

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (No. 2) 1986

EXPLANATORY MEMORANDUM

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

This memorandum takes account of amendments made by the House  
of Representatives to the Bill as introduced.



Customs and Excise Legislation  
Amendment Bill (No. 2) 1986

Outline

This Bill proposes a number of amendments to the Customs Act 1901 and the Excise Act 1901, in particular to give effect to the Government's decision to introduce revised excise rebate arrangements on exports and domestic free market sales of Bass Strait crude oil, to introduce a new narcotics offence, and to effect various technical amendments to both Acts.

The major changes contained in the Bill are the

(i) amendments of the Customs Act 1901,

- . to amend Section 114 of the Act to make it clear that the requirement to enter goods for export does not apply to excisable goods upon which duty has not been paid (Clause 4). Excisable goods upon which duty has not been paid are required to be entered for exportation under Section 58 of the Excise Act 1901;
- . to make changes (similar to those proposed for the Excise Act) to the provisions relating to ship's and aircraft's stores and the authority to institute prosecutions (Clauses 5 and 8 respectively);
- . to transfer to the Comptroller-General of Customs the Minister's administrative powers relating to the power to treat goods as goods of a Forum Island Country, (Clause 6); and
- . to introduce a new offence into Section 233B of the Act of bringing, attempting to bring or causing to be brought into Australia narcotic goods as defined in the Act to make it clear that it is an offence to bring illicit narcotics into Australia either as a transit passenger or otherwise (Clause 7).

(ii) amendments of the Excise Act 1901,

- . to ensure that the provisions of the Act give full effect to the Government's policy involving crude oil and LPG by introducing provisions to make it clear that all excisable crude oil and LPG is to be first entered for home consumption and duty paid before being entered for export. Part of the Government's incentives to encourage exports of crude oil involve rebates of excise duty after exportation. The amendments reflect current practice in the industry and will therefore not effect producers liability for excise on their production of crude oil and LPG (Clauses 11 and 12).

to enable the Minister for Resources and Energy, or an authorised officer of the Department of Resources and Energy, to determine by notification in the Gazette the rebates of excise duty payable on exports and free market sales of Bass Strait Crude Oil (Clause 13);

to clarify the rebuttable presumption that prosecutions under the Act are instituted in the name of and under the authority of the Collector, (Clause 15); and

to update the administrative requirements for the provision of information relating to ship's and aircraft's stores, (Clause 16).

#### Financial Impact Statement

The provisions of this Bill have no direct financial implications.

## NOTES ON CLAUSES

### PART I - 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:

- (i) Sections 5 and 16 (relating to amendments to the requirements under both the Customs Act 1901 and the Excise Act 1901 regarding the provision of information concerning ship's or aircraft's stores), which are to come into operation on the 28th day after the day on which the Act receives the Royal Assent (the usual lead time where a penalty provision is involved);
- (ii) Section 11 (amending Section 58 of the Excise Act to require individual export shipments of crude oil or LPG to be first entered for home consumption) which is to come into operation on 21 October 1986. 21 October 1986 has been selected as a suitable day close to the making of these amendments to discourage direct export entry of any crude oil or LPG proposed to be exported between 21 October 1986 and the day of Royal Assent of the Bill; and
- (iii) Section 12 (amending Section 61C of the Excise Act to deem export permissions to be first entered for home consumption) which is to come into operation on 1 October 1983. 1 October 1983 has been selected as a suitable day between the announcement in the 1983/84 Budget of approval to export crude oil or LPG and a time just prior to the first export shipment of product.

### PART II - AMENDMENTS OF THE CUSTOMS ACT 1901

#### Principal Act

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

Entry of goods for export

Clause 4 amends Section 114 of the Principal Act to make it clear that the requirement to enter goods for export under the Act does not apply to excisable goods upon which duty has not been paid. Excisable goods upon which duty has not been paid are required to be entered for exportation under Section 58 of the Excise Act 1901.

