

1985

The Parliament of the Commonwealth  
of Australia

House of Representatives

Customs and Excise Legislation Amendment Bill 1985

Explanatory Memorandum

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



### Outline

This Bill principally proposes to amend the Customs Act 1901 and the Excise Act 1901, to give effect to various Government decisions relating to subject matter contained in those Acts. In addition, the Bill proposes to effect consequential penalty amendments to the Distillation Act 1901, the Spirits Act 1906, and the Coal Excise Act 1949.

The major changes in the Bill are as follows:

(i) amendments to the Customs Act 1901 to:

- . change the legislative basis for the allocation of import quotas by tender and resolve some practical difficulties in the administration of the tender-quota scheme in Part XV (Clauses 18 to 22);
- . enable tariff concession orders issued under Part XVA to be revoked in 3 additional circumstances (Clause 23);

(ii) amendments to the Customs Act 1901 and Excise Act 1901 to:

- . introduce more effective controls over ship's and aircraft's stores (Clauses 7, 9 to 12 and Clauses 34 to 36, 44);
- . impose liability on bodies corporate in respect of breaches of customs or excise law resulting from certain actions by their directors, servants or agents (Clauses 17 and 43);
- . automatically index the rate of rebate which is payable to persons who have paid duty on diesel fuel used for certain off-road purposes (Clauses 13 and 37);

(iii) amendments to the Excise Act 1901, the Distillation Act 1901, the Spirits Act 1906 and the Coal Excise Act 1949 to:

- . increase the level of penalties and update the prosecutions provisions in those Acts (Clauses 39 to 42 and 47 to 54).

### Financial Impact Statement

The only measure contained in this Bill which will require any direct financial outlay by the Government is the proposal to index diesel fuel rebates (Clauses 13 and 37). The estimated costs of indexation for the 1985-86 and 1986-87 financial years is \$4.3 million per annum.



## NOTES ON CLAUSES

### Short Title

Clause 1 is a formal machinery clause

### Commencement

Clause 2 provides for the Act to come into operation on the 28th day after the day on which it receives the Royal Assent, with the exception of;

- . Sections 1 (short title), 2 (Commencement), and 18 to 22 (relating to the tender quota scheme of Part XV), which shall commence on the day on which the Act receives the Royal Assent;
- . Sections 4, 7, 9, 10, 11, 12, 34, 35, 36 and 44 (relating to ship's and aircraft's stores) which shall come into operation on such day or days as are fixed by Proclamation (to allow regulations to be made in respect of this matter);
- . Section 8, which shall come into operation when a corresponding section of the Customs and Excise Amendment Act 1983 is proclaimed;
- . Sub-section 21(1) (which corrects an incorrect reference to the Customs Tariff Act), which is deemed to have come into operation on the date that section was first inserted into the Act (ie - 1 January 1983);
- . Sections 24 and 25 which are consequential on the commencement date of the Customs Tariff (Stand-By Duty) Act 1985; and
- . Sections 29, 30, 31, 38, 45 and 46, which are dependant on the commencement dates of the various Acts to which these sections relate.

## PART II - AMENDMENTS OF CUSTOMS ACT 1901

### Principal Act

Clause 3 is a technical drafting clause, which formally defines the Customs Act 1901 as the Principal Act for the purposes of this Part of the Bill.

Entry of Goods

Clause 4 amends Section 36 of the Principal Act by inserting a new paragraph (j) which;

- . identifies a Collector at the place at which ship's or aircraft's stores are to be loaded as the appropriate Collector to whom entries in respect of the stores are to be given.

Ships and aircraft to obey signals

Clause 5 amends Section 59 of the Principal Act by;

- . substituting for references to the "coast of Australia" as the landward limit of the territorial sea, references to the "baseline of the territorial sea of Australia", as adopted pursuant to Section 7 of the Seas and Submerged Lands Act 1973 and notified in Gazette of 9 February 1983;
- . where baselines have not been proclaimed in respect of Australian islands, the relevant limit of the territorial sea will simply be measured from the coast of that island.

Breaking Bulk

Clause 6 repeals Section 73 of the Principal Act and substitutes a new section which;

- . incorporates the new references to "baselines of the territorial sea" as provided for in Clause 5.

Entry of warehoused goods

Clause 7 amends Section 99 of the Principal Act by adding two new sub-sections which;

- . expand the purposes for which warehoused goods may be entered by providing for entry of such goods for use as ship's or aircraft's stores. The sub-sections prohibit the removal of goods (other than exempt goods to which Section 128B applies) for either of those uses unless authority, pursuant to an entry, has been given.

