

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS LEGISLATION AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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



CUSTOMS LEGISLATION AMENDMENT BILL 1992

OUTLINE

This Bill is an omnibus measure proposing amendments to the Customs Act 1901 and the Customs Administration Act 1985.

The main proposals contained in the Bill relate to:

- i) amendments to the Customs Act 1901 and the Customs Administration Act 1985 to provide the legislative framework for the electronic transmission to the Australian Customs Service of information relating to the reporting, screening and clearance of imported cargo, and to permit limited on-line computer access to such information by other agencies.

The proposed cargo automation scheme is the third leg of the improvement and updating of entry facilities for imports and exports and is modelled on the two earlier initiatives known as EXIT (in respect of exported goods which was provided for in Act No. 111 of 1990) and COMPILE (in respect of imported goods which was provided for in Act No. 34 of 1992). The amendments include the insertion of a new Division 3A into the Act to provide for the electronic/computer option for cargo reporting (Clause 10 refers). The main features of the new regime are:

- . the introduction of an electronic/computer option for the communication to Customs of information relating to the reporting, screening and clearance of imported cargo, to complement the existing documentary/manual reporting facilities (Clauses 6,7 and 10, new section 67A refers).
- . Where the electronic option is selected, computer transmission of information must be via the Sea Cargo Automation System or the Air Cargo Automation system, access to which will be conditional on registration as a registered user and the entry into an agreement with Customs setting out the terms and conditions of computer communication with Customs (Clause 10, new sections 67B and 67C refer).
- . A registered user who enters into a computer user agreement with Customs will be allocated a unique identifying code for use in any transmission to Customs, which will effectively serve as evidence that the transmission was made by the person in whose name the identifying code has been issued (Clause 10, new section 67C refers).
- . The Australian Quarantine and Inspection Service (AQIS) and Port Authorities have been granted on-line access to the cargo information system as a means of further strengthening import controls over prohibited or risk goods (Clause 10, new subsections 67B(6) and (7) refer). As a consequence, section 16 of the Customs Administration Act 1985 has been amended to

permit on-line access to this cargo information by AQIS and Port Authorities, for specific and limited purposes, and subject to the requirement that the information obtained not be used for any other purpose nor disclosed to anyone else except to the extent necessary for one of the specific purposes (Clause 27 refers);

- ii) amendments to the Customs Act 1901 to improve waterfront security in accordance with recommendations by the Joint Review Committee which examined the report of the National Crime Authority on Port security, in particular, to increase control over ships' crew and other individuals in waterfront areas.

The Act is amended to:

- . extend the present powers of Customs officers to search certain vehicles (Clause 23, new section 197 refers); and
 - . oblige persons in "Customs areas" to produce satisfactory identification upon request by a Customs officer (Clause 5, new section 20 refers);
- iii) amendments to the Customs Act 1901 to extend eligibility for the diesel fuel rebate scheme to vessels servicing oil and gas operations in the North West Shelf and Timor Gap exploration areas when those vessels travel to or from Australian ship repair yards for refits or repairs (Clause 21 refers); and
- iv) amendments to the Customs Act 1901 to effect minor technical changes consequential on the introduction of the electronic lodgement reforms to the import entry regime in Act No. 34 of 1992 (Clauses 11, 12, 19, 20 and 22 refer).

Financial Impact Statement

The measures contained in this Bill relating to the proposed cargo automation reforms, and the extension of the diesel fuel rebate scheme, are expected to result in additional costs, as follows:

- i) Cargo automation -

The cost of implementation, including development, maintenance, and operational costs, have been estimated in present dollar values, as:

- . \$2.404m for financial year 1992-93,
- . \$2.229m for financial year 1993-94,
- . \$2.680m for financial year 1994-95, and
- . \$2.146m for financial year 1995-96;

- ii) diesel-fuel rebate -

The cost of the proposed mining operation extension of the rebate scheme for the next four years has been estimated in present dollar values, as:

. \$0.25m for each full year.

The other proposed amendments in this Bill have no direct financial implications.

CUSTOMS LEGISLATION AMENDMENT BILL 1992NOTES ON CLAUSESShort title etc.

Clause 1 provides for the Act to be cited as the Customs Legislation Amendment Act 1992.

Commencement

Clause 2 provides for the Act to commence on the following days:

Subclause (1) provides for the Royal Assent commencement of the following amendments;

- . Clauses 1,2,3 and 26, are machinery provisions relating to the short title, the commencement provision and the Customs Act 1901 and Customs Administration Act 1985 citation provisions;
- . Subclause 13(1) which amends section 71B of the Customs Act 1901 to allow any officer of Customs to cancel an authority to deal with goods the subject of an import entry; and which also amends section 71B as a consequence of the introduction of electronic lodgement by Act No. 34 of 1992;
- . Paragraphs 15(a),(b) and (c) which amend section 71L of the Principal Act to allow returns for like customable and special clearance goods to be communicated by computer;
- . Clause 18 which amends section 114C of the Customs Act 1901 along the lines of subclause 13(1) but in relation to export entries.

Subclause (2) provides for commencement 28 days after the day on which the Act receives the Royal Assent (which is the standard minimum commencement period where a new offence provision is to operate, or where new obligations or liabilities are created) for the following amendments:

- . Clauses 5 and 23 which impose new obligations and liabilities in relation to control of the waterfront.

Subclause (3) provides for a Proclamation commencement for the amendments relating to the

introduction of the electronic reporting system for cargo. The amendments are intended to commence in February/March 1993, primarily to allow the various approved forms under the new scheme to be prepared, and to enable the contractual arrangements for the transmission of cargo information to Customs to be settled.

