1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AMENDMENT BILL (NO. 2) 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Science and Tourism, the Honourable John Moore, MP)

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OUTLINE

This Bill is one of three in the legislation package for the implementation of a cost recovery regime for import related services delivered by the Australian Customs Service, which was announced by the Government in the 1996-97 Budget.

The 3 Bills in this legislation package provide the legislative authority for the imposition and collection of 13 charges and fees for import related services delivered by the Australian Customs Service. The 13 imposts are located in 2 new charges Bills, and this Customs Amendment Bill, as follows:

- Import Processing Charges Bill 1996

  This Bill contains charges 1 to 7, dealing with the import entry and cargo reporting charges imposed on the importer of the goods, or the air or sea cargo reporter in respect of the goods, as follows;

Fee or Charge	Item	Amount
1	Import Entry via sea (lodged electronically)	$29.65 plus $0.20 per line after line 10
2	Manual Import Entry via sea	$51.40 plus $1.00 per line after the first line
3	Import Entry via air or post (lodged electronically)	$22.80 plus $0.20 per line after line 10
4	Manual Import Entry via air or post	$44.55 plus $1.00 per line after the first line
5	Manual Reporting charge for sea cargo	$2.60 per manifest line
6	Manual Reporting charge for air cargo	$3.00 per house or straight line air waybill
7	'Screen Free' charge for air cargo requiring no import entry	$2.40 per house or straight line air waybill

- Customs Depot Licensing Charges Bill 1996

  This Bill contains charge 10, which imposes charges that are associated with the new depot licensing regime for paragraph 17(b) premises under the *Customs Act 1901* (the Customs Act) (ie. the Customs depots), which are appointed for the examination of goods, or for the consolidation of goods for export or the deconsolidation of goods after importation, as follows;

Fee or Charge	Item	Amount
10	Licensing Charge for former 17b premises or new depots (new Part IVA - of the Customs Act	$1000 for initial depot licence application for an existing 17(b) operator $3000 per depot licence application for new applicants $4000 per annual depot licence

This Bill - Customs Amendment Bill (No. 2) 1996

This Bill contains:

i) fees 8 and 9, relating to the processing of those entries which are required to move imported goods out of a warehouse and into home consumption (items 5 and 19 of Schedule 1 of the Bill refer); and

ii) the replacement fees currently contained in the Customs Act for:
- the processing of applications for refund of customs duty under section 163 of the Customs Act (fees 11 and 12)(items 26 and 27 of Schedule 1 of the Bill refer); and
- the provision of officers' services either out of hours, or at locations where such services are not usually provided, under section 28 of the Customs Act (fee 13)(items 7 and 8 of Schedule 1 of the Bill refer).

The 5 fees payable under this Bill are at the following rates;

Fee or Charge	Item	Amount
8	Import Entry ex-warehouse (lodged electronically)	$5.00 plus $0.20 per line after line 10
9	Import Entry ex-warehouse (lodged manually)	$26.75 plus $0.80 per line after the first line
11	Refund Application Fee (lodged electronically)	$45.00 per application
12	Refund Application Fee (lodged manually)	$65.00 per application
13	S.28 Location fee and Overtime Fee	$37.00 location fee or $40.00 overtime fee per hr or part thereof + transport costs

iii) The Bill also addresses the administration elements, including the collection mechanism, for the 7 charges imposed by the Import Processing Charges Bill 1996 (items 9, 10, 13-15, 18 and 20-24 of Schedule 1 of the Bill refer);

iv) This Bill also proposes the introduction of a new licensing regime into the Customs Act to replace the current appointment of places under paragraph 17(b)(item 25 of Schedule 1 of the Bill refers which inserts new Part IVA). This will provide the basis for the imposition of a "user pays" licence application charge and an annual depot licence charge. It will also address the inadequacies of the current provision in the Customs Act under which depots are appointed, which may be summarised as follows:

- the provision does not clearly spell out the process of application for appointment of a depot;

- the provision does not state the grounds on which Customs makes or refuses to make such appointments;

- appointees are not subject to any legal obligations in relation to the appointment; and

- other than by withdrawing the appointment, Customs has no alternative way of dealing with appointees who fail to comply with requirements in respect to Customs control of the cargo.

The new Part IVA proposal seeks to address the shortcomings of the current appointment regime under paragraph 17(b) with the introduction of a new licensing regime which will include the following elements;

a) the requirement for applications for a depot licence (new sections 77H and 77G refer);

b) the conditioning of a depot licence, making a licence subject to certain conditions set out in new sections 77N and Q. In relation to depots handling imported goods, there will be a condition setting time limits as to the length of time goods under Customs control may be kept in a depot before they are required to be moved to a Customs licensed warehouse (new section 77P). This is to require cargo to be brought to account within a reasonable period of time;

c) renewal provisions, with licences automatically renewed on 1 July of each year (new section 77S) upon the payment of the annual renewal charge. If the licensee does not pay the depot licence charge by 1 July then the licence expires after a further period of 90 days, during which time Customs will have power to refuse permission for goods under Customs control to move to the depot (new sections 77T and U);

d) the power to revoke a depot licence, to provide the circumstances in which Customs may revoke a depot licence and the manner in which

this might be done. The revocation decision is subject to AAT review (new section 77V and item 30 of Schedule 1 of the Bill refers); and

e) Customs powers in respect of a depot. Customs will be given the power to issue written directions to the operator of a licensed depot about the movement and storage of goods under Customs control and the packing or unpacking of goods under Customs control into or from receptacles. Further, Customs will be able to give directions to the licence holder about goods under Customs control to prevent interference with such goods (new section 77Y).

FINANCIAL IMPACT STATEMENT

The 13 charges and fees in this legislation package are expected to result in the following increases in revenue:

Import Processing Charges Bill 1996

Fee or Charge Item	1996/97 Half Year Only	1997/98 First Full Year	1998/99
1	12,193,000	24,386,000	24,386,000
2	292,000	585,000	585,000
3	15,157,000	30,314,000	30,314,000
4	428,000	855,000	855,000
5	817,000	1,635,000	1,635,000
6	595,000	1,190,000	1,190,000
7	1,355,000	2,710,000	2,710,000
Gross Revenue	**30,837,000**	**61,675,000**	**61,675,000**
Less current revenue - from IT(computer) charges	8,792,000	17,584,000	17,584,000
Nett Revenue Effect	**22,045,000**	**44,091,000**	**44,091,000**

Customs Depot Licensing Charges Bill 1996

Fee or Charge Item	1996/97 Half Year Only	1997/98 First Full Year	1998/99
10			
Gross Revenue	**1,110,000**	**1,470,000**	**1,470,000**
Less current revenue	0	0	0
Nett Revenue Effect	**1,110,000**	**1,470,000**	**1,470,000**

This Bill - Customs Amendment Bill (No. 2) 1996

Fee or Charge Item	1996/97 Half Year Only	1997/98 First Full Year	1998/99
8, 9, 11, 12, 13			
Gross Revenue	**1,726,000**	**3,453,000**	**3,453,000**
Less current revenue from these activities			
8,9 - Ex Warehouse fees (S.85)	475,000	951,000	951,000
IT(Computer) Recovery (4.2%)	407,000	815,000	815,000
11, 12 - Refund Applications (S.163)	431,000	861,000	861,000
13 - Overtime, Off.Services (S.28)	227,000	454,000	454,000
Nett Revenue Effect	**186,000**	**372,000**	**372,000**

All 3 Bills

Total Gross Revenue	33,673,000	66,598,000	66,598,000
Less Total current revenue	10,332,000	20,665,000	20,665,000
Total Nett Revenue Effect	**23,341,000**	**45,933,000**	**45,933,000**

CUSTOMS AMENDMENT BILL (NO. 2) 1996

NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the Act to be cited as the *Customs Amendment Act (No. 2) 1996.*

Clause 2 - Commencement

Subclause (1) provides for sections 1, 2 and 3 of the Act (the short title, commencement and formal enabling provisions) to commence upon Royal Assent.

Subclause (2) provides that, subject to subsection (3), the other provisions of the Act commence on a day or days to be fixed by Proclamation. These other provisions are the proposed amendments to the *Customs Act 1901* (the Customs Act) which are set out in Schedule 1 to the Act. These relate to:

1. the fees relating to the processing of those entries which are required to move imported goods out of a warehouse and into home consumption (items 5 and 19 refer);

2. the replacement fees currently contained in the Customs Act for the processing of applications for refund of customs duty and for the provision of officers' services either out of hours, or at locations where such services are not usually provided (items 7, 26 and 27 refer);

3. the administration provisions for the charges contained in the Import Processing Charges Bill (item 9 to 18 and 20 to 24 refer); and

4. the requirements of the new customs depot licensing regime, whose related charges are contained in the Customs Depot Licensing Charges Bill (items 6, 25 and 28 to 30 refer).

