

1980-81-82

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AND EXCISE AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for Business and
Consumer Affairs, the Honourable John Moore, M.P.)

CUSTOMS AND EXCISE AMENDMENT BILL 1982

Purpose of the Bill

The main purpose of this Bill is to amend the Customs Act 1901 to increase substantially the penalties provided for contraventions of the Act.

The structure and details of the offences, penalty and prosecution provisions of the Act have undergone only very limited change since 1901, except in relation to narcotics, despite a partial and chiefly mechanical revision of the level of penalties in 1967.

In general, the maximum prescribed penalty for a breach of a provision of the Act is now only \$1000. However, there is further provision, if such a penalty is for an offence committed in respect of goods, for the penalty to be replaced by an amount equivalent to three times (or, in the case of fraud, six times) the value of the goods.

The inadequacy of the Act's penalties generally and in non-revenue related matters in particular, was highlighted by the Australian Royal Commission of Inquiry into Drugs (ARCID) and in the recent public and Parliamentary discussion of illegal exportation of horsemeat and kangaroo meat to the United States.

In view of the considerable profits to be made by evading Customs duty, by importing prohibited imports or by exporting prohibited exports, it is clear that very substantial levels of penalty are necessary to provide an effective deterrent to such activities which is commensurate also with the seriousness of the offences.

The increase of penalties now proposed in this Bill will remedy inadequacies in present levels of penalties in all other areas of the Customs Act. In so doing it will implement the recommendations of the ARCID to enhance controls over shipping and aircraft and other measures to prevent the importation and exportation of prohibited goods by providing proper deterrents for serious breaches of the Act relating to the revenue and matters of industry protection.

The Bill also makes amendments to extend the jurisdiction of Courts which hear Customs prosecutions to a level compatible with the new levels of penalties.

Resulting from a continuing review of the Customs Act, the Bill also contains provisions to update, simplify and remedy defects in the provisions of the Act governing the making of entries for goods. The proposed provisions will allow entries presented before the relevant goods arrive at their discharge port or airport to be effective to establish a rate of duty from the time the carrying ship or aircraft arrives at its first port or airport of call in Australia.

This will remove an anomaly under which, although "advance" entries for identical goods on the one vessel have been lodged at various ports, different rates of duty may apply in respect of goods for different ports in the event of a duty change occurring while the goods are in transit between ports. The proposal will also identify with greater certainty the particular Collector to whom the entry is to be made and update other administrative requirements in relation to entries.

Also as part of that review, the new Part VA which is proposed by the Bill will introduce a new system of licensing for places used as depots for holding imports and goods for export prior to their examination by Customs. The Bill also contains provisions to amend and update provisions of the Act dealing with the report, unshipment, placement and movement of imported cargo. These proposals will correct deficiencies in the existing provisions which fail to accommodate modern cargo handling procedures, particularly in relation to containerised cargo. Minor amendments are proposed to be made to provisions covering the licensing of Customs warehouses and Customs agents to overcome administrative difficulties.

The opportunity has been taken to make amendments also to clarify the entitlement to duty concessions of stores permitted to be taken on board a ship or aircraft for consumption while engaged in international voyages and flights.

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- Clause 1 - Citation.
- Clause 2 - Provides for sections 1, 2 and 70 to operate from the date of Royal Assent and the remaining provisions to operate on a date or dates to be fixed by Proclamation. The delay in operation is necessary to enable appropriate regulations to be made, administrative arrangements to be finalized and the Off-Shore Installations (Miscellaneous Amendments) Act to come into operation.
- Clause 3 - Identifies the Customs Act 1901 as the Principal Act for the purposes of Part II of the Amendment Act.
- Clause 4 - Amends section 5 consequential upon the repeal of sections 240 to 243 inclusive proposed by Clause 60.
- Clause 5 - Repeals section 17 which will be made redundant by the introduction of new provisions for the licensing of depots under Part VA proposed in Clause 24.
- Clause 6 - Repeals sections 36, 37 and 38 and substitutes -
- (i) a new proposed section 36 which:
 - . provides for the making of an entry of goods that are required or eligible to be entered (i.e. that have been imported or that are on a ship or aircraft that has arrived at the first Australian port or airport at which cargo is to be discharged) by giving an entry to an appropriate Collector in a manner prescribed, and containing the particulars required, by the regulations;
 - . gives authority for regulations to be made prescribing the circumstances in which an entry may be given to a Collector other than an appropriate Collector;
 - . defines the term "appropriate Collector" for the purposes of this section;

