

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CUSTOMS TARIFF (MISCELLANEOUS  
AMENDMENTS) BILL 1996**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Small Business  
and Consumer Affairs, the Honourable Geoff Prosser, MP)



**CUSTOMS TARIFF (MISCELLANEOUS  
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**OUTLINE**

This Bill is a technical corollary to the new *Customs Tariff Act 1995* (Act No. 147 of 1995), which passed the Parliament in the 1995 Spring Sittings with bi-partisan support.

The *Customs Tariff Act 1995*, which will commence on 1 July 1996, implements over 500 tariff classification changes to the Harmonized Commodity Description and Coding System of the World Customs Organization. The passage of the Act last year provided an effective 6 months lead time before its commencement and was necessary to enable the importing community to make the necessary computer and documentary changes resulting from the new Tariff Act. It has also enabled the checking and revalidation of 120,000 tariff advices on the tariff classification of goods.

The current *Customs Tariff Act 1987* will be repealed by Part 3 of the *Customs Tariff Act 1995* with effect from 1 July 1996. There are several Commonwealth Acts which presently contain references to the *Customs Tariff Act 1987*, including references to sections of that Tariff Act and to items, subitems, headings and subheadings of Schedules to that Act. It is necessary to legislatively update all references to the provisions of that 1987 Tariff Act with the 1995 Tariff Act, to ensure the continued effectiveness of these references (Schedule 1 of this Bill refers).

There are also several types of instruments, such as by-laws and Tariff Concession Orders, which contain references to the provisions of the *Customs Tariff Act 1987*. As a majority of these instruments are intended to continue in effect for the purposes of the new Tariff Act, it is necessary in this Bill to enact transitional provisions to apply to these instruments. The provisions, in effect, deem references which are contained in the instruments to the 1987 Tariff Act as if they were references to the 1995 Tariff Act. Where the tariff headings have changed, the provisions deem the references to be to those changed headings as set out in a partial concordance (Schedule 2, items 2 to 5 of this Bill refer). In the absence of such a provision, all these instruments will lapse on the commencement of the new Tariff on 1 July 1996 because the 1987 Tariff Act to which they refer is repealed with effect from that date.

**FINANCIAL IMPACT STATEMENT**

The amendments proposed in this Bill have no financial impact.

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**NOTES ON CLAUSES**

**Clause 1 - Short Title**

This clause provides for the Bill to be cited as the *Customs Tariff (Miscellaneous Amendments) Act 1996* (hereinafter referred to as the Miscellaneous Amendments Act 1996).

**Clause 2 - Commencement**

This clause provides that the Miscellaneous Amendments Act 1996 is taken to commence on 1 July 1996, immediately after the commencement of the *Customs Tariff Act 1995* on that day.

**Clause 3- Schedule**

This clause is the formal enabling provision for the Schedules to the Bill, providing that each Act specified in the three parts of Schedule 1 to the Bill are amended or repealed as set out in the applicable items of that Schedule. The clause also provides that any other item in a Schedule has effect according to its terms. This is a standard enabling clause for transitional, savings and application items in amending legislation, which in this Bill are contained in items 2, 3, and 5 of Schedule 2 to the Bill.

**SCHEDULE 1****AMENDMENT OF ACTS****Part 1 - Amendment of Act to update references to the *Customs Tariff Act 1987*****Items 1 to 19- Amendment of Acts**

These items amend the provisions of the twelve Commonwealth Acts referred therein by omitting the reference to "*Customs Tariff Act 1987*" and substituting "*Customs Tariff Act 1995*".

The purpose of this amendment is to update all references to the short title of the *Customs Tariff Act 1987* (hereinafter the 1987 Tariff Act) in the 12 Commonwealth Acts to the short title of the *Customs Tariff Act 1995* (hereinafter the 1995 Tariff Act). While these twelve Acts also contain references to provisions of the 1987 Tariff Act, these provisions are unchanged in the 1995 Tariff Act. Therefore, the only amendment required to these Acts is to update the citation of the 1987 Tariff Act.

