1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (NO. 2) 1985

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Industry, Technology and Commerce, Senator the Honourable John N. Button).

15923/85 Cat. No. 85 4958 0

Printed by Authority by the Commonwealth Government Printer

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OUTLINE

This Bill proposes amendments to the Customs Act 1901 and the Excise Act 1901.

The most important amendments to the Customs Act 1901 are as follows:

(i) clauses 4 and 7 introduce provisions which will enable the imposition of conditions and restrictions upon warehouse licences so as to authorize the sale of goods at inwards duty free shops. The measures are part of a package of legislative changes required to implement the Government's decision to introduce limited inwards duty free shopping at international airports in Australia. Changes are necessary to the Sales Tax laws, the Customs Tariff Act 1982 and to regulations to complete the total legislative package. The conditions and restrictions proposed in clause 7 provide, amongst other things, that a licence shall not authorize the sale of goods at an inwards duty free shop unless the shop is situated at an airport appointed under the Act and is located before passengers arrive at the Customs barrier.

The licences will be limited to the sale of certain quantities of prescribed goods (limited to spirituous liquour, tobacco products and perfume) and the only persons who will be able to purchase goods at an inwards duty free shop will be travellers on an incoming international flight;

(ii) clause 9 makes provision for a different rate of rebate to be payable on diesel fuel used for different purposes. This will enable, in particular, the total Customs duty payable on diesel fuel used in primary production to be rebatable as announced by the Treasurer in the 1985/86 Budget Speech; and

(iii) clause 8 amends the rules of origin in relation to goods manufactured in a Forum Inland Country.

The most important amendments to the Excise Act 1901 (clauses 18 and 19 respectively) parallel the inwards duty free shop and diesel fuel rebate provisions of the Customs Act 1901 contained in this Bill, providing for the sale of excisable goods at inwards duty free shops and enabling the rebate of excise duty on diesel fuel used in primary production to be at the same amount as the excise duty paid on the fuel.

Financial Impact Statement

The introduction of inwards duty free shops is expected to increase airport concession revenues by about $5 million in a full year. The rebate of duty on diesel fuel at the full rate of the duty payable is expected to cost about $35.5 million in a full year and $24 million in 1985/86. The change to the diesel fuel rebate for mining operations is expected to cost approximately $350,000.

The other provisions of the Bill have no direct financial implications.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Short title

Clause 1 is a formal machinery clause.

Commencement

Clause 2 provides for the Act to come into operation on the day on which it receives the Royal Assent, with the exception of:

- sections 4, 7, 12, 18 and 21 (relating to inwards duty free shops) which are to come into operation on a day to be fixed by Proclamation. It is proposed that a suitable Proclamation day be fixed when necessary regulations have been made;

- sections 5, 11 and 13 (dealing with the determination of fees for the services of officers and the review of those determinations, and minor alterations to the search provisions of the Act) which are to come into operation 28 days after Royal Assent;

- section 6 (containing amendments consequential upon sections 4 and 7) which is to come into operation when section 22 of the Customs and Excise Amendment Act 1982 comes into operation. Section 22 of that Act deals with outwards duty free shops and is to be Proclaimed to come into operation when the necessary regulations relating to outwards duty free shops are made;

- sections 9, 10, 19 and 20 (amending certain provisions relating to diesel fuel rebates) which are deemed to come into operation on 1 November 1985. This is the day the

Treasurer announced in the 1985/86 Budget Speech as the day on which duties of Customs and Excise will be rebated in full for eligible primary production;

- Part III (containing technical drafting amendments to the unproclaimed amendments to section 196 of the Act), which is to come into operation when section 5 of the Customs Amendment Act 1979 comes into operation;

- section 17, which is to come into operation when section 75 of the Customs and Excise Amendment Act 1982 is proclaimed. This is for a similar reason to that indicated in relation to section 6

PART II - AMENDMENTS OF CUSTOMS ACT 1901

Principal Act

Clause 3 is a formal machinery clause which defines the Customs Act 1901 as the Principal Act for the purposes of this Part of the Bill.

