

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

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

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

CUSTOMS AND EXCISE LEGISLATION
AMENDMENT BILL 1986

Outline

This Bill proposes to amend the Coal Excise Act 1949, the Customs Act 1901, the Excise Act 1901, and the Customs and Excise Legislation Amendment Act 1985, to give effect to various Government decisions relating to subject matter contained in those Acts, and to effect various technical amendments to the Acts.

The major changes contained in the Bill are as follows:

- (i) amendments of the Coal Excise Act 1949;
 - . to update the method of ascertaining the excise duty imposed by the Act, to reflect current industry practice for processing and beneficiation of coal (Clauses 4 to 6);
- (ii) amendments of the Customs Act 1901;
 - . to provide the necessary authority for officers of Customs to seize protected cultural objects notified by the Minister for Arts, Heritage and Environment pursuant to the Protection of Movable Cultural Heritage Act 1986, whilst those objects are subject to the control of the Customs (Clauses 8, and 13 to 15);
 - . to introduce new tariff concession arrangements on goods re-imported after repair or renovation, to permit duty-free entry of such goods where it is established that the repair or renovation is not capable of being performed in Australia in the normal course of business (Clauses 16 to 18);
- (iii) amendments of the Excise Act 1901;
 - . to empower, by regulation, the exemption, of goods from the requirement of entry as ship's or aircraft's stores, similar to the existing provision in the Customs Act 1901 (Section 128A) (Clause 23); and
 - . to effect a drafting change to Section 104 of the Act (relating to the power to detain and search persons) to bring that provision into line with the requirements of the Sex Discrimination Act 1984 (Clause 24).

Financial Impact Statement

The provisions of this Bill have no direct financial implications.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Short Title

Clause 1 is a formal machinery clause.

Commencement

Clause 2 provides for the Act to come into operation on the day on which it receives the Royal Assent (sub-clause (1)), with the exception of:

sub-section 8(2) and sections 10,13,14, and 15 (relating to consequential amendments to the Customs Act 1901 to provide the necessary authority for officers of Customs to seize cultural objects notified by the Minister for Arts, Heritage and Environment pursuant to the Protection of Movable Cultural Heritage Act 1986), which are to come into operation on the commencement of the Protection of Movable Cultural Heritage Act 1986 (sub-clause (2));

sections 16, 17 and 18 (relating to the proposed new tariff concession arrangements on goods re-imported after repair or renovation), which are to come into operation on 1 July 1986, the date of commencement of the corresponding amendments to the Customs Tariff Act 1982 (sub-clause (3));

sections 20 and 21 (relating to drafting corrections to amendments made to the penalty provisions of the Excise Act 1901 in the Customs and Excise Legislation Amendment Act 1985) which shall be deemed to have come into operation on 27 June 1985, the day on which the relevant section of the Customs and Excise Legislation Amendment Act (No 40 of 1985) came into operation (sub-clause (4));

section 23 (relating to proposed amendments to the Excise Act 1901 to empower by regulation the exemption of goods from the requirement of entry as ships' or aircrafts' stores), which shall come into operation on the proclamation of the relevant section of the Customs and Excise Legislation Amendment Act (No. 40 of 1985) (sub-clause (5)).

PART II - AMENDMENTS OF THE
COAL EXCISE ACT 1949

Principal Act

Clause 3 is a formal machinery clause which identifies the Coal Excise Act 1949 as the Principal Act for the purposes of this Part of the Bill.

Removal of Coal

Clause 4 effects a technical drafting change to Section 24 of the Principal Act, by deleting sub-section 24(3). That sub-section is superfluous as a consequence of the proposed deletion of Section 24B of the Principal Act (Clause 6), which has become redundant.

Ascertaining quantities of coal

Clause 5 inserts a new Section 24AA into the Principal Act, to provide that the method for determining the quantities of coal produced by a producer (principally for ascertaining the amount of excise duty payable on the coal) shall be by reference to the invoice documents of the producer, recording the quantities of coal sold (proposed new sub-sections (1) and (2)).

as a method for ascertaining duty payable, the "sales" or "invoice" weight of coal, as opposed to the quantity of coal removed from a mine, more accurately reflects industry practice and current technology in terms of the processing and weighing of raw coal,

"invoice document" is defined to mean the invoice provided by the producer to the purchaser, or such other document approved by a Collector (proposed new sub-section (3)).

Repeal of Section 24B

Clause 6 repeals Section 24B of the Principal Act, relating to the remission of duty on exported coal, which is redundant, having expired at the commencement of the 1971-72 financial year.

PART III AMENDMENTS OF THE
CUSTOMS ACT 1901

Principal Act

Clause 7 is a formal machinery clause which identifies the Customs Act 1901 as the Principal Act for the purposes of this Part of the Bill.

Interpretation

Clause 8 amends Section 4 of the Principal Act as follows;

- sub-clause (1) removes from the definition of the phrase "Answer questions", the word "Collector, and substitutes "an officer of Customs", to make the definition consistent with the substantive power in the Act to question passengers, etc (Section 195);
- sub-clause (2) introduces a new definition of "protected object", as a consequence of the proposed new section 203A relating to new powers of Customs officers to seize protected cultural objects notified by the Minister for Arts, Heritage and Environment pursuant to the Protection of Movable Cultural Heritage Act 1986.

Collectors of Customs

Clause 9 is a technical drafting amendment which adds to Section 8 of the Principal Act a reference to "the Collector", for the purpose of defining what is meant by that reference where it appears throughout the Act.