**Part 2 - Amendments of Act to update references to particular provisions of the *Customs Tariff Act 1987*****Items 20 to 31**

The purpose of these items is to amend four Commonwealth Acts, being the *Bounty (Computers) Act 1984*, the *Customs Act 1901*, the *Customs Tariff (Anti-Dumping) Act 1975* and the *Sales Tax (Exemptions and Classifications) Act 1992*. These four Acts contain references to particular provisions of the 1987 Tariff Act which are different in the 1995 Tariff Act. Therefore, these items amend these Acts by updating references to provisions of the 1987 Tariff Act with the corresponding provisions in the 1995 Tariff Act.

**Part 3 - Other amendments****Item 31**

This item amends the *Customs Act 1901* by inserting a new section 273HA into that Act. New section 273HA provides that applications may be made to the Administrative Appeals Tribunal for review of a new decision that may be made under provisions of this Bill.

Under paragraph 5(d) of item 3 of Schedule 2 to the Bill, the Chief Executive Officer of Customs has an obligation to remake a Tariff Concession Order or a Commercial Tariff Concession Order in the circumstance where the reference to the heading of the 1987 Tariff Act contained in the concession instrument has been split into two or more headings in the 1995 Tariff Act. While the concession instrument must be remade, a decision as to whether a single instrument is appropriate, referring to one of the possible headings in the 1995 Tariff Act, or whether additional instruments referring to some or all of the other new headings in the partial concordance to the 1995 Tariff Act becomes a possibility. This is a classic administrative decision within the Administrative Review Council guidelines for merits review by the AAT, and is quite properly made reviewable by this item.

**SCHEDULE 2****TRANSITIONAL PROVISIONS****Item 1 - Definitions**

This item sets out the definitions of several terms in Schedule 2 to the Bill, unless the contrary intention appears. These definitions are for the purposes of Schedule 2 of the Bill only.

**Item 2 - By-laws and determinations made or taken to have been made in relation to the 1987 Act**

This item sets out the savings and transitional provisions to apply to a by-law made under section 271 of the *Customs Act 1901* and a determination made under section 273 of that Act in force immediately before 1 July 1996. These savings and transitional provisions are required as a direct consequence of the repeal of the 1987 Tariff Act and the enactment of the new 1995 Tariff Act on 1 July 1996. This item also contains a repeal provision with respect to certain of these by-laws and determinations.

Subitem 2(2) contains the savings and transitional provisions specifically in relation to a by-law or determination made in relation to item 1A, 1C, 1D, 1E, 7, 13, 15, 27, 28A, 34, 39A, 40A, 43, 45, 46, 47, 48, 49, 52, 57, 59 or 62 in Schedule 4 to the 1987 Tariff Act (paragraph 2(2)(a) refers) or a determination made in relation to item 41A in that Schedule (paragraph 2(2)(b) refers).

Paragraphs 2(2)(c) and (d) set out the savings and transitional provisions. Paragraph 2(2)(c) provides that such a by-law or determination is taken to have been made in relation to the item having the same item number in Schedule 4 in the 1995 Tariff Act. Paragraph 2(2)(d) then provides that such a by-law or determination has effect as if the reference to the item in Schedule 4 of the 1987 Tariff Act were a reference to the item having the same item number in Schedule 4 to the 1995 Tariff Act.

The combined effect of paragraphs (c) and (d) is that upon the repeal of the 1987 Tariff Act and the commencement of the 1995 Tariff Act, there will be no requirement to re-execute a by-law or determination made in relation to the above-mentioned item numbers. These provisions will apply in respect of approximately 300 general by-laws, in addition to 1000 determinations made specifically for the purposes of the Passenger Motor Vehicle Plan. These by-laws and determinations are to continue to be used for the purposes of the 1995 Tariff Act.

The reason that these by-laws and determinations can continue in effect is that the above-mentioned items in the 1987 Tariff Act are identical in the 1995 Tariff Act. The numbering and the descriptions of the goods to which the items apply are the same in both Tariff Acts.