- . The provisions which amend the Customs Act 1901 as a result of the proposed new electronic reporting system for cargo are:
 - Paragraphs 4(b) and (c)
 - Clauses 6,7,8,9 and 10
 - Subclause 13(2)
 - Clause 14
 - Paragraph 15(d)
 - Clauses 16,17,24 and 25
- . Clause 27 amends the Customs Administration Act 1985 as a consequence of the proposed new electronic reporting system for cargo.
- . The Proclamation commencements are subject to the standard "sunset" provision in Acts which are expressed to commence by Proclamation; namely, that if the relevant provisions are not proclaimed within a period of six months after the date on which the Act receives the Royal Assent, the provisions are deemed to commence on the first day after that period (subclause (6)).

Subclause (4) provides for a retrospective 16 August 1992 commencement of Clause 21. That clause amends the diesel fuel rebate provisions of the Customs Act 1901 as part of the Government's Budget announcements. The date referred to reflects the date of the Budget announcement. The amendments in any case confer a benefit on eligible persons.

Subclause (5) provides for a retrospective 1 September 1992 commencement of paragraph 4(a) and Clauses 11,12,19,20 and 22.

- . These provisions are technical amendments consequential on the introduction of Electronic Lodgement in Act No. 34 of 1992, which commenced by Proclamation on 1 September 1992.

PART 2 - AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

Clause 3 identifies the Customs Act 1901 as the Principal Act being amended by this Part.

Interpretation

Clause 4 amends section 4 of the Principal Act by:

- . paragraph (a);

omitting the reference to "section 40AA" in the definition of "warehoused goods" and substituting a reference to "section 71E".

- The movement permission provision in section 40AA was omitted by Act No. 34 of 1992 as part of the Electronic Lodgement amendments. The new movement permission provision is in section 71E.

- . paragraph (b);

substituting a new definition of "owner" in respect of a ship or aircraft to include a charterer of the ship or aircraft or a slot charterer or freight forwarder responsible for the transportation of goods on the ship or aircraft.

- The new definition is intended to make clear the fact that persons directly involved in the transportation process such as those mentioned will be regarded as an 'owner' but not persons such as container terminal operators, stevedores or container "unstuffing" depot operators. This distinction becomes significant in terms of the type of access to the new electronic cargo reporting regime obtained by "owners" and "non-owners" (Clause 10, new section 67B refers).

- . paragraph (c);

inserting in subsection (1) five new definitions of terms used in the new electronic cargo reporting scheme or in the consequential amendments to the Customs Administration Act 1985 relating to third party access.

In particular,

- 'cargo automation system' refers to either the Air Cargo Automation System or the Sea Cargo Automation System as provided for in Clause 10, new section 67A,
- 'AQIS' and 'port authority' are referred to in Clause 27 as third parties who may obtain access in restricted circumstances to cargo report information.

Insertion of new section

Clause 5 inserts a new section 20 into the Principal Act as follows:

Waterfront area control

new section 20 obliges persons in 'waterfront areas' to produce satisfactory identification upon request by a Customs officer (new subsection (1)). This provision, together with new section 197 (introduced by Clause 23), is intended to improve waterfront security in line with recommendations of the Joint Review Committee which examined the report of the National Crime Authority on Port security.

x

In imposing the obligation to produce identification, the provision makes a distinction between persons who are members of the crew of an international ship and those who are not. New subsections (2), (3), (4) and (8)(a) deal with the former whilst new subsections (5), (6) and (8)(b) deal with the latter as follows:

Persons who are crew of an international ship

If a person refuses or fails to produce appropriate identification on request they may be requested by a Customs officer to return to their ship forthwith to obtain that identification. (new subsection (2)).

New subsection (3) makes the master of the ship liable if a member of the crew fails to produce appropriate identification to a customs officer in a waterfront area although it is a defence if the master establishes that they had taken all reasonable steps to ensure that crew members had the relevant identification and understood their obligation to carry it in the waterfront area and produce it when requested (new subsection (4)).

The defence in new subsection (4) reflects the fact that the master is unable to effectively control the actions of the crew once they have left the ship. However, it should be noted that by virtue of new subsection (6), the crew member will still be committing an offence in that situation.

'Appropriate identification' with respect to persons who are members of the crew of an international ship is:

- a current passport; or
- a document issued by the shipping company having control of the ship

concerned setting out the full name and nationality of the person and the passport number or other official identification number of the person; or

- a document issued by, or by an instrumentality of, the Commonwealth, a State or a Territory providing photographic identification of the person and setting out their full name, address, and date of birth (new paragraph 8(a)).

Persons other than crew of an international ship

If such a person refuses or fails to produce appropriate identification on request, a Customs officer may either:

- . issue the person with a temporary identification where they can otherwise establish their identity to the officer's satisfaction and explain their presence in the area; or
- . where unable to so establish their identity or their presence in that area - request the person to leave the waterfront area forthwith (new subsection (5))

'Appropriate identification' in this case is:

- . a document issued by the person's employer, providing photographic identification of the employee; or
- . a document issued by, or by an instrumentality of, the Commonwealth, a State or a Territory providing photographic identification of the person and setting out the person's full name, address, and date of birth (new paragraph (8)(b)).

New subsection (7) provides for a penalty of \$500 where a person (being either a crew member of an international ship or otherwise), refuses or fails to comply with a request to return to their ship or leave the waterfront area forthwith, without reasonable excuse.

New subsection (8) defines terms used in the new section 20. In particular it defines 'international ship', 'waterfront area' and 'appropriate identification'.

Impending arrival report

Clause 6 amends section 64 of the Principal Act to allow for an impending arrival report in respect of

ships to be lodged by computer where the owner of the ship is a registered user in relation to the Sea Cargo Automation System.

If a computer impending arrival report is lodged it must:

- . be transmitted to Customs via the Sea Cargo Automation System;
- . communicate such information as is set out in an approved statement; and
- . be signed by transmitting the identifying code of the person making the report.
(Clause 6(d) new subsection 64(4)).

Registration as a user and the associated concept of an identifying code is explained in greater detail in the notes to Clause 10, new section 67C.

