

hovering. The ALRC proposes that in most circumstances ships should be prohibited from hovering or stopping in the offshore area to avoid contact with Customs.

installations. The Discussion Paper proposes that the offshore provisions should apply to installations while they are floating. Accordingly, a 'ship' is defined as a 'floating vessel or structure, whether or not it is used in navigation by water or whether or not it is propelled'. Where an installation achieves some permanence, an additional regime, not included in the Discussion Paper, will also apply.

investigatory powers. The ALRC proposes that investigatory powers for Customs officers should be based upon a Customs officer's suspecting on reasonable grounds that the relevant ship or aircraft, or a person on board, is or is about to be involved in a barrier offence. A barrier offence is a contravention of the Customs Act or regulations or some other law of the Commonwealth involving the entry of a person into or departure of a person from Australia; or bringing anything into Australia, or taking anything out of Australia, including ships and aircraft. Powers are provided to allow Customs officers

- to question and require documents to be produced
- to search for and to examine, secure and seize goods
- to detain ships and aircraft for purposes of search
- to board
- to chase and use reasonable force if ships and aircraft fail to stop for boarding or land when asked.

In addition, Customs officers may arrest persons on board ships or aircraft, if they believe on reasonable grounds that the

person has committed a barrier offence. Belief is a higher standard than suspicion.

use of force. The proposals put forward by the ALRC include a power to use reasonable force. In the case of a ship, reasonable force includes firing upon the ship if a gun has been fired first as a warning. In the case of an aircraft, reasonable force includes firing a gun as a warning provided that the lives of persons on board and the safety of the aircraft are not endangered. A Commonwealth ship or aircraft may chase a ship or aircraft which does not stop or land as requested. The right of 'hot pursuit' of ships may be continued into the high seas.

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passenger processing

new discussion paper. The ALRC is shortly to release a discussion paper containing draft provisions concerned with Customs clearance of passengers, crew and their goods arriving from and departing for overseas.

passenger clearance. Very few provisions in the Customs Act deal specifically with the clearance of passengers, crew and their goods. For the most part Customs officers rely on general provisions in the Act and administrative guidelines. More than 8 million persons crossed the Australian Customs barrier in 1988. The ALRC considers that passenger and crew clearance procedures should be specifically and adequately addressed in the Customs legislation and has dedicated a Chapter of the new Customs and Excise Bill to this. The proposed legislation has the features outlined in the following paragraphs.

clearance on arrival and departure. All persons and goods must go through the

process of Customs clearance upon arrival or prior to departure on an international flight or sea voyage. This means that Customs must have the power to direct the movement of passengers crew and goods from and to ships and aircraft.

customs clearance powers. To determine whether the law is being complied with the ALRC proposes that Customs officers should have the power to require persons arriving and departing

- to answer questions,
- to produce documents,
- to undergo a personal search (restricted in the discussion paper to a frisk search), and
- to permit or assist in the examination of goods by Customs.

persons in the vicinity of customs clearance. The Australian Customs Service has expressed the concern that there is considerable opportunity for offences like illegal importing to be committed or assisted by person who are not travellers but are in the vicinity of the place where Customs is conducting its clearance functions. Many people are employed in places either in or adjacent to the area where persons and goods are cleared by Customs. In addition to baggage handlers and the usual personnel who service ships, aircraft or the terminal building, there are others such as duty free shop operators and the staff of shipping lines, airlines and rental car companies. The ALRC proposes that Customs officers should have the power to determine whether such people are involved in a 'barrier' offence.

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cargo control

The ALRC's proposals for the reform of the provisions of the Customs Act relating to the control of imported cargo are

contained in a Discussion Paper, *Customs and Excise: Cargo Control from Importation until Release* (DP38). The paper covers both sea and air cargo.

Those directly affected by the proposals include, shipping companies, airlines, freightforwarders, stevedores, container terminal operators, depot proprietors warehouse proprietors, road transport companies and the railways. At the government level, the paper is relevant to the work of Customs, quarantine, port authorities, federal and State transport authorities and the police.

legislation obsolete. Many of the provisions of the Customs Act that apply to the importation of cargo are obsolete. They were based on commercial practices that existed at the time the legislation was passed in 1901. The legislation has never adequately addressed the different commercial practices that arose with the introduction of air transport and the increased use of containerisation. Commercial practices are well in advance of the legislation. This is particularly so in the case of those airline procedures that are computerised. As the legislation has fallen behind the times there has been an increasing tendency to rely on administrative discretions and on the novel and somewhat unorthodox use of old provisions.

interstate commission's waterfront inquiry. Changes are still occurring. The Interstate Commission's Waterfront Investigation reported in April of this year. That inquiry has recommended major changes to the industrial structure of the waterfront. These proposals are designed to increase efficiency and accountability among those employed on the waterfront. They involve the abolition of work practices agreed to by the waterfront unions and their employers, the renegotiation of industrial awards, the insertion of stand down provisions, the exclusion of the Wa-