It is proposed to proclaim 1 January 1997 as the commencement day for all these charges.

Subclause (3) provides that if a provision of the Act does not commence under subsection (2) within 6 months after the day on which this Act receives the Royal Assent, it is taken to have commenced on the first day after the end of that period. Therefore, if a Proclamation is not made under subsection (2), the amendments in Schedule 1 shall commence 6 months after the day on which the Act receives the Royal Assent.

Clause 3 - Schedule(s)

This clause is the formal enabling provision for the Schedule to the Act, providing that each Act specified in the Schedule (in this case the Customs Act only) is amended in accordance with the applicable items of the Schedule. The clause also provides that the other items of the Schedules have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation (items 8, 11, 16, 22 and 27 of Schedule 1 refer).

SCHEDULE 1 - AMENDMENT OF THE CUSTOMS ACT

Item 1 - Subsection 4(1)

This item inserts a new definition into subsection 4(1) of the Customs Act for the purposes of the Customs Act as follows:

cargo report processing charge means charge imposed by the *Import Processing Charges Act 1996* and payable as set out in section 64ABB. New section 64ABB is inserted by item 10 of Schedule 1 and sets out the circumstances in which cargo report processing charge is payable in respect of the lodging of a documentary cargo report under section 64AB of the Customs Act. Cargo report processing charge is imposed by subsection 4(1) of the *Import Processing Charges Act 1996* and is referred to in the Outline to this Bill as charge Nos 5 and 6.

Item 2 - Subsection 4(1)

This item inserts a new definition into subsection 4(1) of the Customs Act for the purposes of the Customs Act as follows:

electronic in relation to a report means transmitted to Customs by computer. This definition appears in item 10 of Schedule 1, relating to the new screening charge.

Item 3 - Subsection 4(1)

This item inserts a new definition into subsection 4(1) of the Customs Act for the purposes of the Customs Act as follows:

entry processing charge means charge imposed by the *Import Processing Charges Act 1996* and payable as set out in subsection 71AA(1). New section 71AA is inserted by item 18 of Schedule 1 and sets out the circumstances in which entry processing charge is payable in respect of import entries for imported goods made under section 71A of the Customs Act. Entry processing charge is imposed by subsection 4(2) of the *Import Processing Charges Act 1996* and is referred to in the Outline to this Bill as charge Nos 1 to 4.

Item 4 - Subsection 4(1)

This item inserts a new definition into subsection 4(1) of the Customs Act for the purposes of the Customs Act as follows:

screening charge means charge imposed by the *Import Processing Charges Act 1996* and payable as set out in section 64ABC. New section 64ABC is inserted by item 10 of Schedule 1 and sets out the circumstances in which screening charge is payable is respect of cargo reports that relate to certain goods not requiring an import entry under paragraph 68(1)(f) of the Customs Act. Screening charge is imposed by subsection 4(3) of the *Import Processing Charges Act 1996* and is referred to in the Outline to this Bill as charge No. 7.

Item 5 - Subsection 4(1)

This item inserts a new definition into subsection 4(1) of the Customs Act for the purposes of the Customs Act as follows:

warehoused goods entry fee means a fee payable under section 71AB on warehoused goods entered for home consumption. New section 71AB is inserted by item 19 of Schedule 1 and sets out the circumstances in which a fee is imposed and payable on the entry of warehoused goods for home consumption. These fees are referred to in the Outline to this Bill as fee Nos 8 and 9.

Item 6 - Paragraph 17(b)

This item amends the Customs Act by repealing paragraph 17(b). This amendment is a direct consequence of the insertion of new Part IVA of the Customs Act by item 25 of Schedule 1 (new sections 77F to 77ZA) which introduces a new licensing regime for Customs depots. Presently under paragraph 17(b) of the Customs Act, the CEO may appoint places for the examination of goods on landing. Under new Part IVA, such premises will be required to be licensed in accordance with that Part. Appointments under paragraph 17(b) will no longer be able to be made and this paragraph is, therefore, repealed.

Item 7 - Subsections 28(2) and (3)

This item amends the Customs Act by repealing subsections 28(2) and (3) and inserting new subsections 28(2), (3), (4), (5) and (6).

Under subsection 28(1), the days and hours for the performance of Customs functions may be prescribed. These are prescribed under regulation 19 of the Customs Regulations. Presently under subsection 28(2) of the Customs Act, where a person requests a function to be performed by an officer of Customs outside these prescribed hours, a fee is payable which is based on the cost of making an officer available. Under subsection 28(3), where a person requests the services of an officer of Customs to perform specified functions at a place other than a place at which the services are normally made available without charge, a fee is also payable. This fee is also based on the cost of making an officer available.

Under subsections 28(2) and (3), both these fees are required to be determined by the CEO on a case-by-case basis, having regard to the individual circumstances of each request. However, the determination of these fees in this manner causes great administrative burden and also uncertainty to persons making requests under these subsections. It is, therefore, proposed to insert a new method of determining the amount of fees that may payable in these circumstances and, at the same time, update the fees to reflect the actual cost of officers' services.

New subsection 28(2) provides that if, at the request of a person, a Collector arranges for an officer to be available to perform a function outside the hours prescribed (in regulation 19) for the performance of that function, the person must pay an overtime fee.

New subsection 28(3) then sets out the components of the overtime fee. The first component of the fee is $40.00 per hour or part thereof during which the officer

performs the requested function and engages in any related travel (as defined in new subsection 28(6)), or such other rate as is prescribed. The figure of $40.00 per hour is based on an average of the costs of making officers available outside the prescribed hours, and also reflects the costs associated with giving effect to Australian Public Service conditions of employment, including overtime and meal allowances. As these costs may alter over time, the facility has been included to allow this component of the fee to be altered by regulation.

> The per hour fee includes not only the time taken to perform the requested function, but also the time taken in travelling to and from the place at which the function is performed (defined as *related travel* in new subsection 28(6)).

The second component of the overtime fee is any prescribed travel expense (at the rate prescribed) associated with the officer performing that function at that place. It is proposed to prescribe, in the Customs Regulations, these rates including rates for travel undertaken by taxi and by car consistent with current Australian Public Service guidelines. This addition is intended to cover expenses in the nature of disbursements incurred for the mode of travel taken to get the officer to the place where the function is to be performed. This can happen, for example, where officers attend an owner's business premises to conduct a cargo examination, or draw a sample of goods for analysis. The function is performed at the owner's request at his or her premises rather than at the port or airport and the fee payable would include the per hour fee for performing the examination including the time taken to travel to and from the place, in addition to any disbursements incurred in the form of prescribed travel expenses for, for example, taxi fares.

Therefore, while the amount of the overtime fee will still need to be calculated for each request made under subsection 28(2), the components of the fee are pre-determined under subsection 28(3) which will make the administration of the fee easier and create greater certainty for persons making requests under subsection 28(2).

New subsection 28(4) provides that, if at the request of a person, a Collector arranges for an officer to be available to perform a function at a place that is not a place at which such a function is normally performed and is during the hours prescribed for that function (again under regulation 19), the person must pay a location fee. If the request was out of hours in addition to being at a location where such functions are not normally performed, the governing fee is the overtime fee in subsection 28(2).

New subsection 28(5) then sets out the components of the location fee. The first component of the fee is $37.00 per hour or part thereof during which the officer performs the requested function and engages in any related travel, or such other rate as is prescribed. Similar to the overtime fee, the figure of $37.00 per hour is based on an average of the costs of making officers available to perform functions. Also, as these costs may alter over time, the facility has been included to allow this component of the fee to be altered by regulation.

> Similar to the overtime fee, the per hour rate includes travel time under the new definition of relevant travel.

The second component of the fee is any prescribed travel expense (at the rate prescribed) associated with the officer performing that function at that place. Similar to the overtime

fee, it is proposed to prescribe, in the Customs Regulations, such rates including rates for travel undertaken by taxi and by car consistent with current Australian Public Service guidelines.

Therefore, while the amount of the location fee will also still need to be calculated for each request made under subsection 28(4), the components of the fee are pre-determined under subsection 28(5) which will again make the administration of the fee easier and create greater certainty for persons making requests under subsection 28(4).

New subsection 28(6) sets out the definition of *related travel* for the purposes of section 28. This is defined as travel to or from the place at which the function referred to in paragraph 28(3)(a) or 28(5)(a) is performed if that travel directly relates to the officer performing that function. This definition will limit the circumstances where a fee may be imposed for travel time to ensure the travel is directly relevant to the officer performing the requested function.

