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PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AMENDMENT BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the
Minister for Business and Consumer
Affairs, the Honourable John Moore, M.P.)

CUSTOMS AMENDMENT BILL 1981

Purpose of the Bill

The main purpose of the Bill is to amend the Customs Act 1901 to give effect to the recommendations of the Australian Royal Commission of Inquiry into Drugs to:

- . reflect the Administrative Direction defining the Division of Powers and responsibilities between the Department of Business and Consumer Affairs and the Australian Federal Police;
- . enable powers of Customs at present exercisable within a 3 nautical mile limit from the coast to become exercisable within a 12 nautical mile limit;
- . provide power to question persons who request approval from Customs of delivery of imported goods in order to establish their identity and connection with the owner of such goods.

The Bill makes further amendments to the Customs Act 1901 to overcome administrative difficulties by inserting new provisions or making amendments which:

- . provide a basis for the sale or destruction of unseaworthy ships, for example "refugee" vessels, which have been seized or abandoned;
- . place a liability on principals for acts of their servants in the unauthorised movement of goods subject to the control of Customs and provide a defence where the principal took reasonable steps to prevent the offence;
- . replace the requirement for passing of Customs entries in relation to goods by provision allowing authority to be given for the delivery of the goods in a manner prescribed by regulations and to provide further for suspension of such authority in order to enable examination of the goods where there is a risk of the presence of undocumented imports, particularly narcotic drugs;
- . authorise the making of regulations to prescribe the time within which, and the manner in which ships and aircraft and their cargo are to be reported to Customs after their arrival from overseas;
- . extend the validity period of Customs Tariff Proposals from 6 to 12 months; and
- . to make amendments consequential upon the transfer of powers to the Australian Federal Police.

Customs Amendment Bill 1981

- Clause 1 - Short title.
- Clause 2 - Commencement date to be the twenty eighth day after the Bill receives the Royal assent, except that certain provisions are to come into operation on dates to be fixed by Proclamation.
- Clause 3 - Defines terms for the purposes of the legislation.
- Clause 4 - Amends Section 30 to make it clear that Customs control over goods (with the right to examine the goods) continues until the goods are physically delivered.
- Clause 5 - Places a liability on a principal where his servant commits an offence of moving, altering or interfering with goods which are subject to the control of the customs. A defence has been provided for a principal who exercises due preventive care and diligence.
- Clause 6 - Amends Section 35A of the Principal Act in consequence of the amendment to Section 39 by Clause 9.
- Clause 7 - Amends Section 36 of the Principal Act in consequence of the amendment to Section 39 by Clause 9.
- Clause 8 - Amends Section 37 of the Principal Act in consequence of the amendment to Section 39 by Clause 9.
- Clause 9 - Replaces the requirements in Section 39 of the Principal Act for the "passing" of Customs entries in relation to goods by a provision allowing authority to be given for the delivery of the goods in a manner prescribed by regulations.

The Section further provides for the suspension of such authority, at any time until the goods are actually delivered in accordance with the authority, to enable the goods to be examined where, as a result of an intelligence assessment the Collector is of the opinion that there is a risk of the presence of additional undocumented goods.

The provision for suspension is principally aimed at the detection of narcotics.

Section 39 of the Principal Act also allows the authority to be conditioned upon subsequent compliance with other laws, in particular the Quarantine Act 1908 which, inter alia, requires permits to be issued before delivery of certain goods.

Clause 10 - Amends Section 40B of the Principal Act in consequence of the amendment to Section 39 by Clause 9.

Clause 11 - Amends Section 42 of the Principal Act in consequence of the amendment to Section 39 by Clause 9.

Clause 12 - Restates the powers of Customs to intercept ships in waters adjacent to Australia and aircraft over Australia or adjacent waters.

The proposed amendment removes the limitations in the present provision to exercise of the powers within three nautical miles of the coast. International law and convention permits such exercise within a twelve nautical mile limit. Provision is made for the limitation to apply only in respect of foreign ships and aircraft and not to apply in respect of Australian ships and aircraft.

Clause 13 - Provides that regulations may be made prescribing the time within which, and the manner in which, the master owner or pilot shall make report to Customs of the ship or aircraft and its cargo after arrival from overseas.

The provision also removes an anomaly, particularly in relation to aircraft, whereby report was only required within one working day after arrival. Under existing provisions an aircraft could make several overseas flights prior to reporting its first arrival.

Clause 14 - Amends Section 70 of the Principal Act in consequence of the amendment to Section 39 by Clause 9.

Clause 15 - Amends Section 71 of the Principal Act in consequence of the amendment to Section 39 by Clause 9.

Clause 16 - Amends Section 71A of the Principal Act as a consequence of the amendment to Section 39 by Clause 9.