(ii) a new proposed section 37 which provides:

- . in respect of goods carried in a ship or aircraft that an advance entry (i.e. an entry given before the ship or aircraft arrives at the first Australian port or airport at which any of its cargo is to be discharged) may be given as prescribed by the regulations to a specified Collector and that the goods shall be taken to be entered when the ship or aircraft arrives at that port or airport instead of, as is presently the case, when the goods arrive at the port or airport to which they are consigned or at which they are discharged; and
- . in respect of a ship or aircraft that is not imported in another ship or aircraft, such an advance entry may be given to a Collector at the port or airport at which the vessel is to be imported but the vessel shall be taken to be entered on its first arrival at an Australian port or airport;

(iii) a new proposed section 38 which -

- . allows an advance entry or an entry in respect of goods to be withdrawn at any time prior to the payment of duty on the goods;
- . deems an entry of goods to be withdrawn if duty on the goods is not paid in accordance with a notice given by a Collector;
- . provides that withdrawal of the goods does not lead to the return of the entry to the owner of the goods or affect any prosecution or penalty for an offence in respect of the entry; and
- . provides that withdrawal of an entry for home consumption does not entitle a person to take any advantage of a tariff change which occurred after the entry was given and before it was withdrawn;

(iv) a new proposed section 38A which:

- . restates the present prohibition in sub-section 38(3) of the making of an entry in respect of goods which are already the subject of an entry for home consumption that has not been withdrawn; and
- . increases the penalty for a contravention of the prohibition to \$1000; and

(v) a new proposed section 38B which restates the powers of a Collector presently contained in sections 38, 40B and 216 of the Act to require the answering of questions and the furnishing of documents and other information to substantiate particulars of goods before he gives authority for the goods to be dealt with in accordance with the entry. In the course of restating these powers the new section extends them to apply more generally to goods in respect of which an entry has been given.

Clause 7 - Expands the provisions of section 40AA, under which a Collector may grant permission for the movement of goods subject to the control of Customs by:

- . providing authority for regulations to be made in relation to such permissions, including regulations prescribing circumstances in which permissions may be given or matters to be taken into account before permission is given;
- . changing the power of the Collector to impose requirements in the permission to a power to impose conditions (which may be prescribed by the regulations) in respect of the permission and to revoke, suspend, vary, or cancel a suspension of, such a condition by notice in writing;
- . conferring upon a Collector a power to revoke a permission, either generally or in relation to particular goods, in accordance with the regulations in place of the power to revoke such permissions presently conferred by the application of the Acts Interpretation Act; and

- Clause 9 - Repeals section 64 and substitutes a new section which provides authority for regulations to be made providing for the making of reports in relation to ships and aircraft arriving from overseas and their cargo. The regulations may:

- Clause 10 - Inserts a new proposed section 65A which extends, to any persons able to comply, the obligations now imposed on a master owner or pilot of an overseas vessel to answer questions or produce documents relating to the vessel or its cargo, crew, passengers or journey. The new requirement relates also to a vessel that has commenced, but not completed, its journey to Australia. The maximum penalty for a contravention of the new proposed section is to be \$1,000.

Clause 11 - Repeals sections 68 to 70 and inserts -

- (i) a new proposed section 68 which sets out the purposes for which imported goods are required to be entered (with the omission of the purpose of removal to a place specified in the entry which has become redundant - see Clause 8) and the time at which the goods may be entered; and
- (ii) a new proposed section 69 which authorises the making of regulations providing for the manner for the making of, and the effect of, a "Sight entry" to allow an owner of goods to examine them when he does not have sufficient information about them to enable him to enter the goods.