Item 8 - Application

This item provides that the amendment made to the Customs Act by item 7 applies in relation to all functions in respect of which a Collector makes an arrangement under section 28 after the commencement of that item. Prior to commencement of item 7 by Proclamation, all requests for the performance of functions or services are governed by the existing provisions of section 28.

Item 9 - At the end of section 64AB

This item amends the Customs Act by inserting new subsection 64AB(7).

Section 64AB of the Customs Act sets out the requirements for the communication to Customs of cargo reports in respect of cargo on board a ship or aircraft that is on a voyage or flight to Australia and that is intended to be unshipped in Australia. Subsections 64AB(2) and (3) specify the time limits for the communication of these cargo reports to Customs and the classes of persons who are required to make such reports. It is important to note with regard to the classes of persons who are required to make cargo reports that "owner" in respect of a ship or aircraft is given a slightly expanded meaning in subsection 4(1) of the Act to include a charterer of the ships or aircraft or a slit charge or freight forwarder responsible for the transportation of goods on the ship or aircraft.

New subsection 64AB(7) sets out a deeming provision in respect of a cargo report, or part of a cargo report, that is communicated to Customs later than the relevant time specified in subsection 64AB(2) or (3) and otherwise complies with subsection (4) or (5) of section 64AB, as the case requires. Subsections (4) and (5) set out the form of, and the manner of communicating to Customs, a documentary and electronic cargo report respectively. Subsection (7) provides that such a cargo report is taken to be, or to be part of, a cargo report and to have been communicated to Customs in accordance with section 64AB *only* for the purposes of sections 64ABB, 64ABC and 64ABD.

New sections 64ABB and 64ABC set out the circumstances under which the cargo report processing charge and the screening charge are payable and new section 64ABD sets out special provisions for the payment of these two charges. The effect of new

subsection 64AB(7) is to impose the liability to pay these two charges upon the person or persons who communicate a cargo reports containing the relevant information which generates a charge, even when the reports are lodged later than the relevant time limits specified in section 64AB. Without this deeming provision, there would be no liability to pay the cargo report processing charge and/or the screening charge in respect of these late cargo reports.

Item 10 - After section 64ABA

This item amends the Customs Act by inserting new sections 64ABB, 64ABC and 64ABD.

Section 64ABB Liability for cargo report processing charge

New section 64ABB sets out the circumstances under which a person is liable to pay cargo report processing charge imposed by subsection 4(1) of the *Import Processing Charges Act 1996*. This is referred to in the Outline to this Bill as charge Nos. 5 and 6, and the charges relate to the processing surcharge levied on documentary cargo reports communicated to Customs pursuant to subsection 64AB(4). Charge No. 5 relates to the documentary sea cargo report surcharge and charge No. 6 relates to the documentary air cargo report surcharge.

New section 64ABB provides that a person who communicates to Customs a documentary report that is, or is part of, a cargo report and that provides particulars of a consignment and that identifies a person having a beneficial interest in the goods in the consignment is liable to pay cargo report processing charge in respect of the report.

This new section prescribes the type of information in a documentary cargo report which will generate the liability for the charge. The liability attaches to each line of a cargo report, as defined in section 3 of the *Import Processing Charges Act 1996*, at the rate prescribed in paragraph 5(a) of that Act for sea cargo and paragraph 5(b) of that Act for air cargo.

In short, the chargeable elements of a documentary sea cargo report are those lines which constitute or contain a reference to a bill of lading or other such document and which provide particulars of the consignment and identifies a person having a beneficial interest in the goods in that consignment, that is the consignee or owner of the goods.

The chargeable elements of a documentary air cargo report are similarly those lines which constitute or contains a reference to a straight line air waybill or house air waybill, or other such document and which provide particulars of the consignment and identifies a person having a beneficial interest in the goods in that consignment, that is the consignee or owner of the goods.

New section 64ABC Liability for screening charge

New section 64ABC sets out the circumstances under which a person is liable to pay screening charge imposed by subsection 4(3) of the *Import Processing Charges Act 1996*. This charge is referred to in the Outline to this Bill as charge No. 7, and it relates to the screening charge levied on air cargo reports communicated to Customs pursuant either to subsection 64AB(4) (documentary) or 64AB(5)(electronic, ie. by computer).

New section 64ABC provides that a person who communicates to Customs a report (whether documentary or electronic):

(a) that is, or is part of, a cargo report of goods that are intended to be, or that have been, unshipped from an *aircraft* at a particular airport (emphasis added);

(b) that relates, or whole or in part, to a consignment of goods that *do not require entry* (emphasis added);

(c) that provides particulars of the consignment; and

(d) that identifies a person who has a beneficial interest in the goods in the consignment;

is liable to pay screening charge in respect of the report. This screening charge is *additional* to any cargo report processing charge that may become payable in respect of the same report, where documentary, under new section 64ABB.

> *Goods that do not require entry* means goods that, because they are included in paragraph 68(1)(f)(of the Customs Act) are not goods to which section 68 applies. Section 68 of the Customs Act specifies those goods in relation to which an import entry is required in accordance with section 71A. Certain exceptions to this requirement are also specified in this section and under paragraph 68(1)(f), goods, other than prescribed goods, that are transported to Australia by ship or aircraft and that have a value not exceeding $250 are not required to be entered.

The charge is in respect of the screening which these reports undergo for community protection and revenue implications, akin to the screening to which import entries are subjected. For these reports however, there will be no import entry under section 68 of the Customs Act, because there goods are formally exempted from entry under paragraph 68(1)(f).

This new section prescribes the type of information in a documentary or electronic air cargo report which will generate the liability for the screening charge.

The liability attaches to each line of a cargo report, as defined in Section 3 of the *Import Processing Charges Act 1996*, at the rate prescribes in section 7 of that Act.

In short, the chargeable elements of a documentary or electronic air cargo report are those lines which constitute or contain a reference to a straight line air waybill or house air waybill, or other such document, and which provide particulars of the consignment and identifies a person having a beneficial interest in the goods in that consignment, that is again the consignee or owner of the goods.

New section 64ABD Special arrangements for payment of cargo report processing charge or screening charge

New section 64ABD sets out the details of special arrangements which can be made between the CEO and persons liable to pay cargo report processing charge or screening charge for the payment of these charges.

New subsection 64ABD(1) sets out the details for the payment of cargo report processing charge, screening charge or both charges in relation to goods covered by *documentary reports only* (emphasis added). The CEO may enter into an arrangement with a person whereby such a person agrees to pay :

(a) within a specified interval after the end of each consecutive period specified in the arrangement (called a *liability period*) - this specified interval could be a period of, for example, 21 days and the liability period could be a month of the year;

(b) in the manner provided in the arrangement;

the total of these charges for which the person becomes liable during the liability period.

Where a person has become liable to pay cargo report processing charge and/or screening charge in respect of documentary reports and has *not* entered into an arrangement under subsection 64ABD(1), the consequences of not paying these charges are set out in new subsection 71(3) of the Customs Act in respect of the screening charge (item 14 of Schedule 1 refers) and amendments to section 74A of the Customs Act in respect of the cargo report processing charge (items 23 and 24 of Schedule 1 refer).

New subsection 64ABD(2) sets out the provisions for the payment of screening charge in respect of electronic reports. A person must pay, within 21 days after the end of each month, the total of all screening charge in relation to goods covered by electronic reports for which the person becomes liable during the month. If a person fails to pay screening charge in accordance with this subsection, the amount of screening charge will become a debt due to the Commonwealth and recoverable in accordance with new subsection 64ABD(4).

The provisions of this subsection do not apply in respect of screening charge if the CEO has made an arrangement for the payment of screening charge under new subsection 64ABD(3). The provisions will apply, however, if an arrangement made under subsection 64ABD(3) is terminated by the operation of subsection 64ABD(6).

New subsection 64ABD(3) provides that the CEO may make an arrangement whereby a person agrees to pay, in the manner provided in the arrangement, screening charge in relation to goods covered by electronic reports. This will allow the CEO to make arrangements for the payment of screening charge that are different to the payment provisions set out in subsection 64ABD(2).

If a person refuses or fails to pay the screening charge in accordance with the arrangement, the arrangement will be terminated under subsection 64ABD(6) and the payment of the screening charge will be required in accordance with subsection 64ABD(2).

New subsection 64ABD(4) provides that amount payable by a person to the Commonwealth under either an arrangement under subsection 64ABD(1) or (3) or in accordance with subsection 64ABD(2) may be recovered as a debt due by the Commonwealth by action against the person in a court of competent jurisdiction.