Interpretation

Clause 4 amends section 4 of the Principal Act by inserting a definition for "airport shop goods", which is to be those goods, or classes of goods, that shall be declared by the Customs Regulations to be airport shop goods for purposes related to inwards duty free shops. In accordance with the Government's announcement on 5 September 1984 it is proposed that the regulations declare spirituous liquor, tobacco products and perfume to be "airport shop goods".

Working days and hours, etc

Clause 5 amends section 28 of the Principal Act to add a provision to enable the Comptroller-General of Customs to also determine the fees for the services of officers requested to perform specific functions during hours prescribed under sub-section 28(1) but at a place where such services are not normally made available without charge. The fees now proposed to be determined by the Comptroller-General are currently prescribed by Customs Regulation 192. This new provision will provide uniformity for the determination of, and publication of, fees for officers services inside or outside normal hours of business.

Outwards duty free shops

Clause 6 amends section 96A of the Principal Act consequent upon the distinction now being made in this Bill between outwards duty free shops and inwards duty free shops.

Inwards duty free shops

Clause 7 inserts a new Section 96B into the Principal Act, to govern the licensing and control of warehouses which are to operate as inwards duty free shops. The main features of the new section are -

- definitions (proposed sub-section 96B(1));
- limitation on siting (the shops are required to be situated at a proclaimed airport and between the aircraft and the Customs barrier) (proposed sub-section 96B(2));
- a scheme of provisions authorising regulations and administrative permissions analogous to those at present in place in relation to outwards duty free shops (proposed sub-sections 96B(3) to 96B(11));
- revocation of any permission to be in accordance with the regulations (proposed sub-section 96B(12));
- written notice of findings, evidence and reasons for refusal or revocation of a permission by a Collector to be given to the affected duty free shop proprietor (proposed sub-section 96B(13)). (Under 273GA(1)(b) of the Principal Act such decisions are capable of review by the Administrative Appeals Tribunal.)

When goods deemed to be the produce or manufacture of a country

Clause 8 amends section 151 of the Principal Act to;

(i) expand the rules which determine whether goods shall be treated as the manufacture of a Forum Island Country by -

- allowing the cost of labour and/or prescribed materials of New Zealand to contribute, together with labour and/or materials of the Forum Island Country or other Forum Island Countries or Australia or Papua New Guinea, towards the required percentage of the factory or works cost of the goods; and

- requiring that, in order for the cost of labour and/or prescribed materials of New Zealand to be taken into account for that purpose, the factory or works cost of the goods represented by labour and/or materials of the Forum Island Country, or of another Forum Island Country or Countries, must represent at least one-quarter of the cost of labour and/or material of the final product; and

(ii) make a number of formal and technical amendments to the existing provisions of section 151

Rebate of duty in respect of diesel fuel used for certain purposes

Clause 9

Sub-clause (1) amends section 164 of the Principal Act by inserting new provisions to permit different rates of rebate to be set for diesel fuel used for different purposes. This will enable the rebate in respect of diesel fuel used in primary production to be paid at the same rate as the rate of customs duty payable on the fuel as announced by the Treasurer in the 1985/86 Budget Speech. It will also enable the rebate on fuel used in mining operations to be increased to offset any increases resulting from indexation arrangements between now and the 1986/87 Budget, as announced by the Treasurer in the context of the Taxation Reform Package in September 1985. The rebate rates specified in proposed new sub-section 164(5) may be increased by Ministerial declaration published in the Gazette (proposed new sub-section 164(5A). Such declarations are to be subject to the usual disallowance provisions (proposed new sub-section 164(5B).

Sub-clause (2) is a saving provision in respect of rebate action taken prior to 1 November 1985.

Indexation of rate of rebate

Clause 10 Sub-clause (1) is consequential upon clause 9 and repeals Section 164A of the Principal Act, which provided for the automatic indexation of the rate of rebate on diesel fuel. Automatic indexation is no longer appropriate as a consequence of the introduction of a system of Ministerial declarations to increase the rates of rebate.