'Approved statements' must comply with the tabling and disallowance procedures provided for in section 46A of the Acts Interpretation Act 1901 (section 4A of the Principal Act refers).

Cargo report

Clause 7 amends section 64AB of the Principal Act to bring it into line with other provisions which allow a report to be lodged by computer. In particular,

paragraph (c) inserts a new subsection (3A) to allow the option of lodging a cargo report by document or by computer;

paragraph (e) requires a computer report to be signed by transmitting the identifying code of the person making the report; as with the impending arrival report for ships referred to earlier.

paragraph (f) omits subsections (6) and (7) of the Principal Act and substitutes a new subsection (6) to make clear that the Comptroller-General may approve different approved forms and approved statements for the cargo reports of different kinds of owner of a ship or aircraft. This provision is intended to reflect the fact that freight forwarders and slot charterers, in addition to shipping companies, may be lodging the cargo report in respect of cargo on a particular ship, since they will be in the best position to know the details of that cargo.

In effect the new subsection (6) is a condensation of the previous subsections (6) and (7).

The clause also amends the time within which a computer cargo report for aircraft must be lodged as a consequence of the circumstances pertaining to airline companies. The time is amended from 'the time of arrival of the aircraft at the airport' to '2 hours before the arrival of the aircraft at the airport' (paragraph (b)).

Insertion of new section

Clause 8 inserts a new section 64ABA into the Principal Act as follows:

Amendment of cargo reports

new section 64ABA provides a facility for a cargo report (whether documentary or computer) to be varied at any time after it has been communicated to Customs but before the delivery of the relevant goods into home consumption or warehousing (new subsection (1)).

The ability to vary a cargo report is subject to the requirement that if it results in a decrease in the quantity of goods previously covered by the report, an explanation of that decrease must be communicated to Customs as soon as practicable but in any case within 90 days of communicating the variation (new subsection (2)).

New subsections (3) and (4) provide for the manner of communication of the variation and when it is taken to have been so communicated. The manner is the same as for the original report (whether documentary or computer). Its effect is prospective rather than retrospective, in the sense that the cargo report has effect as varied on and from acknowledgement of the variation by Customs to the person transmitting the variation (for computer reports) or when the variation is received by an officer (for documentary reports).

Communication of reports to Customs

Clause 9 effects a minor amendment to section 64AD to provide that computer impending arrival reports will be taken to be communicated to Customs when an acknowledgement of the report is transmitted to the person transmitting the report.

Insertion of Division

Clause 10 inserts a new Division 3A into Part IV of the Principal Act. The Division provides the option for electronic reporting, screening and clearance of imported cargo through the use of computer links between Customs, parties reporting and

links between Customs, parties reporting and delivering cargo, and other parties in the cargo importing community.

The Division contains 5 new sections as follows:

DIVISION 3A - THE USE OF COMPUTERS IN SEA AND
AIR CARGO AUTOMATION SYSTEMS

Sea and air cargo automation systems

new section 67A provides that Customs must establish and maintain computer systems, to be known as the Sea Cargo Automation System and the Air Cargo Automation System respectively. In each case the systems are maintained and established for specific purposes which include the following:

Sea Cargo Automation System (new subsection 1)

- the receipt and processing of ships' impending arrival reports or ships' cargo reports;
- the receipt and processing of variations of ships' cargo reports;
- the acknowledgement of such reports or variations;
- the grant or refusal of permits to unship at a port goods covered by such cargo reports;
- the grant or refusal of cargo clearance advices under new section 74A; and
- the receipt and processing of movement applications under section 71E

Air Cargo Automation System (new subsection (2))

- the receipt and processing of an aircrafts' cargo report;
- the receipt and processing of variations of such cargo reports;
- the acknowledgment of such reports or variations;
- the grant or refusal, by Customs, of cargo clearance advices under new section 74A in respect of all or part of the goods in question; and
- the receipt and processing of movement applications under section 71E.

Computer access to Customs

new section 67B provides for the type of access that different persons have to the cargo automation systems, as follows:

Persons transmitting information to Customs on the systems

They must be a registered user in relation to the particular cargo automation system (new subsection (1)).

Persons obtaining information from Customs on the systems

They must be:

- a registered user in relation to the particular system; or
- AQIS (as defined in the amendments to section 4 of the Principal Act); or
- a port authority in relation to the Sea Cargo Automation System (as defined) (new paragraph (2)(a)).

If the person in question is AQIS or a port authority there is a further condition for access imposed by new paragraph (2)(b), that is, that the information is provided, and used, only in accordance with section 16 of the Customs Administration Act 1985 (Clause 27 refers).

- Section 16 of the Customs Administration Act 1985 provides for the disclosure of confidential information by Customs in certain specified circumstances.

Access to a cargo automation system is also governed by the terms of any user agreement entered into by the person (new subsection (3)) (new section 67C also refers).

New subsections (4) to (7) inclusive govern access depending upon whether a person is a registered user who is also the owner of a ship or aircraft; a registered user who is not such an owner; AQIS; or a port authority. In particular,

new subsection (4) provides that a registered user is permitted access to the Sea Cargo Automation System as follows:

if they are the owner of a ship

- access to transmit reports relating to the impending arrival of the ship or to transmit cargo reports;
- access to transmit variations of cargo reports;
- access in relation to permits to unship; and
- access to discover the status of any cargo clearance advice.

This type of access is therefore available to shipping companies, freight forwarders and slot charterers but not to container terminal operators, stevedores, or container 'unstuffing' depot operators and the like. (new paragraph (4)(a)).

if they are not the owner of a ship

- access in relation to permits to unship; and
- access to discover the status of any cargo clearance advice (new paragraph (4)(b))

new subsection (5) provides that a registered user is permitted access to the Air Cargo Automation System as follows:

if they are the owner of an aircraft

- access to transmit cargo reports;
- access to transmit variations of cargo reports; and
- access to discover the status of any cargo clearance advice (new paragraph (5)(a))

if they are not the owner of an aircraft

- access to discover the status of any cargo clearance advice (new paragraph (5)(b)).