New subsection 64ABD(5) applies in the circumstances where a person has entered into an arrangement under subsection 64ABD(1) for the payment of cargo report processing and/or screening charge and the person refuses or fails to pay the amounts within the specified interval in the arrangement. In this circumstance, the arrangement is terminated by force of subsection 64ABD(5) and as referred to above, the consequence of the failure to pay these charges are as set out in new subsection 71(3) and/or section 74A as amended.

New subsection 64ABD(6), as referred to above, applies in the circumstances where a person refuses of fails to pay the screening charge in accordance with an arrangement under subsection 64ABD(3). The arrangement is terminated by force of subsection 64ABD(6) and the person will be required to pay the screening charge in accordance with subsection 64ABD(2).

Item 11 - Application

This item is the application provision in relation to the amendments of the cargo reporting process. It provides that amendments to the Customs Act made by items 1, 2, 4, 9, 10, 13, 14, 23 and 24 apply in relation to all cargo reports made under section 64AB after the commencement of those items (by Proclamation). Prior to their commencement, the cargo reporting process will continue to be governed by the existing provisions of the Customs Act.

Item 12 - Paragraph 68(1)(e)

This item amends the Customs Act by omitting "$1,000" from paragraph (e) of subsection 68(1) and substituting "$250".

Section 68 of the Customs Act specifies those goods in relation to which an import entry is required in accordance with section 71A. Certain exceptions to this requirement are specified in section 68. Once such exception is for goods, other than prescribed goods, that are included in a consignment consigned through the Post Office and that have a value not exceeding $1,000, or such other prescribed amount (paragraph 68(1)(e)). Such goods are only required to be entered in accordance with section 71A if their value is more than $1,000.

It is proposed to decrease this threshold to $250 to make the exception similar to the exception in paragraph 68(1)(f). Under that exception, goods, other than prescribed goods, that are transported to Australia by ship or aircraft and that have a value not exceeding $250 are not required to be entered in accordance with section 71A. Therefore, all goods in a consignment imported into Australia through the Post Office of a value of more than $250 will be required to be entered in accordance with section 71A and will also be liable to pay entry processing charge (see item 18 of Schedule 1).

Item 13 - Subsection 71(2)

This item effects a minor consequential amendment to subsection 71(2) of the Customs Act due to the addition of new subsection 71(3) by item 14 following. This amendment makes the operation of subsection 71(2) subject to the provisions of new subsection 71(3).

Item 14 - After subsection 71(2)

This item amends the Customs Act by inserting new subsection 71(3).

Section 71 of the Customs Act contains the provisions whereby imported goods which do not require an import entry in accordance with section 71A can be authorised to be delivered into home consumption. The goods to which section 71 applies are set out in paragraphs (d), (e), (f) and (i) of subsection 68(1) and, as referred to above, include goods that are transported to Australia by ship or aircraft and that have a value not exceeding $250 (paragraph (f)).

The purpose of new subsection 71(3) is to create a further restriction on the ability of Customs to authorise the delivery into home consumption of goods referred to in paragraph 68(1)(f). This restriction relates to the payment of the screening charge payable under new section 64ABC in respect of such goods.

New subsection 71(3) provides that Customs must not authorise the delivery of goods of a kind referred to in paragraph 68(1)(f) into home consumption unless:

(a) the person liable to pay screening charge in respect of those goods pays that charge. As referred to above, the liability to pay screening charge is set out in new section 64ABC and, unless paragraph (b) or (c) below applies, the non-payment of the charge on case-by-case basis will mean that the goods cannot be authorised for delivery into home consumption; or

(b) the person liable to pay the charge is entitled to pay that charge in accordance with subsection 64ABD(2). As referred to above, the screening charge in respect of electronic cargo reports is always payable in accordance with subsection 64ABD(2), that is, on a monthly basis. Therefore, there is no case-by-case requirement to pay the screening charge as set out in paragraph (a) before the goods can be authorised for delivery into home consumption; or

(c) the person liable to pay the charge is entitled to pay that charge in accordance with an arrangement in force under subsection 64ABD(1) or (3). Similar to paragraph (b), where screening charge is payable in accordance with such arrangements, there is no case-by-case requirement to pay screening charge as set out in paragraph (a) before the goods can be authorised for delivery into home consumption.

Item 15 - Subsection 71A(1)

This item amends the Customs Act by repealing and substituting subsection 71A(1).

Subsection 71A(1) contains the description of an import entry. Presently it is limited to communication to Customs of information concerning goods to which section 68 applies that are intended to be entered for home consumption, warehousing or transhipment, that is, imported goods.

Where imported goods have been entered for warehousing, however, section 99 of the Customs Act provides that such warehoused goods can be entered for home consumption. In practice, an entry for home consumption in respect of warehoused

goods is made in accordance with section 71A. The purpose of this amendment is, therefore, to formalise this practice in the Customs Act.

The new subsection 71A(1) contains the same words as the existing subsection 71A(1) and adds that an import entry is also a communication to Customs of information concerning warehoused goods that are intended to be entered for home consumption.

Item 16 - Saving provision - entries under subsection 71A(1) of the *Customs Act 1901*

This item sets out a saving provisions in respect of import entries communicated to Customs under section 71A prior to the amendments to that section in item 15 coming into force. An import entry communicated to Customs before item 15 comes into force that is an import entry within subsection 71A(1) immediately before the commencement of item 15 is taken to continue to be an import entry within the meaning of subsection 71A(1) as remade by item 15. As subsection 71A(1) is to be repealed and remade, any import entry made prior to the repeal and that has not been finalised at the time of the repeal may cease to have effect. This savings provision, therefore, ensures the continued existence of such an import entry for the purposes of new subsection 71A(1).

Item 17 - Subparagraph 71A(2)(b)(i)

This item amends the Customs Act by inserting the phrase "or sending" after "giving" in subparagraph 71A(2)(b)(i).

Paragraph 71A(2)(b) specifies the manner of communicating a documentary import entry to Customs. Currently, a documentary entry can be communicated by giving it to an officer doing duty in relation to entries or by leaving it at an allocated place in a Customs Office. The effect of the amendment in this item will also allow documentary entries to be communicated to Customs by sending the entry. For example, a documentary entry could be communicated by sending it via the post or by facsimile.

Item 18 - After section 71A

This item amends the Customs Act by inserting new section 71AA.

New section 71AA sets out the circumstances where liability to pay entry processing charge arises. Entry processing charge is imposed by subsection 4(2) of the *Import Processing Charges Act 1996*.

Under new subsection 71AA(1), where an import entry in respect of goods is, or is taken to have been, communicated to Customs under section 71A, the owner of the goods becomes liable to pay entry processing charge.

> Subsection 71A(2) specifies when a documentary import entry is communicated to Customs, as referred to in item 17 above. Subsection 71L(2) specifies when a computer import entry is taken to be communicated to Customs. This occurs when an import entry advice is transmitted by Customs using the COMPILE computer system to the registered COMPILE user whose PIN number was transmitted in relation to the entry.

Liability to pay entry processing charge also applies in relation to an altered import entry. This is because section 71J of the Customs Act provides that where a person who has communicated an import entry changes information in the entry, the person is taken, at the time when an import entry advice is given or transmitted in respect of the altered entry, to have withdrawn the entry as it previously stood . The altered entry, in effect, becomes a new import entry and it is proposed to attach liability to pay entry processing charge in respect of such an entry.

> Liability to pay entry processing charge in respect of an import entry that is taken to have been withdrawn under section 71J will be removed by new subsection 71AA(3) (see below).

New subsection 71AA(2) provides that where one person who is an owner of goods pays entry processing charge in respect of an import entry relating to particular goods, any other person who is an owner of those goods ceases to be liable to pay charge in respect of that entry.

Under the definition of "owner" in respect of goods in subsection 4(1) of the Customs Act, more than one person can be the owner of goods. The liability for entry processing charge, however, attaches to any owner of the goods so that more than one person could be liable to pay entry processing charge in respect of particular goods in any one entry. The purpose of this subsection is, therefore, to absolve any other owner of particular goods from liability to pay charge where any one person who is an owner pays charge.

New subsection 71AA(3) sets out the circumstances in which the liability for entry processing charge under subsection 71AA(1) will be removed. This will occur when:

(a) an import is withdrawn under subsection 71F(1). This provision allows an import entry to be withdrawn after it has been communicated to Customs and before the goods to which it relates are dealt with in accordance with the entry; or

(b) where an import entry is taken to have been withdrawn under subsection 71F(6) or section 71J. The circumstances under section 71J have been explained above. Under subsection 71F(6), an import entry is withdrawn where duty remains unpaid for 30 days plus such further period as the Collector specifies in relation to an import entry.