Subitem 2(3) provides that the operation of a by-law or determination referred to in subitem 2(2) is not affected in relation to the 1987 Tariff Act by the savings and transitional provisions.

Subitem 2(4) contains provisions that will apply to all other by-laws and determinations made under sections 271 and 273 of the *Customs Act 1901* not covered by subitem 2(2). This item provides that any other such by-law or determination ceases to have effect on 1 July 1996. This is to occur because the items of Schedule 4 to the 1987 Tariff in relation to which these by-laws and determinations are made do not have identical corresponding items in Schedule 4 in the 1995 Tariff Act. Therefore, it is not possible for these by-laws and determinations to continue in existence for the purposes of the 1995 Tariff Act.

Subitem 2(4) also applies in respect of any by-law or determination that was taken to have been made in relation to an item in Schedule 4 to the 1987 Tariff Act. This deeming provision was contained in subsection 8(2) of the *Custom Tariff (Miscellaneous Amendments) Act 1987* when the *Customs Tariff Act 1982* was repealed and the 1987 Tariff Act enacted. The operation of by-laws and determinations made in relation to the 1982 Tariff Act was preserved for the purposes of the 1987 Tariff Act. However, to ensure consistency and clarity in the operation of all by-laws and determinations, it is proposed that these by-laws and determinations cease to have effect. Approximately 100 by-laws and determinations will cease to have effect in accordance with this subitem.

### **Item 3 - TCOs and CTCOs**

This item deals with the transitional and savings provisions for two kinds of Customs instruments which permit concessional duty entry for the types of goods nominated in the instrument. The pre 1992 instruments are called Commercial Tariff Concession Orders, and the post 1992 instruments are called Tariff Concession Orders, made under the current Part XVA of the Customs Act 1901. There are over 12,000 such orders which have been made, or are taken to have been made, in relation to the 1987 Tariff Act.

Subitem 3(1) is a standard savings type provision, which preserves the validity of current concession instruments made in relation to the 1987 Act (or taken to have been made in relation to that Act), by a similar savings type provision that appeared following the last tariff harmonisation exercise in 1987 with the 1982 Tariff Act (subsection 8(2) of Act No. 76 of 1987 refers), by legislatively treating each type of instrument as if it had been made in relation to the 1995 Act. Without such a provision, the 22,000 concession instruments currently in existence would lapse with the commencement of the 1995 Tariff on 1 July 1996, because the 1987 Tariff Act to which those instruments refer is also repealed with effect from that date.

The savings exercise is done in three ways, as follows:

Subitem 3(3) deals with the bulk of the 22,000 tariff concession instruments, and covers the circumstance where the concession instrument contains (or for the pre 1987 instrument is taken to contain) a reference to a 1987 Tariff Act heading, and that same

tariff heading equally appears in the 1995 Tariff Act. The fact there is an exact match between the two Tariff Act headings obviates the need for a concordance to move the user from the old Act to the new Act (Item 4 refers to the partial concordance, which is intended to cover the 550 changes between the 1987 Act and the 1995 Act).

The effect of Subitem 3(3) is to treat a reference in a concession instrument to the 1987 Tariff Act as if it were a reference to the 1995 Tariff Act, as and from 1 July 1996 when the 1995 Tariff Act commences.

Subitem 3(4) deals with the savings provision necessary for the first of the two circumstances where there has been a change in the tariff headings between the 1987 Tariff Act and the 1995 Tariff Act. This first circumstance deals with the situation where a 1987 Tariff Act heading contained in a concession instrument is the subject of a one to one change in the 1995 Tariff Act, or where two or more 1987 Tariff Act headings are collapsed into one heading in the 1995 Tariff Act. These changes are all identified in the partial concordance provided for in item 4, and they represent the bulk of the 550 changes which appear in the partial concordance. An example of each type of change covered by the this subitem is:

the transfer of waste and scrap of batteries containing lithium or mercury compounds from 3823.90.90 in the 1987 Tariff Act to 8548.10.10 in the 1995 Tariff Act, and

the closing up of photographic paper from 3703.90.10 and 3703.90.90 in the 1987 Tariff Act to 3703.90.00 in the 1995 Tariff Act.