Payment of duty on ship's or aircraft's stores

Clause 5 amends section 130B of the Principal Act by omitting sub-section (2) and inserting 3 new sub-sections to update the administrative requirements for the provision of information relating to ship's and aircraft's stores, and impose a new obligation for the declaration of drugs that are, or are taken on board as, ship's or aircraft's stores. In particular,

proposed new sub section 130B(2):

imposes an obligation on a ship's owner, or if directed by an Officer of Customs, the master of a ship to:

- whenever directed to by an officer of Customs, give to a Collector, in accordance with a form made available by the Collector, a return relating to ship's stores, and goods taken on board as ship's stores; and
- immediately before the departure of the ship from Australia, give to the Collector, in accordance with a form prescribed in the Customs Regulations, a return detailing the drugs that are ship's stores, or have been taken on board as ship's stores;

.. the drugs required to be declared are those drugs contained in the Fourth Schedule to the Customs (Prohibited Imports) Regulations

proposed new sub-section 130B(2A):

imposes an obligation on the owner of an aircraft or, if directed by an officer of Customs, the pilot of an aircraft to:

- whenever directed to by an officer of Customs give to a Collector particulars of the "prescribed aircraft's stores" that are aircraft's stores and that have been taken on board as aircraft's stores;

.. "prescribed aircrafts stores" are defined as those stores which have been prescribed for the purposes of Section 129 of the Act (proposed new sub-section(4)); it is currently intended to prescribe spiritous liquor or beverages, beer, stout, wine, cigarettes, cigars and other tobacco products, propellant fuel and lubricating oil for the purposes of that section

.. the amendment should facilitate the provision of information by airlines by means other than the lodgement of prescribed forms (ie by electronic means, computer, telex etc)

- immediately before the departure of the aircraft from Australia, give to the Collector, in accordance with a form prescribed in the Customs Regulations, a return detailing the drugs that are aircraft's stores, or have been taken on board as aircraft's stores (similar to the requirement re ships).

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

Clause 6 amends sub-section 151(5A) of the Principal Act by transferring from the Minister for Industry, Technology and Commerce to the Comptroller-General of Customs the power to treat goods as being goods of a Forum Island Country if such goods satisfy specified conditions;

this transfer of power is part of the transfer of administrative functions from the Minister to the Comptroller-General, commenced by the Customs Administration (Transitional Provisions and Consequential Amendments) Acts, No.39 of 1985 and No. 10 of 1986.

Special provisions with respect to narcotic goods

Clause 7 inserts a new offence into Section 233B of the Principal Act (proposed paragraph 233B(1)(aa)) to make it clear that it is an offence to bring, attempt to bring or cause to be brought into Australia any illicit narcotics so as to ensure that the penalties set out in Section 235 of the Principal Act apply to a person whether the person is in transit or otherwise. Consequential amendments are also made to the existing offences set out in paragraphs 233B(1)(cb), 233b(1)(d) and 233B(1)(e) of the Principal Act.

Evidence of authority to institute proceedings

Clause 8 amends sub-section 245A(2) of the Principal Act by providing that documents in addition to telegrams, which are purported to be signed by the Collector, and purport to authorize an officer to institute Customs prosecutions or proceedings, are admissible as evidence of the requisite authority for that officer to institute a prosecution or proceeding in the name of the Collector. This corrects the anomalous situation which it is argued currently exists, whereby authority to institute proceedings in the name of the Collector can only be evidenced by the production of a telegram.

Applications deemed to be made

Clause 9 is a technical drafting amendment to section 269J of the Principal Act to delete the reference to the "Temporary Assistance Authority", which was abolished by the Industries Assistance Commission Amendment Act 1984 (Act No 118 of 1984).

PART III - AMENDMENTS OF THE EXCISE ACT 1901Principal Act

Clause 10 is a formal machinery clause which defines the Excise Act 1901 as the Principal Act for the purposes of this Part of the Bill.

Entry for home consumption etc

Clause 11 inserts a new provision into the Principal Act to make it clear that for the purposes of the Government's crude oil and LPG policy, excisable stabilized crude petroleum oil or liquefied petroleum gas that may be entered on an individual shipment basis (under Section 58 of the Principal Act) is not to be entered for exportation unless first entered for home consumption.

Paragraph (b) provides that the requirement for entry for export after entry for home consumption is not to apply to production from the area known as Jabiru in the Northern Territory. Production from that area is to be removed from excise control by the Excise Tariff Amendment Bill (No. 2) 1986 (Clauses 4, 5 and 16 of that Bill) in accordance with the Government's Resource Rent Tax policy.

These amendments and the amendments in Clause 12 following are proposed to make it clear that all stabilized crude oil and LPG produced is subject to excise duty. Any exports of crude oil are, after entry for home consumption and entry for exportation



and, in accordance with the Government's policy, subject to a rebate of excise duty as currently prescribed by the Excise Regulations and, as proposed by Clause 13 of this Bill are to be specified by Ministerial Gazette Notice.