Sub-clause (2) is a saving provision in relation to the operation of the indexation provisions prior to the repeal of section 164A as proposed by this Bill.

Suspected persons - detention and search

Clause 11 proposes 3 minor amendments to section 196 of the Principal Act.

- paragraph (a) inserts a provision to permit the Comptroller-General to limit the classes of Customs Officers who are to be empowered to direct a search. It is proposed that only senior and experienced officers be empowered to direct searches;

- paragraph (b) is designed to remove the present requirement that the same officer who established a reasonable cause for a search also conduct the search. This will enable a different officer to the one who established the reasonable cause for the search to actually conduct the search, as it is not always practicable for the same officer to be continuously available for such purposes; and

- paragraph (c) provides that officers conducting a search are to be of the same sex as the person being searched.

Regulations

Clause 12 amends section 270 of the Principal Act by inserting into this general regulation-making power of the Customs Act a specific power to make regulations which include within the scope of "airport shop goods" certain locally-produced goods which fall within the ambit of the Excise Acts.

Review of decisions

Clause 13 amends section 273GA of the Principal Act to provide for review by the Administrative Appeals Tribunal of the decisions made by the Comptroller-General of Customs relating to the determination of the fees for officers' services, consequent upon the proposed amendment in Clause 5.

PART III - AMENDMENT OF CUSTOMS AMENDMENT ACT 1979

Principal Act

Clause 14 is a formal machinery clause which defines the Customs Amendment Act 1979 as the Principal Act for the purposes of this Part of the Bill.

Suspected persons - detention and search

Clause 15 is consequential upon the amendments proposed by Clause 11. It removes the same provision from the Customs Amendment Act 1979 to that proposed in paragraph (b) of Clause 11.

PART IV - AMENDMENTS OF EXCISE ACT 1901

Principal Act

Clause 16 is a formal machinery clause which defines the Excise Act 1901 as the Principal Act for the purposes of this Part of the Bill

Outwards duty free shops

Clause 17 amends section 61D of the Principal Act consequent upon the distinction now being made in this Bill between outwards duty free shops and inwards duty free shops, similar to proposed Clause 6

Inwards duty free shops

Clause 18 inserts a new section 61E into the Principal Act to govern the licensing and control of warehouses which are to operate as inwards duty free shops to sell excisable goods. The overall scheme of the provisions is parallel to that proposed by Clause 7 which relates to the sale of imported goods at inwards duty free shops.

Rebate of duty in respect of diesel fuel used for certain purposes

Clause 19 Sub-clause (1), similar to sub-clause 9(1), amends Section 78A of the Principal Act to permit the Minister to declare a different rate of rebate of excise duty on diesel fuel used in different manners and to increase the rate of rebate from time to time. This will enable the rebate in respect of diesel fuel used in primary production to be set at the same rate as the rate of excise duty payable on such fuel as announced by the Treasurer in the 1985/86 Budget Speech. It will also permit the same change to be made to the excise rebate on diesel fuel used in mining operations to that proposed by Clause 9. The Ministerial declarations are subject to the usual disallowance procedures (proposed sub-section 78A(5B)).

Sub-clause (2) is a saving provision in respect of rebate action taken prior to 1 November 1985.

Indexation of rate of rebate

Clause 20 Sub-clause (1) is consequential upon clause 19 and repeals Section 78B of the Principal Act, which provided for the automatic indexation of the diesel fuel rebate. Automatic indexation is no longer appropriate as a result of the introduction of the system of Ministerial declarations similar to that proposed in clause 10.

Sub-clause (2) is a savings provision, similar to that in Clause 10

Review of Decisions

Clause 21 amends Section 162C of the Principal Act to provide for review by the Administrative Appeals Tribunal of a Collector's decision relating to the new inward duty free shops provisions (clause 18).