Clause 12 - Inserts a new section 71AA which provides a Collector with the authority to grant permission, for the transshipment without entry of prescribed goods. By requiring only the minimum documentation, the provision will facilitate such transshipment of goods e.g., the export of fish caught in international waters by overseas vessels operating out of Australian ports. The new section also provides that:

- . goods that are delivered for transshipment shall be deemed to have been entered for transshipment on the day on which they are so delivered;
- . the permission may be given subject to conditions which may be revoked, suspended or varied, or a condition of which may be cancelled by notice in writing;
- . the permission may be revoked either generally or in respect of particular goods before they are delivered for transshipment; and
- . the penalty for a breach of a condition of a permission shall be an amount not exceeding \$10,000.

Clause 13 - Consequential to the repeal of section 37 and the substitution of the new section 38 proposed by Clause 6, replaces the reference to sub-section 37(i) by a reference to section 38.

- Clause 14 - Repeals sections 74 and 76 and substitutes a new section 74 which:
- . prohibits, subject to a penalty of \$25,000 the unloading of goods from a ship or aircraft except as prescribed or in accordance with permission given by a Collector;
 - . provides authority for the Collector to give permission for goods to be unloaded according to a comprehensive permission system along the lines of that provided in section 40AA as proposed to be amended by Clause 7; and
 - . provides for a penalty of \$10,000 for a failure to comply with a condition of a permission.
- Clause 15 - Amends section 78 in relation to the definition of a "place" to make it clear that a place which may be used as a warehouse pursuant to a licence granted under section 79 may be more than one building or area or part only of a building or area.
- Clause 16 - Amends section 81 to add to the requirements for the grant of a warehouse licence the requirement that, where the applicant is a company, (and in line with the requirements for the grant of a licence to an applicant who is a natural person), it must be fit and proper to be licensed according to criteria similar to those applied in relation to a natural person.
- Clause 17 - Amends section 82:
- . to require a licensed company to notify the Comptroller of certain convictions of the company, the appointment of a receiver, or the company being placed under official management or being commenced to be wound up; and
 - . to make it clear that the conditions to which a licence may be subject may be conditions related to non-revenue matters covered by the Customs Acts (such as prohibited imports) in addition to matters of revenue protection.

- Clause 18 - Amends section 83 to provide specific powers of control in the event of a licence lapsing due to the failure of a licence holder to apply for renewal of his licence along the lines of the powers now available when a licence is suspended under section 86, or cancelled under section 87.
- Clause 19 - Amends section 86:
- . to allow a notice to be given when the Comptroller has reasonable grounds to believe that a company which holds a warehouse licence is not a fit and proper person;
 - . to make it clear that the Comptroller shall have regard to certain specified criteria in considering whether a person or company is a fit and proper person or company (which are similar to the criteria to be considered in the granting of a licence); and
 - . to make it clear also that non-revenue matters covered by the Customs Acts (such as prohibited imports) are as relevant to questions of the suspension of a licence as are revenue matters.
- Clause 20 - Amends section 87 to make it clear that non-revenue matters covered by the Customs Acts are as relevant as revenue matters to questions of cancellation of a warehouse licence.
- Clause 21 - Amends section 90 to extend the obligation of warehouse licence holders to provide adequate office space to the provision also of adequate office furniture such as a desk to enable an officer to perform his duties at the warehouse.
- Clause 22 - Amends section 97 to -
- . provide that a Collector shall not grant permission for the temporary removal of goods from a warehouse unless he is in possession of a security given to his satisfaction for the payment of duty in the event of such goods not being returned to the warehouse; and
 - . repeal the prohibition on the owner of goods removing them temporarily from a warehouse with permission but without giving such security in relation to the goods.

- Clause 23 - Repeals section 99 and substitutes a new section which makes it clear that warehoused goods shall not be delivered for home consumption or taken from the warehouse for export unless they have been entered accordingly and authority has been given under section 39 for the goods to be dealt with in accordance with the entry.
- Clause 24 - Inserts a new Part VA introducing a system of licensing for depots into which imported cargo or cargo for export is received.