Since in the case of aircraft, continuing permissions to unship are granted, there is no requirement for access in this regard.

new subsection (6) provides AQIS with access to a cargo automation system as follows:

- access to any cargo report transmitted to Customs on the computer;
- access in relation to permits to unship in respect of ships' cargo;
- access to discover the status of any cargo clearance advice.

This access is also subject to the requirements of section 16 of the Customs Administration Act 1985 as outlined previously.

new subsection (7) provides port authorities with access to the Sea Cargo Automation System as follows:

- access only to obtain such particulars from any cargo report transmitted to Customs on the system as are required for the purpose of compiling statistics and calculating wharfage charges.

Registered users

new section 67C provides the basis on which Customs may provide, deny or withdraw a person's access to computer communications with Customs in relation to the reporting of cargo.

Subsections (1), (2) and (3) prescribe the means by which intending users of the Sea Cargo Automation System or the Air Cargo Automation System may seek registration. An application must be in an approved form (as defined in section 4A of the Principal Act), containing such information as the form requires (new subsection (2)). The Comptroller may require additional information from an applicant and may refuse to register an applicant until such information is given to the Comptroller's satisfaction (new subsection (3)).

Subsection (4) obliges the Comptroller to formally notify the applicant that registration has been approved or, for stated reasons, refused, once he or she has received the application and information required by subsections (2) and (3). In particular, subsection (5) provides that the Comptroller may refuse to register an applicant who does not, and will not within a reasonable time, have computer facilities compatible with the system referred to in new paragraph (7)(a). Refusals for any reason are appealable to the Administrative Appeals Tribunal (Clause 25 refers).

Subsection (6) sets the date of registration at the date the notice under subsection (4) is signed;

Subsection (7) requires registered users to enter into an agreement with Customs. This requirement provides the contractual basis of the user's access to a cargo automation system. Agreements will deal with technical matters (including training), commercial arrangements, and other terms and conditions by which the parties will communicate using a cargo automation system. The agreement will outline the rights, obligations, liabilities and indemnities of the parties. It will also reinforce certain provisions of the legislation, such as the maintenance of security over identifying codes;

Subsection (8) provides that once a registered user enters into an agreement, the Comptroller must allocate an identifying code to the user for their use, or for the use of any employee of the user.

. In the case of a user that is a company it

is intended that only one identifying code would be allocated; but of course the company is under the same obligation as an individual user to maintain the security of that identifying code.

A person's identifying code will serve as that person's access key and electronic signature.

Subsections (9), (10) and (11) empower the Comptroller to cancel a user's registration for failure to comply with either the Principal Act or the agreement signed by the user.

- . Decisions to cancel a user's registration are appealable to the Administrative Appeals Tribunal (Clause 25 refers).

Unauthorised use of registered user's identifying code

new section 67D provides in conjunction with the provisions of Clause 24 that the registered user is prima facie responsible for any communication 'signed' with that user's identifying code.

- . The user can rebut this prima facie presumption by presenting evidence to show that the communication was transmitted without the authority of the user;
- . The user can also rebut the prima facie presumption by notifying Customs of a possible breach of security in regard to the identifying code.

What happens if a cargo automation system is down

new section 67E provides that where a cargo automation system is inoperative, such that a registered user cannot transmit a report, or in the case of cargo reports, a variation of the report; the reports or variations must be communicated to Customs by document (subsection (1)). Customs' acknowledgement must also be by document (subsection (2)).

Like Customable goods

Clause 11 amends section 69 of the Principal Act to:

- . paragraph (a);

include a power to prescribe by regulation other goods to which the section can apply and therefore be capable of delivery into home consumption without entry, subject to the conditions set out in section 69.

- This will enable goods to be added to

the post entry return system, especially goods such as imported unmanufactured tobacco leaf and all alcoholic beverages, which, prior to the introduction of the electronic lodgement reforms in Act 34 of 1992, were included in the weekly settlement return scheme.

. paragraph (b);

inserts in subsection 69(5) a cross-reference to section 71L of the Principal Act, so that a return for like customable goods may be given to Customs by computer or by document. This computer enhancement has arisen since the electronic lodgement reforms in Act No. 34 of 1992, and is related to those measures.

Special Clearance goods

Clause 12 amends section 70 of the Principal Act to:

. paragraph (a);

insert in subsection 70(7) a cross-reference to section 71L of the Principal Act so that a return for special clearance goods may be given to Customs by computer or by document. As with paragraph (b) of Clause 11, this computer enhancement has arisen since the electronic lodgement reforms in Act No. 34 of 1992.

. paragraph (b);

insert the words "or sales tax" into paragraph 70(7)(b) to make it clear that a person who has delivered special clearance goods into home consumption without entry must pay both the Customs duty and sales tax owing on those goods when the return is lodged.

Authority to deal with goods entered under section 71A

Clause 13 amends section 71B of the Principal Act to recognise the fact that imported goods must satisfy two types of screening before they may be delivered for home consumption and warehousing, that is, screening relating to barrier enforcement and that relating to revenue protection. Both types of checks must be satisfied before the goods in question can pass into Australian commerce, and the amendments effected by this clause recognise that duality by creating the requirement for a 'single status' for imported goods in new subsection 71B(3A) (Clause 17 also refers). In particular;

paragraph (1)(a) of Clause 13 amends subsection

71B(8) to remove the restriction on persons who may cancel an authority to deal with goods the subject of an entry. It was previously the case that a person doing duty in relation to import entries could exercise that power but not a person who was performing a barrier enforcement role. The removal of the words "doing duty in relation to import entries" now means that any officer of Customs can exercise the power, thereby satisfying both revenue and barrier enforcement concerns.