The effect of subitem 3(4) is to treat a reference in a concession instrument to the 1987 Tariff Act as if it were the reference to the 1995 Tariff Act which is prescribed in the partial concordance provided for in item 4. The reference change is deemed to occur on and from 1 July 1996, when the 1995 Tariff Act commences.

Subitem 3(5) deals with the savings provision necessary for the second of the two circumstances where there has been a change in the tariff headings between the 1987 Tariff Act and the 1995 Tariff Act.

This second circumstance deals with the situation where a 1987 Tariff Act heading contained in a concession instrument has been split into two or more headings in the 1995 Tariff Act. There are approximately 20 tariff headings in the 1987 Tariff Act that have been split into two or more headings in the 1995 Tariff Act. These changes are once again identified in the partial concordance provided for in item 4. An example of this type change is;

the split of 4410.10.00 (particle board, etc.) in the 1987 Tariff Act to separately identify waferboard (4410.11.00 and 4410.19.00) in the 1995 Tariff Act; or

the split of 7304.20.00 (casing, tubing and drill pipe, used in drilling for oil and gas) in the 1987 Tariff Act to separately identify drill pipe (7304.21.00) and other (7304.29.00) in the 1995 Tariff Act.

The scenario above relating to the 20 Tariff headings from the 1987 Tariff Act which have been split into two or more headings in the 1995 Tariff Act affects approximately 50 concession instruments.

Subitem 3(5) operates to terminate the concession instrument with the 1987 Tariff Act reference from 1 July 1996 (paragraph 3(5)(c) refers), but there is a positive obligation to remake the concession instrument from that date, with the appropriate 1995 Tariff Act reference (paragraph 3(5)(d) refers)

The remake decision under paragraph 3(5)(d) is reviewable by the Administrative Appeals Tribunal (item 14 of Part 3 of Schedule 1 to the Bill refers).

Subitem 3(6) sets the parameters of the Chief Executive Officer's obligation to remake concession instruments in the circumstance identified in subitem 3(5). This sub-item effectively provides that the option of which heading or headings of the 1995 Tariff Act can be chosen to replace the 1987 Tariff Act heading is limited to those headings which appear in the relevant split in the partial concordance (paragraph 3(6)(a) refers), and which have a corresponding description (paragraph 3(6)(b) refers).

Subitem 3(7) makes it clear that the remade concession order or orders in the circumstance identified in subitem 3(5) has effect as if the order or orders had been made under the relevant provisions governing the making of a Commercial Tariff Concession Order or a Tariff Concession Order in the Customs Act 1901. With regard to the latter, the notification requirements for a Tariff Concession Order, including the obligation to inform the applicant of the decision, are taken to have been complied with.

Subitem 3(8) requires that the remade concession order or orders be published in the Gazette as soon as practicable after it has been made, similar to the gazettal obligation for principal tariff concession orders in Section 269R of the Customs Act 1901.

#### **Item 4 - CEO to prepare partial concordance**

This item requires the CEO to prepare, as soon as practicable after the commencement of the Bill, a certain type of written instrument (hereinafter referred to as "the partial concordance"). The partial concordance is to indicate, in relation to a particular heading in Schedule 3 to the 1987 Tariff Act, any heading in Schedule 3 to the 1995 Tariff Act that corresponds to that particular heading (subitem 4(1) refers).

Subitem 4(2), however, places a restriction on the type of heading to be included in the partial concordance. It must not include a heading in the 1987 Act if there is a heading in the 1995 Tariff Act with the same numbering and if both these headings cover the same goods. This means that the only entries in the partial concordance will be headings in the 1987 Tariff Act which have different numbering in the 1995 Tariff Act, or those headings that may have the same numbering but cover different goods in the 1995 Tariff Act.