The provisions replace section 17 which provided for the appointment of places for the examination of cargo on landing. These provisions were not designed, however, to provide powers of control over places geographically removed from the wharf or airport at which most imported cargo and cargo for export is now handled. This is due to lack of space at wharves and airports.

The new system of licensing depots, together with the system of licensing already applying to Customs warehouses, will provide an adequate basis for the exercise of control over all places receiving cargo.

The main features of the scheme, which are based directly on the system for the licensing of Customs warehouses, are as follows:

- Sections 103-105

define terms and provide requirements for applications for, and the grant of, licences;

- Section 106

provides that the Comptroller shall not grant a licence unless he is satisfied that the company or person to be licensed and any other person participating in the management or control of the depot is a fit and proper company or person having regard to certain specified matters. The provision also sets out certain other matters which must be taken into consideration before a licence is granted;

. Section 107

provides that a licence is subject to conditions specified in a licence or in the regulations and that such conditions may, inter alia, refer to matters sufficient for the protection of the revenue or ensuring compliance with the Customs Acts;

. Section 108 and 109

specify that a licence is annual but renewable. The Comptroller may vary conditions of a licence or refuse to renew it if he is satisfied that there are grounds for suspension or cancellation. Provision if made for the control of a depot in the event of the failure of a licence holder to apply for renewal;

. Section 110

provides for fees to be charged in accordance with the regulations;

. Section 111

provides authority for the Comptroller to give notice to a licence holder, where he has grounds to believe that a specified circumstance has occurred, to require the licence holder to show cause why his licence should not be cancelled;

- . empowers the Comptroller to suspend the licence if he considers it appropriate to do so - this would only be considered in the event of a serious breach or where there is an immediate danger to the revenue;

- . empowers the Comptroller, if a licence is suspended, to take control of the depot to protect the revenue and to ensure that owners of goods held in the depot are not disadvantaged; and

- . provides that the Comptroller may at any time revoke the suspension and if it has not been revoked within 28 days must either revoke the suspension or cancel the licence.

. Section 111A

provides authority for the Comptroller to cancel a licence where he is satisfied that a specified circumstance has occurred;

- . requires the Comptroller to give notice of the grounds on which the licence has been cancelled and of the right of the licence holder to have the decision reviewed by the Administrative Appeals Tribunal;
 - . requires the Comptroller to give public notification of the cancellation and advise owners of goods in the depot that, unless the goods are cleared or removed therefrom they are liable to be sold;
 - . Sections 111B and 111C
are formal only;
 - . Section 111D
sets out the obligations of a licence holder in relation to the operation of the depot.
 - . Section 111E
provides a Collector with a power of access to the licensed depot.
- Clause 25 - Amends section 114 to make it consistent with section 115 and to require, subject to a penalty of \$1,000, that goods other than goods specified in sub-section 114(3) shall not be shipped or otherwise committed for export until they have been entered for export and an authority under section 39 to export the goods has been given.
- Clause 26 - Repeals section 117 and substitutes a new section which is in substantially the same terms as the repealed section except that the requirement of the production of documents has been deleted as superfluous in view of the authority for a Collector to require the production of documents under new section 38B as proposed to be inserted by Clause 6.
- Clause 27 - Amends section 130E to make it clear that it is an offence for an owner or master of a ship or owner or pilot of an aircraft to fail to provide a return to a Collector of the stores taken on board if so directed. A penalty of \$2,000 is proposed for this offence.

- Clause 28 - Amends section 130C by inserting new definitions of "aircraft" and "ship" and of terms used in those definitions including "international flight" and "international voyage" to make it clear that duty concessions on ship's and aircraft's stores are only available in relation to a ship or aircraft which is currently engaged in an international journey.

These amendments are designed to close a possible loophole, whereby revenue may be evaded, by ensuring that vessels and aircraft operating domestically are not given duty concessions in regard to their stores.