- . A decision to cancel an authority to deal with goods continues to be reviewable by the Administrative Appeals Tribunal (paragraph 273GA(1)(aa) of the Principal Act refers).

paragraph (1)(b) amends paragraph 71B(8)(b) to correct an omission which occurred when that provision was inserted into the Principal Act by Act No. 34 of 1992. The amendment allows a relevant notice to be served on a person having possession of the goods, where the registered COMPILE user does not have possession. The amendment brings the provision into line with paragraph 71B(8)(a).

Subclause (2) inserts a new subsection (3A) into section 71B of the Principal Act as follows:

new subsection 71B(3A) creates the so-called 'single status' concept referred to earlier, by providing that an authority to deal with goods the subject of an entry may not be issued unless a cargo clearance advice authorising their release has first been issued under new section 74A (Clause 17 refers). The authority to deal is related to the 'revenue' side of the entry equation whilst the cargo clearance advice is related to the 'barrier enforcement' side of that equation, and means that both sorts of checks have to be completed before the goods can be delivered for home consumption or warehousing.

Application for movement permission

Clause 14 amends section 71E of the Principal Act to allow an application for permission to move goods the subject of Customs control to be made by computer as well as by document (paragraphs (a), (b), (c) and (d) refer), as a further enhancement of the Customs computer system.

paragraph (e) inserts 2 new subsections into section 71E to provide that it is an offence to move goods subject to Customs control without reasonable cause otherwise than in accordance with the terms of the permission (Subsection (3A)).

The penalty for this offence is set at \$50,000.

Subsection (3B) provides that goods moved otherwise than in accordance with a movement permission are not taken to have been moved as authorised by the Act for the purposes of paragraph 229(1)(g).

Paragraph 229(1)(g) provides that goods which are moved other than as authorised by the Act are forfeited to the Crown and therefore liable to seizure under section 203.

Manner and effect of communicating with Customs or computer

Clause 15 amends section 71L of the Principal Act as a consequence of the computer enhancement amendments proposed in Clauses 11, 12 and 14, and will provide for returns for like customizable goods under subsection 69(5) and special clearance goods under subsection 70(7) to be communicated to Customs by computer as well as by document (paragraphs (a), (b) and (c) refer).

Paragraph (d) inserts 2 new subsections into section 71L to provide for an application for permission to move goods subject to Customs control to be made by computer.

New subsection (3) provides that a computer movement application must be via the cargo automation system or the COMPILE computer system; signed by transmitting the Registered User's identifying code or PIN number and must include such information as is set out in an approved form.

New subsection (4) provides that a computer movement application is taken to have been communicated to Customs when Customs transmits an acknowledgement via either the cargo automation system or the COMPILE computer system to the person whose identifying code or PIN number was transmitted in relation to the application.

Authority for unshipment

Clause 16 amends section 74 of the Principal Act by adding two new subsections to reflect the distinction between the owner of a ship and those persons such as container terminal operators who are not such an owner and therefore have no obligation to lodge a cargo report. In particular,

new subsection (3) requires Customs to communicate a permit to unship to both:

- a) the person who communicated the relevant cargo report; and
- b) any other person responsible for the physical removal of the relevant cargo.

new subsection (4) provides that in the case of persons covered by new paragraph (3)(b), Customs may inform such persons of any conditions attaching to the grant of the permit that directly affects the physical removal of goods covered by the cargo report but must not disclose any other conditions or the reason for the imposition of any condition.

- . This discretion is necessary, for example, to allow Customs to direct removal of specified cargo to a designated area on the wharf for examination.

Insertion of new section

Clause 17 inserts a new section 74A into the Principal Act as follows:

Cargo clearance

new section 74A provides for the grant (by document or computer) of a cargo clearance advice where:

- a) a person has lodged a cargo report in respect of goods intended to be discharged at a port or airport in Australia; and
- b) a permit to unship the goods has been issued under section 74; and
- c) an officer of Customs doing duty in relation to cargo is satisfied that there is no reason why the goods cannot be released for home consumption or warehousing.

This new provision together with the amendments to section 71B effected by Clause 13 is central to the single status concept discussed earlier. The cargo clearance advice is the mechanism by which cargo can be checked against various barrier enforcement profiles prior to the goods being authorised for delivery into home consumption or warehousing.

Authority to deal with goods entered under section 114

Clause 18 amends section 114C of the Principal Act by omitting the words "doing duty in relation to export entries" from subsection (b). This amendment (relevant to exports), is consequential on that effected by paragraph 13(1)(a) of this Bill to section 71B of the Principal Act in

relation to imports and reference should therefore be made to the notes on that clause.

Goods to be dealt with in accordance with export entry

Clause 19 amends section 114D of the Principal Act to omit the reference to "section 40AA" and substitute a reference to new "section 71E".

- . The movement permission provision in section 40AA was omitted by Act No. 34 of 1992 as part of the Electronic Lodgement amendments. The new movement permission provision is section 71E.

Rate of import duty

Clause 20 amends section 132 of the Principal Act to insert a new subsection (3), which was omitted in the electronic lodgement reforms of Act 34 of 1992. The new subsection reinstates the pre Act 34 status-quo, and provides that if an entry for home consumption is withdrawn under section 71F and the goods the subject of that entry are subsequently entered for warehousing, that entry for home consumption is disregarded for the purposes of fixing a rate of duty.

- . Subsection 132(1) will then operate to provide that the rate of duty will be fixed at the time those warehoused goods are ultimately entered for home consumption.

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

Clause 21 amends section 164 of the Principal Act to insert a new inclusive paragraph into the definition of "mining operations" for the purposes of the Diesel Fuel Rebate Scheme.

New paragraph (da) provides that "mining operations" includes the undertaking of voyages by certain ships to and from Australian ports for the purpose of refitting or repairs or subsequent sea trials in connection with such a refit or repair (subclause 21(a) refers).

