) The Review Tribunal may confirm, vary or set aside the decision of the Commissioner General.

"(4) The Review Tribunal when giving its decision shall state in writing its findings of facts and its reasons in law for the decision.

**"178B. APPEAL TO THE NATIONAL COURT.**

"A party to a proceeding before the Review Tribunal who is dissatisfied with the decision of the Tribunal may, within 30 days after being notified of the decision of the Tribunal, or within such further times as the National Court may allow, file a notice of appeal in accordance with the National Court Rules.

**"178C. 178C. EFFECT OF DECISION.**

"(1) The decision of the Customs Review Tribunal is binding and takes effect forthwith.

"(2) The fact that an appeal is pending does not in the meantime interfere with or affect the decision of the Tribunal and any customs duties and taxes payable may be recovered as if no appeal were pending.

"(3) Where an appeal is pending in the National Court against the decision of the Tribunal, the decision of the Tribunal is binding and remains in force unless a stay of the decision is granted by the National Court."

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**37. AUTHORISED AGENTS (AMENDMENT OF SECTION 184).**

Section 184 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:-

"(1) The owner of any goods, other than goods of a personal private nature or not imported for commercial purposes, shall comply with this Act by a lawfully authorised agent."

I hereby certify that the above is a fair print of the *Customs (2007 Budget Amendment) Act 2006* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Customs (2007 Budget Amendment) Act 2006* was made by the National Parliament on 28 November 2006.

Speaker of the National Parliament.