Actual or deemed withdrawal of an import entry must also occur before the issue of an authority to deal in respect of the goods covered by the entry. In these circumstances, the owner of the goods is not liable to pay entry processing charge in respect of that entry.

New subsection 71AA(4) provides that *import entry* in section 71AA does not include an entry for transhipment. It is not proposed to impose entry processing charge on such entries.

Item 19 - Before section 71B

This item amends the Customs Act by inserting new section 71AB.

Section 71AB - Warehoused goods entry fee

New section 71AB sets out the circumstances where a fee is payable in relation to the entry for home consumption of warehoused goods. These fees are referred to in the Outline to this Bill as fee Nos 8 and 9.

New subsection 71AB(6) provides that for the purposes this new section *only*, *warehoused goods* includes goods that may be treated as if they are warehoused goods by virtue of section 100 of the Customs Act. Under that section, goods may be treated as warehoused goods for the purposes of their entry for home consumption under section 99 even though they have not actually been received into a warehouse pursuant to an entry for warehousing. For all other purposes of the Customs Act, warehoused goods has the meaning as set out in subsection 4(1) of the Customs Act.

New subsection 71AB(1) provides that an owner of warehoused goods who enters the goods for home consumption is liable to pay a fee for the processing by Customs of the entry. This fee is called the *warehoused goods entry fee*. The entry for home consumption of warehoused goods is pursuant to section 99 of the Customs Act. This entry is made in accordance with section 71A (see item 15 above which expands the definition of an import entry).

New subsection 71AB(2) sets out the formula for determining the amount of warehoused goods entry fee as follows:

FR + [LR x Number of relevant lines] where:

FR is the flat rate applicable under new subsection 71AB(3) to the entry concerned;

New paragraph 71AB(3)(a) provides that the flat rate for a computer import entry is $5.00, or such other amount as is prescribed. New paragraph 71AB(3)(b) provides that the flat rate for a documentary import entry is $26.75, or such other amount as is prescribed;

LR is the line rate applicable under new subsection 71AB(4) to each relevant line of the entry concerned;

Number of relevant lines means the number of lines of the entry to which, under subsection (4), the line rate applies.

New paragraph 71AB(4)(a) provides that the line rate for a computer import entry is $0.20, or such other amount as is prescribed, for each line after the tenth line of the entry. Therefore, if a computer import entry only has, for example, seven lines, the fee payable on that entry would be $5.00, being the flat rate. New paragraph 71AB(4)(b) provides that the line rate for a documentary import entry is $0.80 cents, or such other amount as is prescribed, for each line after the first line of the entry.

New subsection 71AB(5) is similar to new subsection 71AA(2) (as inserted by item 18 of Schedule 1). New subsection 71AB(5) provides that where one person who is an owner of warehoused goods pays warehoused goods entry fee for an entry relating to those goods, any other person who is an owner of those goods ceases to be liable to pay the fee for that entry.

Under the definition of "owner" in respect of goods in subsection 4(1) of the Customs Act, more than one person can be the owner of warehoused goods. This means that more than one person could be liable to pay warehoused goods entry fee in respect of particular warehoused goods in any one entry. The purpose of this subsection is, therefore, to absolve any other owner of particular warehoused goods from liability to pay the fee where any one person who is an owner pays the fee.

New subsection 71AB(6) contains two definitions for the purposes of the section.

First, *line* is defined in the same terms as in the *Import Processing Charges Act 1996* in relation to an import entry (section 3 of that Act refers). It means the part of an import entry that constitutes a description of particular goods covered by the entry that fall to a single tariff classification to which a duty rate attaches. While an import entry may cover different types of goods, they must be differentiated by reference to their tariff classification. Only goods falling to the same classification can be included on any one line of an entry. This definition, however, also recognises that not all goods falling to the same tariff classification must be included on one line only. It is possible to have more than one line of goods included in an entry that are classified to the same tariff classification. The warehoused goods entry fee will be payable in respect of *each* relevant line of the import entry.

Secondly, *warehoused goods* is defined as set out above.

Item 20 - Paragraph 71B(4)(b)

This item amends the Customs Act by omitting and substituting paragraph (b) of subsection 71B(4).

Currently, subsection 71B(4) provides, in part, under paragraph (b), that where any duty, sales tax or other charge payable in respect of the goods covered by an import entry advice is paid, Customs must give an authority to deal with the goods.

New paragraph 71B(4)(b) contains the same requirements as the current paragraph (b) and inserts two additional payments, being the payment of any entry processing charge and warehoused goods entry fee in respect of the goods. Therefore, before an authority to deal with goods will be given under subsection 71B(4), these additional charges must also be paid.

Item 21 - Subsection 71B(4A)

This item amends the Customs Act by repealing subsection 71B(4A).

This subsection currently allows the regulations to prescribe a fee for assistance provided in preparing a documentary import entry for use in a Customs computer system. No fee has ever been prescribed under this subsection. As a consequence of the new entry

processing charge for electronic and documentary import entries, the head of power under subsection 71B(4A) is to be repealed.

Item 22 - Application

This item is the application provision in relation to the amendments to the import entry requirements, including the imposition of entry processing charge and warehoused goods entry fee. It provides that amendments to the Customs Act made by items 3, 5, 12, 15, 17, 18, 19, 20 and 21 apply in relation to all import entries (including altered import entries) transmitted or given to Customs under section 71A of the Customs Act after the commencement of those items (by Proclamation). Prior to their commencement, import entries will continue to be governed by the existing provisions of the Customs Act.

Item 23 - Paragraphs 74A(b) and (c)

This item amends the Customs Act by repealing and substituting paragraphs (b) and (c) of section 74A.

Currently, section 74A sets out the conditions which must be satisfied before an officer of Customs may grant a cargo clearance advice in respect of goods included in a cargo report and which are intended to be discharged at a port or airport in Australia. An authority to take delivery of goods the subject of an import entry under section 71B of the Customs Act cannot issue unless such a cargo clearance advice has issued.

The purposes of new paragraphs 74A(b) and (c) is to set out the consequences of failure to pay cargo report processing charge under new section 64ABB. Where the documentary air cargo or sea cargo processing surcharge is not paid (charge Nos 5 and 6 referred to in the Outline to this Bill) either at the time of processing the report or at the time agreed via the periodic settlement arrangement made under new section 64ABD, then the cargo clearance advice relating to the goods may be withheld. This would prevent an authority to take delivery of the goods on an import entry from issuing under subsection 71B(3A).

Item 24 - Section 74A

This item amends the Customs Act by adding the phrase "on which that charge was paid or that arrangement was in force" after "authorising the goods" in section 74A.

This amendment is a direct consequence of the amendments proposed in item 23 above.

Item 25 - After Part IV

This Item inserts new Part IVA into the Customs Act 1901 to provide for the new licensing regime for premises currently appointed under section 17(b) of the Customs Act as places for the examination of goods on landing.

Section 77F Interpretation

New section 77F defines the following terms for the purposes of new Part IVA;

Australia Post, depot, depot licence, depot licence application charge, depot licence charge, insolvent under administration, International Mail Centre, place, receptacle and Tribunal.

In particular, *International Mail Centre* is defined as a place approved in writing by the CEO under section 77F as a place for the examination of international mail. This will allow the CEO to approve such places which are used by Australia Post. Where the CEO approves a place as an International Mail Centre, this will exempt Australia Post from the payment of depot licence application charge when it makes an application for an International Mail Centre to be covered by a depot licence (new subsection 77H(3) refers). Australia Post will also be exempt from the payment of depot licence charge if the CEO decides the grant a licence is relation to such premises or upon the renewal of a depot licence (new subsection 77U(4) refers).

Section 77F also defines *place* as including an area, a building or part of a building. The effect of this definition is that the granting of a depot licence is not restricted to entire buildings only. A part of a building can constitute a customs depot, as can an open space without any buildings.

Section 77G Depot licences

New section 77G provides that the CEO may grant depot licences to a person or partnership on application under new section 77H. Under this section, licences may be granted for the following purposes:

holding of imported goods that are subject to the control of the Customs;
the unpacking of such goods;
the holding or goods for export that are subject to the control of the Customs;
the packing of such goods;
the examination of goods that are subject to the control of the Customs by officers of Customs.

new subsection 77G(2) provides that a licence may be granted for:

all of the above purposes, some of them or only one of them; and
in relation to a goods generally, or a class or classes of goods. For example, a depot licence may be granted in respect of imported goods that arrive in Australia by air or by sea only.

Section 77H Application for a depot licence

New section 77H provides that a person or partnership may apply for a depot licence.

New subsection 77H(2) provides the formal requirements for the making of a depot licence application. In particular, paragraph 77H(2)(e) provides that a depot licence application must be accompanied by a **depot licence application charge** (which is imposed by subsection 4(1) of the *Customs Depot Licensing Charges Act 1996*).