The ships to which the provision applies are those which are wholly or primarily engaged in "northern mining activities", which is defined to mean activities associated with, or incidental to, the exploration for, or exploitation of, oil or natural gas in waters within the geographical boundaries of 100° to 140° east longitude and 0° to 30° south latitude (subclause 21(b) refers).

- . the geographical area covers the North West Shelf and Timor Gap oil and gas exploration

areas.

- for the refitting or repairs to be eligible refitting or repairs, they must be for, or as a consequence of, carrying out those activities.

This proposed extension of eligibility to such voyages undertaken by these ships is intended to make the overall cost of travelling to Australian ports for such refitting or repairs competitive with the cost of having the repairs done in Singapore, where the diesel fuel taken on for the voyage is at the international (excise free) price.

Payments under Protest

Clause 22 amends section 167 of the Principal Act to provide that an electronically transmitted "paid under protest" statement must be transmitted at the time of making payment in respect of the goods.

- This is a consequential amendment as a result of the Electronic Lodgement amendments in Act No. 34 of 1992 which inserted the electronic option for making a "paid under protest" statement.

The amendment reflects the corresponding requirement for documentary protest statements to be made contemporaneously with the actual payment of duty.

Repeal and substitution of section 197

Clause 23 repeals section 197 of the Principal Act and substitutes a new section 197 as follows. This clause, together with clause 5 are intended to strengthen waterfront security.

Power to stop and search vehicles

new section 197 allows a Customs officer to stop and search vehicles as follows:

- any carriage in a Customs place (new paragraph (1)(a));
- 'Customs place' is defined in new subsection (4)
- any carriage not in a Customs place but that is carrying goods that are subject to Customs control within the meaning of section 30 (new paragraph (1)(b));
- any carriage not in a Customs place which a

Customs officer reasonably believes is carrying goods subject to Customs control (new paragraph (1)(c))

- . any carriage which a Customs officer has reasonable grounds to suspect has been used, or is being used in the commission of an offence against the Principal Act (new subsection (3)).

The power to stop and search vehicles under paragraphs (1)(a) to (1)(c) are effectively a power to monitor compliance with the Act in the circumstances to which they relate. In other words, the power attaches to the fact that the vehicle is in a Customs place or the goods concerned are already subject to the control of the Act. New subsection (2) then applies to make it an offence for the driver of such a vehicle to refuse or fail to comply with the request, without reasonable excuse.

The power to stop and search vehicles on the basis of a suspected offence under new subsection (3), on the other hand, is based on the officer having reasonable grounds to suspect that the carriage has been used etc. in the commission of an offence. Secondly, the officer should believe on reasonable grounds that the search is necessary in order to prevent a thing in the carriage from being concealed, lost or destroyed (new paragraph (3)(b)). Finally, the officer should also believe that the power needs to be exercised without a warrant because the circumstances are serious and urgent (new paragraph (3)(c)).

- . The constraints on the exercise of the power in new subsection (3) places Customs officers in the same position as police officers under section 10A of the Crimes Act, when the Customs officer is exercising the power outside Customs places or in relation to vehicles which do not come within the control of the Act.
- . The exercise of the powers is supported by section 76 of the Crimes Act which makes it an offence to obstruct, resist or hinder etc. a Commonwealth officer who is exercising a power, function or duty under a law of the Commonwealth. A person who refused to permit a Customs officer to search a vehicle would be caught by this provision. However, there is no obligation on such a person to positively assist the search.

Clause 24 inserts a new offence provision into section 234AC of the Principal Act to provide a penalty in relation to unauthorised use of identifying codes which is similar to the provisions in the EXIT scheme implemented by Act No. 111 of 1990 and the COMPILE system implemented by Act No. 34 of 1992.

New subsection (3) requires a registered cargo automation system user to take all reasonable steps to safeguard the security of the identifying code allocated to him or her by Customs (new paragraph (a)), and to notify Customs at the earliest available opportunity if that identifying code is, or is likely to be, known by an unauthorised person (new paragraph (b)).

The penalty for a breach of the section is \$5,000, which is intended to discourage irresponsible security of identifying codes.

Review of decisions

Clause 25 amends section 273GA of the Principal Act, relating to decisions under the Act which are reviewable by the Administrative Appeals Tribunal. It inserts 2 new paragraphs which provide jurisdiction to the AAT to review decisions made in relation to the new electronic cargo reporting regime as follows:

- new paragraph 273GA(1)(aaaa) provides for review by the AAT of a decision to refuse to register a person in relation to the Sea Cargo Automation System or the Air Cargo Automation System (new subsection 67C(4) refers);
- new paragraph 273GA(1)(aaab) provides for review by the AAT of a decision to cancel the registration of a person as a registered user in relation to the Sea Cargo Automation System or the Air Cargo Automation System (new subsection 67C(9) refers).

PART 3 - AMENDMENTS OF THE CUSTOMS ADMINISTRATION ACT 1985

Principal Act

Clause 26 identifies the Customs Administration Act 1985 as the Principal Act being amended by this Part.