Requirements for grant of depot licence

Clause 8 amends Section 106(4) of the Principal Act by omitting paragraphs (a) and (b) and substituting new paragraphs to make it clear that regulations may prescribe the

following criteria relating to the licensing of depots;

- (i) the size of the cargo storage and/or handling area of the depot;
- (ii) the tonnage of cargo passing through the depot per annum;
- (iii) the number of cargo containers handled by the depot per annum;
- (iv) the number of lines per annum on commercial documentation such as airway bills and bills of lading processed by the depot;
- (v) the number of consignments of cargo that would be likely to be processed at the depot per annum.

#### Unshipment of ship's and aircraft's stores

Clause 9 amends Section 128 of the Principal Act by adding two sub-sections which;

- . amplify the present requirement for entry of ship's and aircraft's stores that are, with the consent of a Collector, unloaded for another purpose, by providing a similar requirement for entry in respect of stores that are utilised for another purpose without being unloaded (e.g. ship-board function attended by persons other than passengers or crew members).

#### Entry of ship's stores and aircraft's stores

#### Returns relating to ship's stores and aircraft's stores

#### Authority for ship's stores or aircraft's stores to be given

Clause 10 inserts 3 new sections into the Principal Act which;

- . impose on owners of goods intended for use as ship's or aircraft's stores (other than exempt goods), an obligation not to allow loading of the goods unless Authority, pursuant to an entry, has been given.

Exemption is provided in respect of:

- excisable stores,
- non-sensitive stores as prescribed by regulation,

(new sub-section 128A);

- stores in respect of which approval has been given for the furnishing of periodic returns in lieu of entries,

(new sub-section 128B);

- a ship or aircraft owner is not to allow goods to be loaded as stores unless an official authority for so doing has been given (new sub-section 128C).

Ship's and aircraft's stores not to be taken on board without approval.

Clause 11 amends Section 129 of the Principal Act to;

- . modify the present provision under which a Collector may restrict the quantities of any stores to be loaded in Australia. The present restriction relating to any quantity of stores reasonable for the voyage or flight, is to be limited to only apply in respect of prescribed stores. (It is intended to prescribe for this purpose only spirituous and alcoholic liqueurs and tobacco products).

Certain ship's and aircraft's stores exempt from duty

Clause 12 repeals Sections 130 and 130A of the Principal Act and inserts a new section 130 which;

- . provides authority for regulations to declare certain stores, or classes of stores, to be "controlled goods" (as defined) and to set out the method by which quantities of such goods will be allowed to be available (by exemption from Customs Seal) for sale or supply duty-free to passengers and crew-members. It is proposed that regulations will declare only spirituous and alcoholic liqueurs and tobacco products to be controlled goods for the purposes of this new section.

Indexation of rate of rebate

Clause 13 inserts new provisions into the Principal Act to provide for the six monthly indexation of the rate of rebate which is payable to persons who have paid duty on diesel fuel used for certain off-road purposes;

- . proposed sub-section 164A(1) defines certain expressions for the purpose of the rebate. The definition of "relevant excise rate" relates to



the rate of duty specified for diesel fuel in the Excise Tariff Act 1921 which has a corresponding Customs Tariff rate. The "relevant rebate rate" is the rate as prescribed by regulation.

- . proposed sub-section 164(2) has the effect of indexing the prescribed customs rebate rate in the same manner that the excise rebate rate is indexed.
- . proposed sub-section 164(3) requires the Minister to notify in the Gazette any indexed rates of rebate.

#### Places set aside for purposes of Act

Clause 14 amends Section 234AA by adding a new sub-section which;

- . provides authority for signs to be displayed in places designated for the purposes of questioning passengers or examining baggage, warning that unauthorised use of cameras or sound recorders is prohibited.

#### Unauthorized entry to places and on ships, aircraft or wharves

Clause 15 makes technical drafting changes to Section 234A of the Principal Act.

#### Unauthorized use of cameras and sound recorders

Clause 16 inserts a new Section 234AB into the Principal Act which;

- . creates an offence for the unauthorised use of cameras or sound recorders in a place in which a sign referred to in Clause 14 (section 234AA) is displayed.

#### Conduct by directors, servants or agents

Clause 17 inserts a new section 257 into the Principal Act which imposes liability on bodies corporate in respect of breaches of the Act resulting from certain action by a body corporate's directors, servants or agents. The new section provides;

- . that where, in proceedings against a body corporate in respect of conduct engaged in by a director, servant or agent on behalf of the body corporate, it is necessary to establish a state of mind on the part of the body corporate, it is sufficient to show that the director, servant or agent acting within the scope of his actual or

apparent authority had that state of mind  
(new sub-section 257(1));

- . the conduct so engaged in by the director, servant or agent is deemed to have also been engaged in by the body corporate (new sub-section 257(2));
- . the above provisions equally apply in respect of non-incorporated principals and servants or agents of such principals (new sub-sections 257(3) and (4)).