New subsection (3) exempts Australia Post from the obligation to pay a depot licence application charge in relation to the whole or part of an International Mail Centre.

Section 77J CEO may require applicant to supply further information

New section 77J provides that the CEO may by written notice require an applicant to provide further information within the period specified in the notice. Subsection 77J(2) provides for an extension of time for the above period, and subsection 77J(3) excludes from consideration any information not supplied within these time-limits.

> The decision under subsection 77J(2) whether or not to grant and extension of time is reviewable by the AAT - see new paragraph 273GA(1)(aar) of the Customs Act which is inserted by item 30 of Schedule 1.

Section 77K Requirements for grant of depot licence

New section 77K sets out the requirements expected of an applicant for a depot licence, and provides that the CEO **must not** grant the depot licence if, in the CEO's opinion, those requirements are not met.

Subsection 77K(1), paragraphs (a) to (e) inclusive provide a **"fit and proper person"** test:

- to an applicant is a natural person - paragraph (a):
- to any of the members of a partnership applicant - paragraph (b):
- in the case of a company application - to any director, officer or shareholder who would participate in management or control of the depot - paragraph (c)
- to any employee of the applicant who would participate in management or control of the depot - paragraph (d)
- to an applicant who is a company - paragraph (e)

The matters which are to be taken into account in relation to **natural persons** are set out in subsection 77K(2) and the matters which are to be taken into account in relation to **companies** are set out in subsection 77K(3)

Paragraph 77K(1)(f) provides that the CEO must not grant a licence if the applicant would not be in a position to occupy and control the place proposed to be covered by the licence.

Paragraph 77K(1)(g) provides that the CEO must not grant a licence if, in the case of a partnership application, none of the members of the partnership would be in a position to occupy and control the place proposed to be covered by the licence.

Paragraph 77K(1)(h) provides that the CEO must not grant a licence if the **physical security** of the place proposed to be covered by the licence is not adequate having regard to the nature of the place, or the procedures and methods proposed to be adopted by the applicant to ensure security of goods.

"Fit and proper person" - Natural persons and companies

Subsection 77K(2) sets out the matters to which the CEO must have regard in deciding whether a **natural person** is a fit and proper person to hold a depot licence: These matters are:

- whether the person has been convicted of any offence against the Customs Act in the previous 10 years - paragraph 77K(2)(a);

- whether the person has been convicted of any offence against another law of the Commonwealth, or a State or Territory law in the previous 10 years, being an offence that is punishable by imprisonment for 1 year or longer - paragraph 77K(2)(b);

- whether the person is an insolvent under administration - paragraph 77K(2)(c);

- any misleading statement made in the application by or in relation to the person - paragraph 77K(2)(d);

    - This is intended, by operation of subsection 77J(1), to include any further information supplied pursuant to section 77J.

- if any statement made by the person in the application was false - whether the person knew that the statement was false - paragraph 77K(2)(e);

    - This is intended, by operation of subsection 77J(1), to include any further information supplied pursuant to section 77J.

Subsection 77K(3) sets out the matters to which the CEO must have regard in deciding whether a **company** is a fit and proper person to hold a depot licence: These matters are:

- whether the company has been convicted of any offence against the Customs Act in the previous 10 years, at a time when any current director officer or shareholder was a director, officer or shareholder of the company - paragraph 77K(3)(a);

- whether the company has been convicted of any offence against Commonwealth, State or Territory law in the previous 10 years, at a time when any current director officer or shareholder was a director, officer or shareholder of the company - paragraph 77K(3)(b);

- whether a receiver of the property, or part of the property, of the company has been appointed - paragraph 77K(3)(c);

- whether the company is under administration within the meaning of the Corporations Law - paragraph 77K(3)(d);

- whether the company has executed under Part 5.3A of the Corporations Law a deed of company arrangement that has not yet terminated - paragraph 77K(3)(e);

- whether the company has been placed under official management - paragraph 77K(3)(f); or

- whether the company is being wound up - paragraph 77K(3)(g).

Other reasons a depot licence may be refused

Subsection 77K(4) provides that the CEO may refuse to grant a depot licence if the location of the proposed depot is too remote to enable officers of Customs to conveniently complete compliance checks.

> This decision is reviewable by the AAT - see new paragraph 273GA(1)(aaq) of the Customs Act inserted by item 30 of Schedule 1.

Subsection 77K(5) provides that a depot licence must not be issued to persons or companies who are not registered users of the Sea Cargo Automation System or the Air Cargo Automation System in the case of applications involving sea and/or air cargo respectively.

> The purpose of this provision is to ensure that depot licence holders have the facilities to conduct transactions electronically.

Section 77L Granting of a depot licence

New section 77L provides that the CEO must make a decision whether or not to grant a depot licence within 60 days after receiving the application, or after receiving any further information requested under section 77J. Failing this, the CEO is taken to have refused the application - subsection 77L(2);

> This decision is reviewable by the AAT - see new paragraph 273GA(1)(aaq) of the Customs Act inserted by item 30 of Schedule 1.

Subsection 77L(3) provides that section 77L does not apply to applications made prior to 1 April 1997 in relation to existing "appointed places" for the purposes of paragraph 17(b) of the Act. These matters are dealt with under the transitional arrangements in new section 77M.

Section 77M Transitional provisions for former paragraph 17(b) places

New section 77M provides transitional arrangements for existing "appointed places" under paragraph 17(b) of the Customs Act 1901. Under these arrangements, a person operating such a place (referred to as "the operator" - subsection 77M(2)) may, before 1 April 1997, apply for a depot licence under the new provisions to cover the existing "appointed place" (subsection 77M(2)). The CEO has until 1 July 1997 to make a decision under section 77G whether or not to grant the licence (subsection 77M(3)). If the CEO does not make a decision whether or not to grant the licence before 1 July 1997, the CEO is taken to have refused the decision and the applicant may seek review by the AAT of this decision.

Where:

- the operator **does not make such an application before 1 April 1997**, then that "appointed place" is taken to have been subject to a depot licence for the period from the commencement of Part IVA until 31 March 1997 (paragraphs 77M(4)(a)-(b)). No depot licence charge is payable in respect of that period (paragraph 77M(4)(c));

- the operator **applies for a depot licence before 1 April 1997**, and **fails** to obtain a licence whether immediately, or eventually following AAT review, then that "appointed place" is taken to have been subject to a depot licence for the period from the commencement of Part IVA until 28 days after the CEO's decision (subparagraph 77M(5)(a)(i)) or until the day of the Tribunal's decision as the case may be (subparagraph 77M(5)(a)(ii)), but no depot licence charge is payable in respect of the period (paragraph 77M(5)(c));

- the operator **applies for a depot licence before 1 April 1997**, and is **successful** in obtaining a licence, whether immediately, or eventually following AAT review (paragraph 77M(6)(b)), then that "appointed place" is taken to have been subject to a depot licence for the period from the commencement until 30 June 1998 (paragraph 77M(6)(c)), and the operator must pay Customs depot licence charge within 30 days of the granting of the licence paragraph 77M(6)(d). The amount of depot licence charge payable in this circumstance is $6,000, which is imposed by subsection 6(3) of the *Customs Depot Licensing Charges Act 1996*.

Subsection 77M(7) exempts Australia Post from any licence charge which would otherwise be required to be paid in respect of an International Mail Centre.

Section 77N Conditions of a depot licence - general

New section 77N sets out the conditions which automatically apply to depot licences.

Subsection 77N(2) prescribes a list of **events** the occurrence of which the holder of a licence must notify the CEO in writing within 30 days. These events are:

- a person not described in the licence application commences participation in control or management of the depot - paragraph 77N(2)(a);

- a change in the membership of a licence-holding partnership - paragraph 77N(2)(b);

- in the case of a company paragraph 77N(2)(c) - conviction of an offence under the Customs Act , or of another law of the Commonwealth, or of a State or a Territory; (subparagraph 77N(2)(c)(i); appointment of a receiver (subparagraph 77N(2)(c)(ii)); or an administrator (subparagraph 77N(2)(c)(iii));, or the execution of a deed of arrangement (subparagraph 77N(2)(c)(iv));

- a person who participates in the management or control of the depot, or the holder of the licence, or a member or a licence-holding partnership is convicted of an offence under the Customs Act 1901, or of a law of the Commonwealth, a State or a Territory; or becomes an insolvent under administration - paragraph 77N(2)(e);

- a substantial change in a matter affecting the physical security of the depot - paragraph 77N(2)(e);

- a substantial change in the keeping of records kept in relation to the depot - paragraph 77N(2)(f).