Permission to deliver certain goods without entry

Clause 12 inserts a new provision into the Principal Act to make it clear that for the purposes of the Government's crude oil and LPG policy, excisable stabilized crude petroleum oil or liquefied petroleum gas that may be permitted to be delivered for home consumption without entry (under Section 61C of the Principal Act) is also permitted to be delivered for exportation without entry and deemed in each case to be entered for home consumption on the day on which the products are so delivered (either for home consumption or exportation).

Sub-Clause 12(2) is a consequential provision designed to obviate the need to re-issue permissions already given under Section 61C of the Principal Act as proposed to be amended.

Rebate of duty in respect of stabilized crude petroleum oil

Clause 13 introduces a new section 78B into the Principal Act, to provide the legislative basis for a new mechanism for the payment of rebates of excise duty on exports and free market sales of Bass Strait crude oil. The new procedure will enable the Minister for Resources and Energy, or an authorised officer of the Department of Resources and Energy, to determine by Gazette Notice the rebates of excise duty payable on such exports or sales, as opposed to the current system which authorises these excise duty rebates by regulations. The new procedure has been introduced to allow more timely settlement of excise rebate claims, to increase the attractiveness of free market sales to the Bass Strait producers;

new sub-section (1) defines for the purposes of the section various terms, and in particular,

- 'Bass Strait Oil' to mean stabilized crude petroleum oil produced at an Australian installation in the Gippsland Basin in Bass Strait, and
- 'domestic free market sale' to mean any sale of Bass Strait Oil to a person whose oil is refined in Australia, at a price other than the Import Parity Price set by the Government from time to time.

new sub-section (2) acknowledges the fact that production at Bass Strait is the result of a joint venture (between BHP Petroleum Pty Ltd and Esso Exploration and Production Australia Ltd), and provides in particular,

- that where production is by joint venture and the oil produced is shared in accordance with the arrangements of the joint venture, one joint venturer's share of the oil produced is deemed for the purposes of the section to have been produced by that person.

new sub-section (3) introduces the new Ministerial Gazette Notice system for the determination of the rebates of excise duty payable to the Bass Strait producers for exports or domestic free market sales of Bass Strait Oil

- the new sub-section provides that the Minister for Resources and Energy, or an authorised officer of his Department, may by a notice published in the Gazette, declare that a rebate is payable to a producer (defined for the purposes of this section as a producer of Bass Strait Oil) who, during the period specified in the notice, exports or sells Bass Strait Oil as a domestic free market sale and has paid the due excise duty, and may either:

- .. declare that the amount of rebate payable to a producer is the amount determined by reference to the rates specified in the notice, or
- .. specify each producer entitled to the rebate and declare in relation to each producer the amount of rebate due by reference to a rate or rates specified in the notice.

new sub-section (4) applies the standard Parliamentary tabling and disallowance provisions applicable to regulations to the excise rebate Gazette Notices

new sub-section (5) provides that such rebates are payable from the Consolidated Revenue Fund

new sub-section (6) preserves the effect of action taken under section 78 of the Principal Act, which has the effect of preserving existing regulations made for the purpose of authorising similar excise duty rebates.

### Institution of prosecutions

Clause 14 is a technical drafting amendment to sub-section 134(4) of the Principal Act, and corrects an inadvertent error in the reference in that sub-section to "Customs" prosecutions, instead of "Excise" prosecutions.

### Evidence of authority to institute proceedings

Clause 15 inserts a new section 134A into the Principal Act to provide a similar regime to that in the Customs Act for the provision of the requisite evidence of authority to institute Excise Act prosecutions and proceedings,

proposed sub-clause (1) provides that where a prosecution under the Principal Act is commenced by an Officer of Customs, in the absence of contrary evidence the prosecution shall be deemed to have been instituted with the authority of the Collector (similar to existing sub-section 245A(1) of the Customs Act);

proposed sub-clause (2) provides that the production of a telegram or any other document purporting to authorise an officer of Customs to institute prosecutions or proceedings under the Principal Act shall be accepted as evidence of the authority of the officer of Customs to institute that prosecution or proceeding in the name of the Collector (similar to sub-section 245A(2) of the Customs Act, as proposed to be amended - see Clause 8).

### Ship's Stores & Aircraft's Stores

Clause 16 amends section 160A of the Principal Act, similar to those amendments proposed in Clause 5 for the Customs Act, to update the administrative requirements for the provision of information relating to ship's and aircraft's stores.