Breaches of confidence

Clause 27

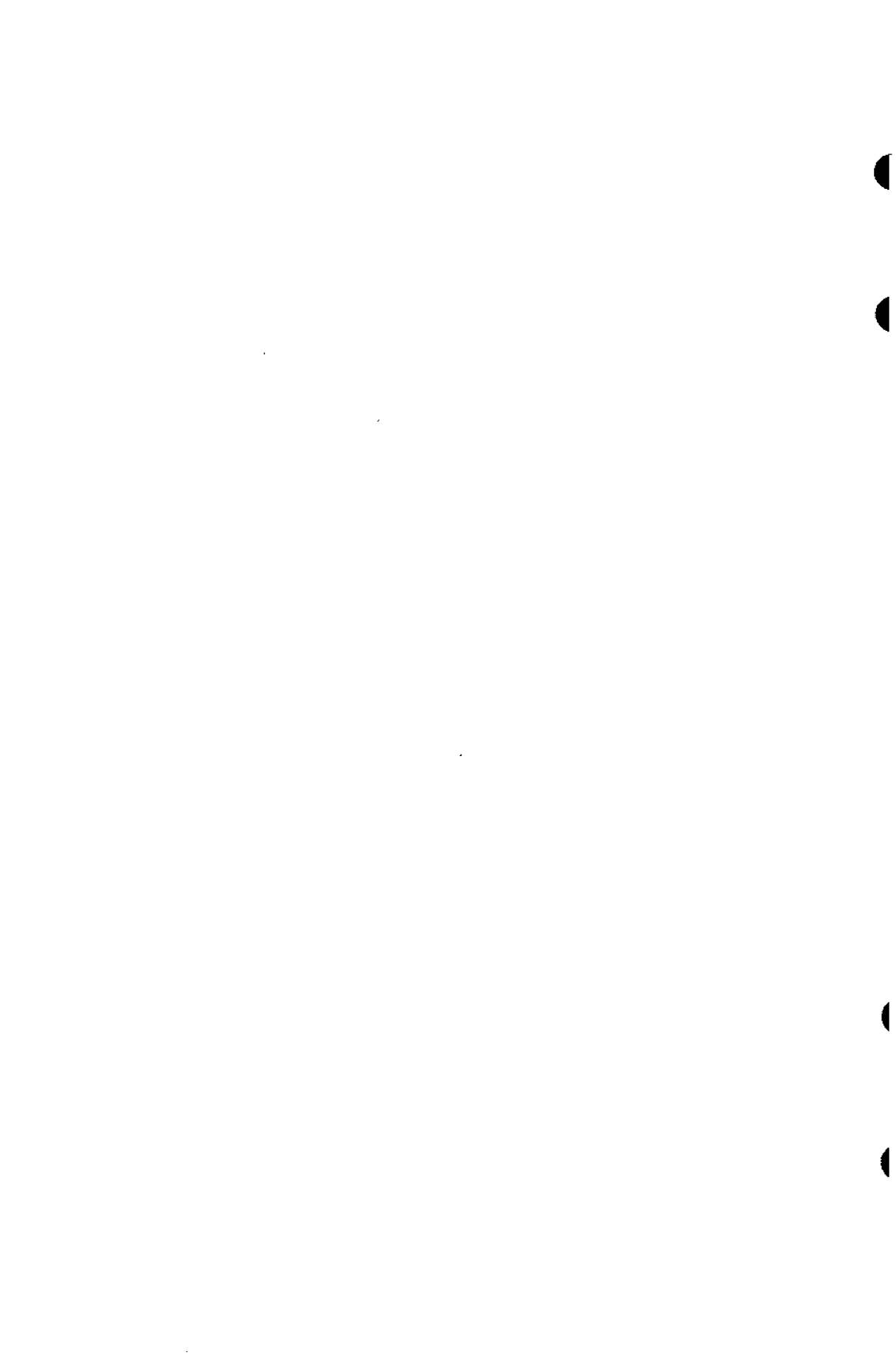
amends section 16 of the Principal Act to allow for the disclosure of cargo reports to specified third parties in specified circumstances. Section 16 makes it an offence to breach confidence except in the course of duty. It carries a penalty of 2 years imprisonment. In particular,

new subsection 16(4) allows disclosure of cargo reports to:

- AOIS for the purpose of determining whether or not there has been a breach of the Quarantine Act 1908, or there is a requirement to exercise powers under that Act;
- a port authority for the purpose of enabling the authority to gather statistics or compute liability for wharfage charges.

new subsection 16(5) makes it an offence for a person to whom a cargo report is disclosed to use or disclose that information for any other purpose. The penalty for breach of the provision is 2 years imprisonment.

new subsection 16(6) allows for computer access to the information outlined above, and will permit the specified agencies to be linked to the Customs computer system for this purpose.