- Clause 29 - Amends section 132:

- . to make sub-section (3) subject to the new proposed sub-section 38(5) to ensure that the disregarding of a withdrawn entry is not to affect the operation of the new sub-section (as to which see Clause 6); and
- . by a formal provision consequent upon the repeal of section 37 and the substitution of new section 38 proposed by Clause 6.

- Clause 30 - Amends section 149 to provide that, for the purpose of calculating the amount of duty to be demanded on goods which are shown on a manifest as having arrived in Australia, but which cannot be produced to an officer, the goods shall be taken to have been entered for home consumption on the day on which a Collector demands the duty in respect of the goods.

- Clause 31 - Repeals sections 175 to 179 inclusive and inserts a new section 175 which:

- . creates a new offence, subject to a penalty of \$25,000, of the master or owner of a ship, or pilot or owner of an aircraft that is not currently engaged in making international journeys allowing goods to be transferred from his vessel to another vessel that is currently engaged in international journeys except with permission of a Collector or for the safety of a ship or aircraft or for saving life;
- . confers authority on a Collector to give permission for the transfer which may be subject to conditions; and

- . creates a further new offence, subject to a penalty of \$10,000, of failing to comply with a condition of a permission.
- Clause 32 - Amends section 180 by substituting a new definition of "nominee" which is not restricted to the circumstances of a corporate customs agent. This will allow all Customs agents whether natural persons or companies or carrying on business in partnerships to nominate their employees who are licenced customs agents to conduct their agency business.
- Clause 33 - Amends section 181 to provide that:
- . an owner of goods may comply with the Customs Acts by engaging any agent other than a corporate customs agent and a nominee of any agent (whether a corporate agent or otherwise); and
 - . a single penalty of \$1000 for a breach of sub-section (4) applies in place of the present penalties of \$1000 in the case of an offence by a company and \$200 in any other case.
- Clause 34 - Amends section 182 consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 35 - Amends section 183 consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 36 - Amends section 183A consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 37 - Amends section 183B consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 38 - Amends section 183CA consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 39 - Amends section 183CC to:
- . add to the requirements for the grant of a customs agent's license the requirement that where the applicant is a company (and in line with the requirements for the grant of a licence to an applicant who is a natural

person) the Company must be a fit and proper company according to criteria similar to that applied in relation to a natural person; and

- . make other changes consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.

Clause 40 - Repeals sections 183CD and 183CE and substitutes:

- (i) a new section 183CD which specifies the criteria for a person to be eligible to be a nominee of a customs agent, whether or not a corporate customs agent, and in particular provides that a person is not ineligible to be the nominee of two or more companies or partnerships of which is is a director or parnter if at each place at which it is an agent the agency has another nominee who is not a director or partner; and
- (ii) a new section 183CE which, consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34, provides for the endorsement on the licence of the names of nominees of the customs agent whether or not the agent is a corporate customs agent.

Clause 41 - Amends sections 183CF consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.

Clause 42 - Amends section 183CG -

- . to require a customs agent that is a company to notify the Comptroller of certain convictions of the company, the appointment of a receiver or the company being placed under official management or being commenced to be wound up;
- . to make it clear that the conditions to which a licence may be subject may be conditions related to non-revenue matters covered by the Customs Acts (such as prohibited imports) in addition to matters of revenue protection; and
- . consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.

- Clause 43 - Amends section 183CM consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 44 - Amends section 183CN consequential upon the amendments made to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 45 - Amends section 183CP consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 46 - Amends section 183CQ consequential upon the amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 47 - Amends section 183CS to make it clear that non-revenue matters covered by the Customs Acts are as relevant as revenue matters to questions of cancellation of a customs agent's licence.
- Clause 48 - Amends section 183CT consequential upon amendments to sections 180 and 181 proposed by Clauses 33 and 34.
- Clause 49 - Amends section 208 to provide that the security to be taken by the Customs or Police on the return of goods shall be a security to pay the value of the goods (as determined in accordance with the provision and specified in the notice) if the goods are condemned or to pay any duty outstanding in respect of the goods if they are not condemned. For the purpose of calculating duty on goods that have not been entered for home consumption the goods shall be taken to have been so entered on the date on which the goods are delivered.