PART XV - TENDERS FOR RIGHTS TO ENTER GOODS FOR HOME CONSUMPTION (AT CONCESSIONAL RATES)

Clause 18 is a technical drafting clause, which amends the heading to Part XV consequent upon the amendments to that Part outlined below.

Interpretation

Clause 19 amends Section 265 of the Principal Act, consequent upon the amendments to Section 266 outlined in Clause 20.

Tender Schemes

Clause 20 amends Section 266 of the Principal Act by;

- . deleting the reference to "a year", and inserting instead a provision which will enable the quota period to be specified in a Scheme formulated by the Minister for each particular quota tender. The proposed amendment is designed to dispense with a quota system tied to a year, enabling the Minister to determine the periods of validity for which tender quota schemes are to run.

Undertakings relating to tenders

Clause 21 amends Section 267 of the Principal Act by;

- . changing the dual requirement of the tender-quota undertaking, so that successful tenderers in future need only undertake to enter the relevant goods for home consumption, and not also undertake to import the goods. It has been alleged the practical effect of the dual obligation in the current undertaking has been to impose both a substantial administrative burden and a quite unintended pecuniary liability on importers (particularly larger corporations) who operate as legally different corporate entities,

- as a result of the above, a consequential amendment to paragraph 1(b) (relating to Ministerial Determinations under Section 273 issued for the purposes of tender-quota schemes), is required. The references to determinations will need to be altered so that they relate to the entry of the goods for home consumption, rather than the importation of such goods.

#### Transfers of rights to enter goods for home consumption at concessional rates of duty

Clause 22 amends Section 268 to effect the changes dealt with in Clause 21 above.

#### Revocation of concession orders

Clause 23 amends Section 269P of the Principal Act to enable the revocation of tariff concession orders in several additional circumstances. These are where the Minister becomes satisfied that an order;

- has become obsolete (new section 269P(2A)), or, where by virtue of some mistake or a change in the tariff classification for the goods, the order incorporates a defective description of the particular goods, or keys the particulars goods to an incorrect tariff classification (new section 269(2)B),
- in the circumstances envisaged by new section 269(2)B, the tariff concession order is to be re-issued, with the correct description or tariff classification (new sub-section 269(II)).

#### Review of decisions relating to Customs Tariff (Stand-by Duty) Act

#### Statement to accompany notification of decisions

Clauses 24 and 25 amend Section 273J of the Principal Act to add additional decisions for review by the Administrative Appeals Tribunal. The grounds relate to the proposed new Customs Tariff (Stand-By Duty) Act 1985.

#### Saving

Clause 26 is a transitional savings provision, which continues the existing provisions of Part XV (relating to quota-tender schemes) for schemes in existence prior to the commencement of this Amendment Act.

### PART III - AMENDMENT OF CUSTOMS AMENDMENT ACT 1979

Clauses 27 and 28 effect minor technical drafting changes to the Act.

PART IV - AMENDMENTS OF CUSTOMS AND EXCISE AMENDMENT ACT 1982

Clauses 29, effect technical drafting changes to the Act.  
30 and 31

PART V - AMENDMENTS OF EXCISE ACT 1901

Principal Act

Clause 32 is a technical drafting clause - identifies the Excise Act 1901 as the Principal Act for the purposes of this Part.

Manufacturers to be licenced

Clause 33 makes a technical amendment to the Principal Act, to enable the regulations to prescribe circumstances which exempt persons from the licensing requirements of the Act.

Entry for home consumption, etc

Clause 34 amends Section 58 of the Principal Act by adding two new paragraphs which;

- . provide authority for entries to be made for excisable goods to be removed for use as ship's or aircraft's stores.

Authority for exportation of excisable goods to be given

Clause 35 effects a minor technical drafting change to Section 58B of the Principal Act.

Returns relating to ship's stores and aircraft's stores

Authority for ship's stores or aircraft's stores to be given

Permission to deliver prescribed goods for home consumption without entry

Clause 36 inserts three new sections into the Principal Act, (similar to those inserted by Clause 10 for the Customs Act) which;

- . provide authority for the Minister to declare by Gazette Notice the excisable goods that may be removed for use as ship's or aircraft's stores, and allow periodic returns of such removals to be given in lieu of giving an entry in respect of each removal (new sections 58C and 58D),
- . place an obligation on ship and aircraft operators not to take on board stores that, unde

the Act, are required to be entered, unless authority pursuant to an entry has been given (new section 58E).