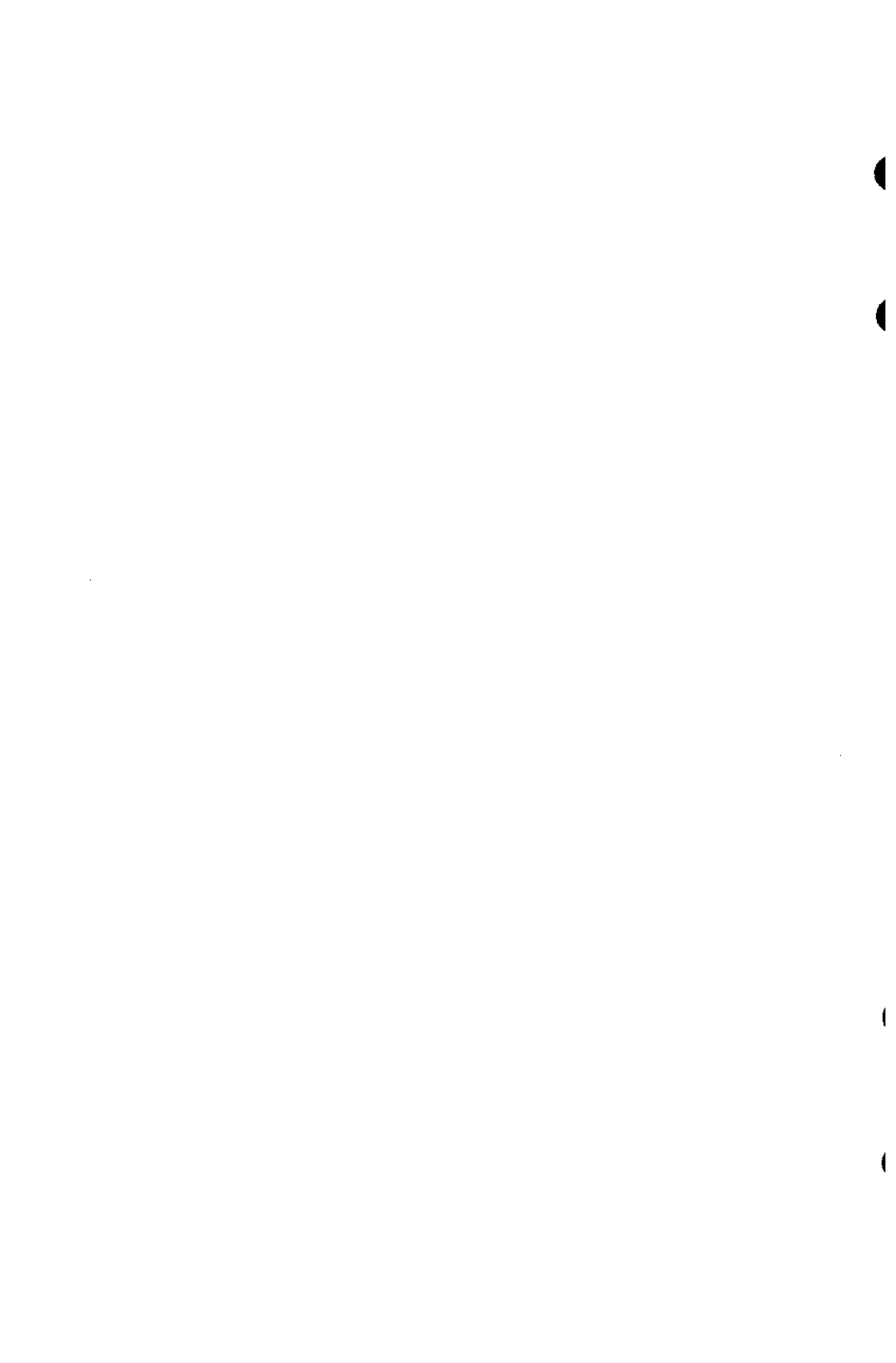


1

2

3

4

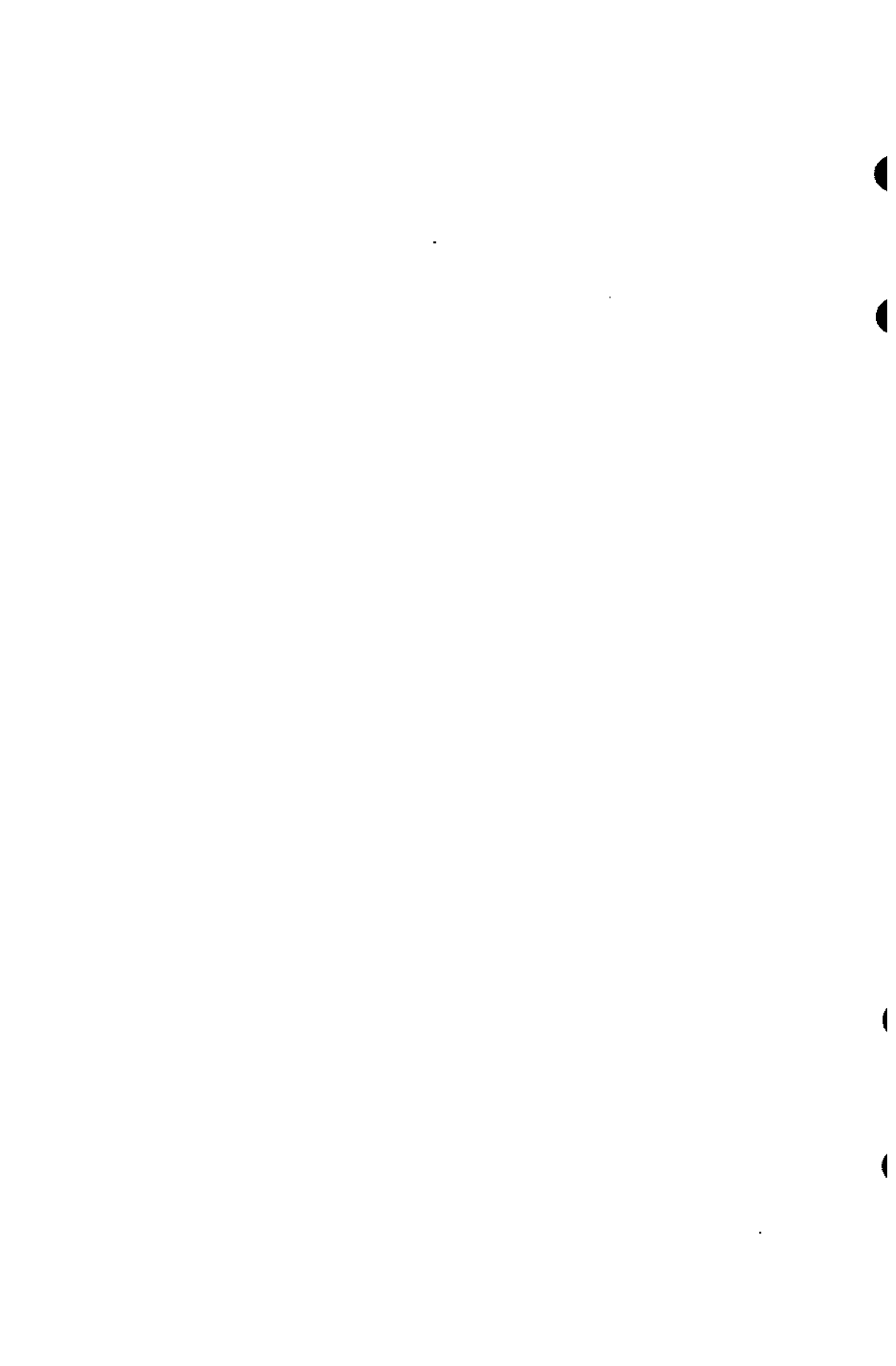


D

D

)

)



D

D

D

D