This amendment is required because, if the goods subsequently are not condemned, they will have been released from Customs control and delivered for home consumption without being entered and without payment of the duty applicable in respect of the goods.

- Clause 50 - Amends section 208A to provide that, where seized goods are returned on security, the action to be taken by the person to whom the goods are returned shall not be an action for the recovery of the security, as is now required, but an action for a declaration that the goods are not forfeited. If that action is not brought within 4 months of the notice requiring the action to be brought, the goods shall be condemned.

- Clause 51 - Amends section 209 to extend the scheme for dealing with goods forfeited as a result of minor breaches of the Customs Act by passengers and crew to any breach of the Customs Act resulting in the forfeiture of goods where the duty on the goods sought to be evaded does not exceed \$500. The scheme now provides for the goods to be impounded and returned on the payment of the duty and a further amount equal to that duty.

Under the expanded provisions goods impounded from persons other than passengers and crew will be returned on payment of the duty and a further amount equal to twice that duty.

- Clause 52 - Repeals section 216 which is replaced by the new section 38B proposed to be inserted by Clause 6.

- Clause 53 - Repeals sections 232 and 232A and:

(i) remakes each section so as -

- . to omit the offences of offering bribes to officers and assaulting officers in the execution of their duty, as adequate provision for those offences is made in the Crimes Act;
- . to provide for the offence of collusive seizure a fine of up to \$20,000 as an alternative to the term of imprisonment now prescribed as the sole penalty for the offence;
- . to provide for the offence of rescuing seized goods, in place of the penalty of \$500 or imprisonment for up to 2 years, the penalty on indictment of a fine of up to \$5,000 or imprisonment for up to 2 years or, if tried summarily, a fine of up to \$2,000 or 1 years imprisonment; and

(ii) inserts a new section 232B which creates a new offence of using abusive or insulting language to an officer performing duties under the Act, subject to a penalty of a fine of up to \$500.

- Clause 54 - Amends section 233 to provide that the penalties for the offences of smuggling goods or importing or exporting prohibited goods are to be determined in accordance with section 233AA proposed to be inserted by Clause 57.

- Clause 55 - Amends section 233A to provide that the penalties for offences provided for in that section (other than in relation to narcotic goods) are to be determined in accordance with section 233AA proposed to be inserted by Clause 57.
- Clause 56 - Inserts a new proposed section 233AE which prescribes, as the penalties applicable to offences under sections 233 and 233A the following penalties:
- . for the revenue-related offence of smuggling under either of those two sections, where the amount of duty on the smuggled goods can be determined, the penalty of an amount not exceeding 5 times, and not less than 2 times, the amount of that duty. In order to allow the amount of the duty evaded to be calculated, it is to be assessed as if the goods were entered on the day the offence was committed or if this cannot be ascertained, the day the prosecution is instituted;
 - . for the offence of smuggling, where for any reason the amount of duty evaded cannot be determined, a maximum penalty of \$50,000.
 - . for the offences of importing or exporting prohibited goods the penalty of an amount not exceeding 3 times the value of the goods involved in the offence or \$50,000 whichever is the greater, or, where the court cannot determine the value of those goods, a maximum penalty of \$50,000.
- Clause 57 - Amends section 234 to replace the single penalty of \$1000 now applicable to each offence in the section by the following penalties:
- . for the revenue-related offence in paragraph 234(1)(a) of evading duty, where the amount of duty sought to be evaded can be determined, the penalty of an amount not exceeding 5 times, and not less than 2 times, the amount of that duty. In order to allow the amount of the duty to be calculated, it is to be assessed as if the goods were entered on the day the offence was committed or, if this cannot be determined, the day the prosecution is instituted;