Subsection 77N(3) provides that the holder of a depot licence must pay to Customs any travelling expenses payable under regulations to be made for this purpose in relation to the distance required to be travelled by a Collector in order to perform functions at that depot.

These travelling expenses will be prescribed under the Customs Regulations.

The holder of the licence is required to facilitate inspection by authorised Customs officers, by: stacking goods so that officers have reasonable access to inspect the goods (subsection 77N(4)), by providing adequate space in the depot for examination of the goods and their secure storage (subsection 77N(5)), by permitting an authorised officer to enter and remain in the depot for those purposes (subsection 77N(6)), and by providing the authorised officer with information in relation to the goods in the depot (subsection 77N(7)).

Subsection 77N(8) provides that the holder of the licence must retain all commercial records and records created in accordance with the Customs Act that relate to the goods, for a period of 5 years from the day the goods were received into the depot. These records are to be retained either in the depot, or elsewhere by arrangement with Customs (subsection 77N(9)).

Subsection 77N(10) provides that at any reasonable time within 5 years an authorised officer may enter and remain in a place where records are kept, is entitled to full and free access to any such records in that place, including access to an electronic equipment in the place for those purposes, and may inspect examine, make copies of or take extracts from those records.

An authorised officer must, on request, produce written evidence of the fact that the person is an authorised officer (subsection 77N(11)).

Section 77P Conditions of a depot licence - imported goods

It is intended that depots be "short-stay" premises for the temporary storage of imported goods.

New section 77P provides that imported goods **must** be removed to a warehouse no later than the end of the month following the month in which the goods were received into the depot (paragraph 77P(1)(a)). The holder can also request an extension of this period before the end of the following month and if granted, the goods must be removed to a warehouse within 30 days after the end of that following month (paragraph 77P(1)(b)).

There is no provision for a further extension of time beyond the single month permitted by paragraph 77P(1)(b).

Section 77Q The CEO may specify other conditions of a depot licence

New section 77Q provides that the CEO may attach additional conditions to the grant of a depot licence, for the purpose of ensuring compliance with the Customs Acts or for protecting the revenue (subsection 77Q(1)). In addition, for the same purposes the CEO may, with 30 days notice (subsection 77Q(3)), vary an existing licence by attaching additional conditions (subsection 77Q(2)).

Section 77R Breach of conditions of depot licence

New section 77R provides that the penalty for breach of a condition of a licence specified in new sections 77N or 77P, or in accordance with new section 77Q, is 50 penalty units ($5,000). New section 77R also provides such an offence is a strict liability offence.

Section 77S - Duration of depot licences

New section 77S provides that a depot licence comes into force on a date specified in the licence, and remains in force until the 30 June following the grant of the licence.

This general provision is varied by the specific circumstances dealt with in the following provisions

new section 77M	transitional provisions for the commencement of the Scheme, and the initial grant of a licence;
new section 77T	provides for renewal of licences, with a 90 day extension of the period of the licence in certain circumstances;
new section 77V	prescribes the circumstances wherein a depot licence may be revoked;

Section 77T Renewal of depot licences

New section 77T prescribes the procedure for renewing a depot licence. In accordance with this section, the CEO must issue a renewal notice to the holder of a depot licence before the end of the financial year, requiring the payment of the depot licence charge in respect of the upcoming financial year.

Where the licence-holder **pays** the depot licence charge before the end of the financial year in which the renewal notice is issued, the licence is renewed for the upcoming financial year (subsection 77T(2)).

In the event that the licence-holder **fails to pay** the depot licence charge before the end of the financial year in which the renewal notice is issued, subsection 77T(3) provides that Customs may refuse to permit goods that are subject to the control of the Customs to be received into the depot until the depot licence charge is paid. This may continue until the end of 90 days into the new financial year, at which time the licence expires if the depot licence charge remains unpaid (subsection 77T(5)).

Where payment is made within this period of 90 days the licence is renewed **only** until the June 30 following renewal (ie **not** for 12 months following renewal) (subsection 77T(4)) and any restrictions imposed by Customs in accordance with subsection 77T(2) are lifted in accordance with that provision.

There are no restrictions on the number of times a licence may be renewed (subsection 77T(6)).

Section 77V Revocation of a depot licence

New section 77V provides that the CEO may revoke a depot licence in certain circumstances. Generally, these circumstances are identical to the conditions which apply to the initial application for a depot licence new section 77K.

Subsection 77V(1), provides that a **notice of intention to revoke** may be issued if the CEO is satisfied that:

- the **physical security** of the depot is no longer adequate, having regard to the matters listed in paragraph 77K(1)(h) - subparagraph 77V(1)(a)(i);

- the **licence-holder** is not a fit and proper person to hold a licence - subparagraph 77V(1)(a)(ii);

- a **member of a licence holding partnership** is not a fit and proper person to hold a licence - subparagraph 77V(1)(a)(iii);

- in the case of a **company - any director, officer or shareholder** who participates in the management or control of the depot is not a fit and proper person to hold a licence - subparagraph 77V(1)(a)(iv);

- any **employee of the licence-holder** who participates in the management or control of the depot is not a fit and proper person to hold a licence - subparagraph 77V(1)(a)(v);

- in the case of a company - the **company is not a fit and proper company** to hold a licence - subparagraph 77V(1)(a)(vi);

- a condition to which the licence is subject has not been complied with - subparagraph 77V(1)(a)(vii);

  conditions are attached to depot licences by operation of sections 77N, 77P and 77Q.

- a **licence charge** payable in respect of the grant of the depot licence remains **unpaid** more than 30 days after the grant of the licence- subparagraph 77V(1)(a)(viii); or

- revocation is necessary for the **protection of the revenue**, or for the purpose of ensuring **compliance with the Customs Acts** - paragraph 77V(1)(b)

Generally, the criteria for determining a "fit and proper person" and "fit and proper company" are identical to those taken into account at the initial grant of the depot licence

- as to the matters which are to be taken into account in relation to **natural persons** - see subsection 77V(2)

- as to the matters which are to be taken into account in relation to **companies** - see subsection 77V(3)

"Fit and proper person" - Natural persons

Subsection 77V(2) sets out the matters to which the CEO must have regard in deciding whether to revoke a depot licence on the basis that a **natural person** is not a fit and proper person to hold a depot licence: These matters are:

- whether the person is an insolvent under administration - paragraph 77V(2)(a);

- whether the person has been convicted of any offence against the Customs Act , or against another Commonwealth law, or a State or Territory law, in the previous10 years - paragraph 77V(2)(b);

- whether the person has been convicted of any offence in the previous 10 years, being an offence that is punishable by imprisonment for 1 year or longer - paragraph 77K(2)(b);

- any misleading statement made in the application by or in relation to the person - paragraph 77V(2)(c);

  - this is intended, by operation of subsection 77J(1), to include any further information supplied pursuant to section 77J.

- if any statement made by the person in the application was false - whether the person knew that the statement was false - paragraph 77V(2)(d);

  - this is intended, by operation of subsection 77J(1), to include any further information supplied pursuant to section 77J.

Subsection 77V(3) sets out the matters to which the CEO must have regard in deciding whether to revoke a depot licence on the basis that a **company** is not a fit and proper company to hold a depot licence: These matters are:

- paragraph 77V(3)(a): the matters referred to in paragraphs 77K(3)(c) to (g);

  These matters are:

  - whether a receiver has been appointed paragraph 77K(3)(c);

  - whether the company is under administration - paragraph 77K(3)(d);

    whether the company has executed a deed of company arrangement that has not yet terminated - paragraph 77K(3)(e);

whether the company has been placed under official management - - paragraph 77K(3)(f); or

- whether the company is being wound up -paragraph 77K(3)(g);

- whether the company has been convicted of any offence against the Customs Act 1901, or against Commonwealth, State or Territory law, in the previous 10 years, at a time when any current director officer or shareholder was a director, officer or shareholder of the company - paragraph 77V(3)(b).

Contents of a notice of intention to revoke a depot licence

Subsection 77V(4) provides that a notice of intention to revoke a depot licence must:

- specify the ground or grounds for the intended revocation - paragraph 77V(4)(a);

- state that the CEO may decide to revoke the licence at any time within the 14 days following the expiration of a 30-day period after the notice is given, if the ground or grounds still exist at that time - paragraph 77V(4)(b);

- invite the holder of the licence to provide written statements to Customs with the period of 30 days explaining why the licence should not be revoked - paragraph 77V(4)(c).