#### Indexation of rate of rebate

Clause 37 inserts a new section into the Principal Act to provide for the automatic indexation of the rate of rebate on diesel fuel, in exactly the same terms as for the Customs Act (see clause 13).

#### Certain interest not payable

Clause 38 introduces a new proposed section into the Principal Act to make it clear that (with the exception of the circumstance set out in sub-section 154(2) of the Act) interest will not be payable by the Commonwealth where amounts paid by way of Excise duty are repayable. The introduction of this provision is made as a consequence of legal advice which indicates that interest may be claimed in respect of Excise duty repayments.

#### Institution of prosecutions

Clause 39 repeals 3 sections of the Principal Act and inserts a new section which;

- . brings the prosecutions provisions of the Excise Act 1901 into line with those of the Customs Act, which were substituted by the Customs and Excise Amendment Act of 1982 (Act No.81) (new sub-section 134(1));
- . confers jurisdiction on middle-tier Courts to hear and determine Excise prosecutions for penalties not exceeding \$20,000 (new sub-section 134(2));
- . jurisdiction in relation to prosecutions, for which penalties in excess of \$20,000 are sought, remains with Supreme Courts of the various States and Territories;
- . the penalty that may be imposed by courts of summary jurisdiction is increased from \$1,000 to \$5,000 ( new sub-section 134(4) ).

#### Prosecution in accordance with practice rules

Clause 40 amends Section 136 of the Principal Act to;

- . make provision for the conduct of proceedings in the newly-invested middle-tier Courts to be in accordance with established rules of practice,

procedures or Court or Judge's directions, which at present apply in respect of Supreme Court proceedings.

Information, etc, to be valid, etc, if in words of Act

Clause 41 amends Section 139 of the Principal Act to;

- . make provision for all the various processes by which proceedings are originated to be valid if set forth substantially in the words of the Act.

No objections for informality

Clause 42 amends Section 140 of the Principal Act to;

- . give a discretion to a Court to correct any defect in whatever available process originated in proceedings before it.

Conduct by directors, servants or agents

Clause 43 inserts a new section into the Principal Act in exactly the same terms as Clause 17 (relating to the Customs Act) to impose liability on bodies corporate in respect of breaches of the Excise Act, resulting from certain action by the companies' directors, servants or agents.

Ship's stores and aircraft's stores

Clause 44 amends Section 160A of the Principal Act to;

- . provide for exemption from Excise duty of certain ship's and aircraft's stores. Authority is given for regulations to declare certain stores (e.g. spirits, alcoholic liqueurs and tobacco products) to be "controlled goods" in which case exemption from duty applies only in respect of the quantities of such stores approved for supply duty free in accordance with a formula to be specified in the regulations.

Interpretation

Clause 45 inserts a technical provision into the Principal Act to make it clear that by-laws may be made under Part XV for the purpose of an item or section of the Excise Tariff Act 1921.

Minister may make by-laws

Clause 46 is consequential upon the provisions of Clause 45 to also make it clear that by-laws may be made under Part

XV for the purposes of a proposed section of the Excise Tariff Act 1921.

Amendments of Principal Act relating to offences

Clause 47 provides for increases in levels of penalties for many offences against the Excise Act 1901 as set out in Schedule 1.

Application

Clause 48 is a savings provision which makes the increased penalties inapplicable in relation to offences committed before the commencement of Clause 47, except where a proposed variation of a penalty provision would operate to the advantage of a convicted defendant.

PART VI - AMENDMENT OF COAL EXCISE ACT 1949

Clause 49 identifies the Coal Excise Act 1949 as the Principal Act for the purposes of Part VI.

Clause 50 provides increases in pecuniary penalties for a number of offences against the Coal Excise Act that are committed after commencement of the proposed section.

PART VII - AMENDMENTS OF DISTILLATION ACT 1901

Clause 51 identifies the Distillation Act 1901 as the Principal Act for the purposes of Part VI.

Clause 52 provides for increases in pecuniary penalties for a number of offences against the Distillation Act 1901 that are committed after commencement of the proposed section.

PART VIII - AMENDMENT OF THE SPIRITS ACT 1906

Clause 53 identifies the Spirits Act 1906 as the Principal Act for the purposes of Part VIII.

Clause 54 provides for increases in pecuniary penalties for a number of offences against the Spirits Act 1906 that are committed after the commencement of the proposed section.

Schedule 1 : sets out the proposed increases in penalties for offences against specified sections of the Excise Act 1901

- Schedule 2 : sets out the proposed increases in penalties for offences against specified sections of the Coal Excise Act 1949
- Schedule 3 : sets out the proposed increases in penalties for offences against specified sections of the Distillation Act 1901
- Schedule 4 : sets out the proposed increases in penalties for offences against specified sections of the Spirits Act 1906.