- . for the offence of evading duty, where for any reason that the amount of duty evaded cannot be determined a maximum penalty of \$50,000;
- . for the revenue-related offence in paragraph 234(1)(b) of obtaining a refund, drawback and the like where it is not payable, the penalty of an amount not exceeding 5 times, and not less than 2 times, the amount of drawback, refund etc. that was wrongly obtained;
- . for each of the offences in paragraphs 234(1)(d), (e) or (f), of making a false entry or untrue statement or misleading an officer, a maximum penalty of \$5,000; and
- . for each of the offences in paragraphs 234(1)(g) or (h) of refusing to answer questions or produce documents or selling goods pretended to be contraband, a maximum penalty of \$1,000.

Clause 58 - Repeals section 238 as being obsolete and of no effect because a specific penalty is now provided for any contravention or evasion of the Act.

Clause 59 - Repeals sections 240 to 243 inclusive which are made redundant by the new penalty rates which are proposed to be inserted by this amending Bill.

Clause 60 - repeals sections 245 and 246 and inserts a new section 245 which provides that:

- . prosecutions may be instituted in courts other than courts of summary jurisdiction in the name of the Comptroller and not, as now, in the name of the Minister;
- . a Customs prosecution may be instituted by the Comptroller (without the present restriction on jurisdiction to proceedings for the recovery of a pecuniary penalty not exceeding \$1000 or the abandonment of the excess over that amount), in a County Court, District Court or, in the State or South Australia and in the Northern Territory, in a Local Court exercising full jurisdiction except that any excess of potential penalty over \$20,000 shall be taken to have been abandoned by the institution of the prosecution; and

- . a Customs prosecution may be brought in the name of a Collector in a court of summary jurisdiction but any excess of potential penalty over \$5000 shall be taken to have been abandoned by the institution of the proceedings.
- Clause 61 - Amends section 247 to make it clear that the civil rules of practice and procedure of the Courts referred to in the new section 245 proposed to be inserted by Clause 61, other than courts of summary jurisdiction, will apply to Customs prosecutions.
- Clause 62 - Amends section 250 to ensure that any originating process, irrespective of its type, shall suffice if the offence or forfeiture is set out in any form closely resembling the words of the Act.
- Clause 63 - Amends section 251 to ensure that no objection shall be taken to any originating process for informality therein.
- Clause 64 - Repeals sections 257 to return to Courts any powers of mitigation they may possess under their respective legislation.
- Clause 65 - Amends section 273GA, to provide that a decision made under the new Part VA in relation to depots proposed to be inserted by Clause 24 may be reviewed by the Administrative Appeals Tribunal.
- Clause 66 - Amends section 276 to remove confusion over the present meaning of the section and to make it clear that, when goods are sold by a Collector, they are sold either at a price which includes the duty and charges payment on the goods or at a price that leaves the goods subject to duty and charges.
- Clause 67 - amends section 277 to:
 - . make it clear that the proceeds of a Collector's sale of goods shall be applied in payment of duty only if the goods have been sold at a price that includes duty; and
 - . provide for the determination of the amount of duty on goods that have not been entered for home consumption, by treating them as if they has been so entered on the date of the sale.

- Clause 68 - Inserts Schedule 1 which lists changes to penalties for Customs offences to a level commensurate with the seriousness of the offence, e.g. for breaches of paragraph 40AA(4)(a) and paragraph 71B(4)(a) the penalties have been increased from \$1,000 to \$50,000 and for a breach of section 73 or 125 the penalties have been increased from \$500 and \$250 respectively to \$25,000.
- Clause 69 - Inserts Schedule 2 containing formal amendments.
- Clause 70 - Is a saving provision which provides that an amendment to a penalty for an offence does not apply to an offence committed before the amendment comes into operation.

PART III AMENDMENT OF THE EXCISE ACT 1901

- Clause 71 - Cites the Excise Act 1901 as the Principal Act for the purposes of Part III of the Amendment Act.
- Clause 72 - Amends section 4 to change the definition of "International aircraft" and "Overseas ship" so as to make this definition consistent with definitions in the Customs Act.