Clause 17 - Amends Section 71B of the Principal Act as a consequence of the amendment to Section 39 by Clause 9.

Clause 18 - Amends Section 72 of the Principal Act as a consequence of the amendment to Section 39 by Clause 9.

The Section further provides that the power to sell perishable goods which are unentered is extended to cover hazardous cargo in order to avoid dangers that may be involved in storage of such goods. The proceeds of such sales, less expenses, are held until it is established who has the right to the proceeds.

Clause 19 - Amends Section 73 as a consequence of the amendment of Section 59 by Clause 12 to extend the offence of removing cargo from holds within territorial waters to removal within 12 nautical miles.

Clause 20 - Amends Section 74 of the Principal Act as a consequence of the amendment to Section 39 by Clause 9.

Clause 21 - Amends Section 115 of the Principal Act as a consequence of the amendment to Section 39 by Clause 9.

Clause 22 - Amends Section 130A of the Principal Act as a consequence of the amendment to Section 39 by Clause 9.

Clause 23 - Amends Section 132B of the Principal Act as a consequence of the amendment to Section 39 by Clause 9.

Clause 24 - The amendments proposed by this Clause are consequential to the amendments proposed by Clause 12 and reframe the powers for compelling ships or aircraft to submit to boarding or aircraft to land. It also reframes those powers exercisable in connection with boarding, search and questioning and with the arrest of persons found on the ship or aircraft.

The amendments also remove provisions devised in the last century for dealing with ships that "hover" in coastal waters by strengthening the powers to deal with ships generally and with aircraft which may require to be intercepted over Australia or its sea approaches.

Clause 25 -

Provides, as a result of a recommendation of the Australian Royal Commission of Inquiry into Drugs, a power to question persons who request approval from Customs for delivery of imported goods.

The provision is designed to assist in the apprehension of persons connected with the practice whereby importers of illicit narcotics address the goods to fictitious persons in Australia and have the goods claimed by their agents in order to avoid being identified with the illegal importation.

Clause 26

As a consequence of the transfer to the Australian Federal Police of powers and functions in relation to narcotic-related seizures, this Clause proposes the remaking of Sections 203 to 208 of the Principal Act to separate the powers of Customs and the Australian Federal Police in relation to:-

- . the seizure of goods.
- . the custody of seizures.
- . the format and serving of notices of seizure.
- . the avenues of action to recover seized goods.
- . the return of seized goods under security.
- . the disposal before condemnation of perishable or hazardous goods, live animals and seriously unseaworthy vessels while safeguarding the rights of claimants to the goods.
- . the disposal of forfeited goods which have been condemned.

Clause 27

- Amends Section 216 of the Principal Act as a consequence of the amendment to Section 39 by Clause 9

Clause 28

- Amends Section 226 of the Principal Act to extend to 12 months, the validity of Customs Tariff Proposals. Sub-Clause (2) of the Principal Act provides that the amendment is only to apply in relation to any Customs Tariff or Customs Tariff alteration proposed in the Parliament after the day prior to the commencement of the Autumn Sittings 1981.

- Clause 29 - Amends Section 228 of the Principal Act as a consequence of the amendments proposed by Clauses 12 and 24 which reshape powers in relation to interception by Customs of foreign and Australian ships and aircraft.
- Clause 30 - Amends Section 229 to provide for forfeiture of any goods (including ships) which are sold by Customs subject to conditions under proposed Section 208E where the conditions have not been complied with.
- Clause 31 - Makes formal amendment consequential to numbering changes to sections only.
- Clause 32 - Amends Section 234 to extend the offences which may be committed in relation to documents produced or delivered also to documents "furnished" to an officer as that term is used in the present Section 40B
- Clause 33 - Amends Section 243A to provide that the powers conferred on "the Minister" by Division 3 of the Principal Act in relation to confiscation of assets of narcotics offenders are powers of the Minister for Administrative Services as now provided for by Administrative Arrangements Order.
- Clause 34 - Amends Section 264 of the Principal Act consequential upon the transfer of power to the Australian Federal Police in regard to narcotic-rated goods.
- Clause 35 - Amends Section 273EA of the Principal Act to provide that a notice of Customs Tariff or Customs Tariff alteration may not have retrospective operation from a date earlier than 6 months before the time of publication of the notice and that, where the Customs Tariff or Customs Tariff alteration would impose a higher rate of duty, the date of operation shall not be earlier than the time of publication of the notice.
- Clause 36 - Makes amendments to various sections as a consequence of the division of powers between the Customs and the Australian Federal Police and gives to the Commissioner of Police powers comparable to those of the Comptroller-General.
- Clause 37 - Makes formal amendments only.
- Clause 38 - Provides that goods which are seized under the present Section 203 of the Principal Act will continue to be subject to the provisions of Sections 204 to 208 as now in force.