The concordance will indicate:



- (i) one to one changes between headings in the 1987 Tariff Act and the 1995 Tariff Act; or
- (ii) that several headings in the 1987 Tariff Act now correspond with only one heading in the 1995 Tariff Act; or
- (iii) that one heading in the 1987 Tariff Act now corresponds with several headings in the 1995 Tariff Act.

These three situations are directly relevant to transitional provisions relating to existing Commercial Tariff Concession Orders and Tariff Concession Orders set out in item 3 above. In particular, the partial concordance will be used for the purposes of subitems 3(4) and (5) in Schedule 2 of the Bill.

Of the changes to headings that will be included in the partial concordance, approximately 350 are the result of classification changes agreed to by signatory countries to the Harmonized Commodity Description and Coding System, which is the international tariff system sponsored by the World Customs Organization. An additional 200 classification changes have also been made to the 1987 Tariff Act in order for Australia to maintain existing tariff levels and these changes will also be included in the partial concordance.

In order to ensure the widest possible access to the partial concordance, the CEO must publish the concordance in the Commonwealth Gazette (paragraph 4(3)(a) refers). The CEO must also, by notice published in the Gazette, inform all interested persons that the concordance has been made and that a copy may be inspected at each principal officer of the ACS in each State and Territory at any reasonable time (paragraph 4(3)(b) refers). The CEO must then cause a copy of the concordance to be kept of each of these offices (subitem 4(4) refers).

#### **Item 5 - TCO applications made before 1 July 1996**

This item details the transitional provision with respect to applications for a TCO that have been lodged, but not finally determined, before 1 July 1996. It is expected that there will be approximately 800 such undecided applications on that date. In particular this item will govern the situation where, in respect of such an application, it is decided to make a TCO under Part XVA of the Customs Act.

Where it is decided to make a TCO, in accordance with section 269S of the Customs Act the date that the TCO comes into force is actually 28 before the day on which the application is lodged. Under section 269P of the Customs Act, a TCO must include a description of the goods and the tariff heading that applies to the goods. Where a TCO application is undecided at 1 July 1996 but after this date it is decided to make a TCO, the date of effect of the TCO will be before 1 July 1996. Therefore, the TCO will need to include a heading in the 1987 Tariff Act (for the pre 1 July period) and a heading in the 1995 Tariff Act (for the post 1 July period).

Under subitem 5(1), the CEO will be given the power to make separate TCOs for the pre 1 July and post 1 July periods. Under paragraph 5(1)(c), the CEO must first make

a TCO that relates to the period before 1 July 1996 during which the TCO is taken to be in force by reference to the heading in Schedule 3 to the 1987 Tariff Act that applies to the goods concerned. Under paragraph 5(1)(d), the CEO must also make a further TCO or further TCOs that relate to the period after 1 July by reference to the heading or each heading in Schedule 3 of the 1995 Tariff Act that applies to the goods concerned. This will therefore ensure the concession granted in respect of the goods the subject of the application will continue after 1 July 1996.

The CEO is to be specifically given the power to make more than one TCO in respect of the post 1 July 1996 period. This is due to the possibility that the original heading in the 1987 Tariff Act which applies to the goods may be split into more than one heading in the 1995 Tariff Act. The goods described in the original TCO application which are classified under one heading of the 1987 Tariff Act may be classifiable to more than one tariff heading under the 1995 Tariff Act. The CEO must, therefore, be given the power to make a TCO or TCOs that will continue to give effect, post 1 July, to the concession granted in respect of all the goods described in the TCO application.

Subitems 5(2) and (3) repeat the same transitional theme applying to TCO applications lodged before, but not decided before, 1 July 1996 with respect to an application for internal review (section 269SH of the Customs Act), or AAT review (section 273GA of the Customs Act) of a decision relating to the making or refusal to make a tariff concession order. Where, as a result of the review, the decision is such that a TCO should issue, then as per subitem 5(1), these will be both a pre 1 July 1996 TCO to cover the 1987 Tariff Act, and a post 1 July 1996 TCO or TCOs to cover the 1995 Tariff Act

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