Revocation Notice

Subsection 77V(5) provides that, within the 14 days after the expiration of the period of 30 days, the CEO may decide to revoke the licence if, having regard to any statements made by the holder of the licence, he is satisfied that grounds exist for the revocation.
this decision is reviewable by the AAT - see new paragraph 273GA(1)(aau) of the Customs Act which is inserted by item 30 of Schedule 1.

Subsection 77V(6) provides that, where the CEO makes a revocation decision, the depot licence is revoked with effect from 28 days after the decision or upon subsequent affirmation of the decision by the AAT, should that eventuate.

Subsection 77V(7) provides that the CEO must revoke a depot licence if so requested in writing by the licence holder, on and from a day specified by the licence-holder in that request.

Subsection 77V(8) provides that the CEO must notify any revocation of a depot licence by notice published in a newspaper circulating in the locality in which the depot is located.

Subsection 77V(9) provides that, where a depot licence is revoked, the licence must be returned to Customs with 30 days.

Subsection 77V(10) provides that notices under this section must be served personally or by post on the licence-holder, or personally on a person who, at the time of service, apparently participates in the management or control of the depot.

Subsection 77V(11) provides that, despite the issue of a notice of intention, or a revocation notice, a licence holder is not prevented from seeking renewal of the licence concerned.

Section 77W Refund of depot licence charge on revocation of a depot licence

New Section 77W provides a formula for the pro-rata return of a depot licence charge in relation to the unexpired period of a revoked licence.

Section 77X Powers of Customs in relation to a place that is no longer a depot

New Section 77X provides that, where a place has ceased to be covered by a depot licence, a Collector may:

permit goods that are subject to the control of the Customs to be received into that place during a period of 30 days after the place ceased to be covered by the licence - paragraph 77X(2)(a);

permit imported goods to be unpacked from receptacles in the place - paragraph 77X(2)(b);

permit goods for export to be packed into receptacles in the place - paragraph 77X(2)(c);

permit examination of goods subject to the control of Customs (controlled goods) by officers of Customs - paragraph 77X(2)(d);

permit removal of controlled goods to a licensed depot or a warehouse - paragraph 77X(2)(e);

require the former licence holder to remove controlled goods to a licensed depot or warehouse - paragraph 77X(2)(f);

take such control of the place as may be necessary for the protection of the revenue or for ensuring compliance with the Customs Acts while controlled goods are in the place - paragraph 77X(2)(g);

require the **former licence holder to reimburse Customs** in respect of services required to be rendered by Customs as a result of the licence ceasing to be in force - paragraph 77X(2)(h);

remove any controlled goods to a place covered by a depot licence or a warehouse where a person has failed to comply with a requirement under paragraph (f) above - paragraph 77X(2)(i); and

require the former holder to reimburse Customs in respect of the cost of removal of goods under paragraph (i) - paragraph 77X(2)(j).

New subsection 77X(3) provides that if a former holder is required to pay in accordance with paragraph 2(h) or (j) and the amount is not paid, it may be recovered as a debt due to the Commonwealth.

Section 77Y Collector may give directions in relation to goods subject to Customs control

New section 77Y provides that, for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, a Collector may give directions to the holder of a depot licence, or a person participating in the management or control of the depot, in relation to goods which are subject to the control of Customs (referred to as "the controlled goods").

New subsection 77Y(2) provides that such a direction must be a direction:

- to move, or not to move, controlled goods within the depot - paragraph 77Y(2)(a);
- regarding the storage of controlled goods in the depot - paragraph 77Y(2)(b);
- to move controlled goods to another depot or warehouse - paragraph 77Y(2)(c);
- about the unpacking of the imported goods that are controlled goods - paragraph 77Y(2)(d);
- about the packing of goods for export that are controlled goods - paragraph 77Y(2)(e).

New subsection 77Y(3) provides that, for the purposes of preventing interference with controlled goods, or for preventing interference with the exercise of the powers or the performance of the functions of a Collector in respect of a depot or controlled goods therein, a Collector may give directions to any person in a depot in relation to controlled goods.

New subsection 77Y(4) creates an offence for failure to comply with directions given in accordance with this section. The penalty for failure to comply with directions is 50 penalty units ($5,000). New subsection 77Y(5) also provides such an offence is a strict liability offence.

Depot licences not transferable

New section 77Z provides that, subject to subsection (2), depot licences are not transferable.

Subsection 77Z(2) provides that a depot licence may be transferred to another person in the circumstances prescribed by the regulations.

These circumstances, if any, will be prescribed under the Customs Regulations.

Service of notice

New section 77ZA provides that, for the purpose of the application of section 29 of the Acts Interpretation Act 1901 to the service by post of a notice under these provisions on a person or partnership, it is sufficient to address the notice to the person or partnership at the address of the place that is or was the depot.

Item 26 - Subsection 163(1C) and (1D)

This item amends the Customs Act by repealing and substituting subsections (1C) and (1D) of section 163.

Section 163 sets out the provisions which govern the circumstances in which refunds, rebate and remissions of customs duty may be made. Currently, subsection 163(1C) provides that a fee of $200 is payable in respect of an application for a refund of customs duty and subsection 163(1D) sets out the circumstances where the $200 fee is not payable. The effect of these exceptions is that the $200 fee is only payable on approximately 13% of refund applications.

It is, therefore, proposed to repeal the $200 fee and replace it with two lower fees for applications for refund of customs duty lodged by computer and by document. It is also proposed to remove all exceptions from the payment of the application fee.

New subsection 163(1C) provides that if a person makes an application for refund of duty paid in respect of goods in accordance with regulations made under paragraph 163(1)(b), the person is liable to pay a fee for the processing by Customs of that application. This fee is called the *refund application fee.*

> The regulations which govern the making of an application for refund of duty are regulations 126 to 128B of the Customs Regulations.

New subsection 163(1D) sets out the new amounts of the refund application fees being:

(a) if the application is transmitted to Customs via a prescribed computer system (which will be in a approved statement) - $45.00 or, if another amount is prescribed, that other amount; or

(b) if the application is made in an approved form (by document) - $65.00, or, if another amount is prescribed, that other amount.

> Regulation 128 provides that an application for refund of duty must be made in an approved statement or an approved form.

Therefore, these fees will be payable in respect of all applications for refunds of Customs duty. The Note to section 163 notes that regulations made under paragraph 163(1)(b) may provide that under certain circumstances, a person is entitled to a refund of duty *without* the need to make an application (emphasis added). In those cases the application fee is not payable.

> There is currently only one circumstance where a application for refund of duty is not required. This is under paragraph 126(1)(ea), where a refund is payable pursuant to a decision of the Administrative Appeals Tribunal or a court on appeal from the Tribunal.

Item 27 - Application

This item is the application provision in relation to the amendments of the refund application provisions. It provides that amendments to the Customs Act made by item

26 apply in relation to all applications for refund of duty made after the commencement of that item (by Proclamation). Prior to their commencement, applications for refund of customs duty will continue to be governed by the existing provisions of the Customs Act.

Item 28 - Subsection 183UA(1) (before paragraph (a) of the definition of *Customs place)*

This item amends the Customs Act by inserting new paragraph (aa) into subsection 183UA(1).

Subsection 183UA(1) defines *Customs place* for the purposes of the search warrant and seizure warrant provisions of the Customs Act. Current paragraph (d) of this definition refers to a place that is appointed under paragraph 17(b) of the Customs Act and places owned or occupied by Customs have been appointed under paragraph 17(b).

As paragraph 17(b) is to be repealed by item 6 of Schedule 1, it is necessary to make specific references to such places in the definition of *Customs place*. New paragraph (aa) of this definition inserts a reference to "a place owned or occupied by Customs".

Item 29 - Subsection 183UA(1) (paragraph (d) of the definition of *Customs place)*

This item amends the Customs Act by repealing and substituting paragraph (d) of the definition of *Customs place* in subsection 183UA(1).

Paragraph (d) presently refers to "a place that is appointed under paragraph 17(b) of the Customs Act. Paragraph 17(b) is to be repealed by item 6 of the Schedule 1 and a new licensing regime is to be introduced in relation to Customs depots by Part IVA. This reference, therefore, is to be removed and replaced with a reference to "a place described in a depot licence granted under section 77G" to ensure that a licensed depot is also a *Customs place* for the purposes of the search warrant and seizure warrant provisions.

Item 30 - After paragraph 273GA(1)(aap)

This item amends the Customs Act by inserting new paragraphs (aag), (aar), (aas), (aat) and (aau) into subsection 273GA(1).

Subsection 273GA(1) sets out those decisions under the Customs Act which can be subject to review by the Administrative Appeals Tribunal. The new paragraphs refer to certain decisions made by the CEO under new Part IVA which introduces the new licensing regime for Customs depots. The decisions referred to in these paragraphs will be subject to review by the Tribunal.

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