Customs control of goods

Clause 10 amends Section 30 of the Principal Act consequent upon the proposed new regime for the seizure of protected cultural objects effected by Clause 11 and the Protection of Movable Cultural Heritage Act 1986.

- the amendment to this Section will deem protected objects (as defined in; sub-clause 8(2)) for export to be subject to the control of Customs from the time the objects are brought into any prescribed place for export, until their exportation to parts beyond the seas

Delivery of goods upon giving of security or undertaking for payment of duty

Clause 11 is a technical amendment to Section 162 of the Principal Act to provide authority for regulations made pursuant to that section to specify that conditions, restrictions or requirements specified in any permission granted under section 162 of the Act are to be complied with in relation to the goods. Section 162 of the Principal Act permits a Collector of Customs to allow in certain circumstances temporary importation of certain goods imported by certain persons without payment of Customs duty.

Delivery of goods on the giving of a general security or undertaking for payment of duty

Clause 12 is a technical amendment (similar to clause 11) to section 162A of the Principal Act to provide authority for regulations made pursuant to that section to require compliance with conditions, restrictions or requirements (including time and purpose) specified in any instrument authorised by the regulations. Section 162A of the Principal Act is the authority for regulations under that section to provide for temporary importation of certain goods without payment of Customs duty.

Seizure of protected objects

Clause 13 introduces a new Section 203A into the Principal Act, to provide the necessary authority for officers of Customs to seize protected cultural objects, as part of the administrative package for the Protection of Movable Cultural Heritage Act 1986, which is designed to protect Australia's heritage of cultural objects and extend certain forms of protection to the cultural heritage of other nations. In particular;

- proposed new sub-section (1) defines for the purposes of the new section the Protection of Movable Cultural Heritage Act 1986 as the relevant Act, the Minister administering that Act (the Minister for Arts, Heritage and Environment) as the relevant Minister, and inspectors under that Act;

- proposed new sub-section (2) outlines the notification procedure by which the Minister for Arts, Heritage and Environment shall notify the Customs of particular objects which are to be protected;

- proposed new sub-section (3) empowers officers of Customs to seize such protected objects whilst such objects are subject to the control of the Customs; and

- proposed new sub-section (4) obliges the Customs to deliver forthwith any such seized goods to the administrative control of inspectors appointed under the Protection of Movable Cultural Heritage Act 1986.

Seized goods to be secured

Clause 14 effects a technical drafting amendment to Section 204 of the Principal Act, as a consequence of the proposed new power of seizure in Clause 13. The amendment makes it clear that the normal security requirement for goods seized by the Customs does not apply to protected objects seized pursuant to proposed new section 203A (Clause 13).

Forfeited Goods

Clause 15 effects a technical drafting change to Section 229 of the Principal Act, similar to that required by Clause 14. The amendment makes it clear that the forfeiture provisions of the Customs Act do not apply to protected objects forfeited or liable to forfeiture under the Protection of Movable Cultural Heritage Act 1986.

Interpretation

Clause 16 amends Section 269B of the Principal Act to insert several new definitions into Part XVA as a consequence of the proposed new commercial tariff concession arrangements on goods re-imported after repair or renovation. In particular;

- a new definition of "repair" is inserted in sub-section (1), to include the renovation of goods;

- a person's capacity to repair particular goods in the normal course of business (which must be adjudged by the Comptroller-General of Customs before any concession order can be issued) is defined in terms of whether or not that person is prepared to accept orders to repair such goods in the normal course of business (proposed new sub-section (8))

Commercial Tariff Concession Orders

Clause 17 amends Section 269C of the Principal Act to insert three new sub-sections which introduce the proposed new commercial tariff concession arrangements for goods re-imported after repair or renovation. The proposed new sub-sections will permit duty free entry of goods re-imported after repair or renovation if the Comptroller-General of Customs is satisfied that the repair or renovation is not capable of being performed in Australia in the normal course of business;

concession orders can be made in respect of particular goods (proposed new sub-section 1A), or a particular class or kind of goods (proposed new sub-section 1B).

Comptroller may refuse to make certain concession orders

Clause 18 amends Section 269E of the Principal Act, to grant to the Comptroller-General of Customs a new discretionary power in relation to the proposed new re-import concessions (Clause 17). The Comptroller has a new discretion to refuse to make a commercial tariff concession order in respect of particular goods if, in the opinion of the Comptroller, the making of such an order would be likely to have a substantially adverse effect on the market for any goods produced or services provided in Australia, or would not be in the national interest (proposed new sub-section 1A);

if a concession order is not made because the Comptroller is of the opinion it would not be in the national interest to do so, the requirements of sub-section 269E(3) will apply to require

notification in the Gazette of the refusal, and the reasons for the refusal. (paragraphs (c) and (d))

PART IV - AMENDMENTS OF THE
CUSTOMS AND EXCISE LEGISLATION
AMENDMENT ACT 1985

Principal Act

Clause 19 is a technical drafting clause, which identifies the Customs and Excise Legislation Amendment Act 1985 as the Principal Act for the purposes of this Part of the Bill.

Application

Clause 20 amends an incorrect section reference relating to the commencement of the pecuniary penalties which were introduced by Section 47 of the Principal Act.

Amendment of Schedule to Principal Act

Clause 21 amends an incorrect pecuniary penalty in the Schedule to the Principal Act, introduced by Section 47 referred to in Clause 20 above.

PART V - AMENDMENTS OF THE
EXCISE ACT 1901

Principal Act

Clause 22 is a technical drafting clause which identifies the Excise Act 1901 as the Principal Act for the purposes of this Part of the Bill.

Entry of ship's stores and aircraft's stores

Clause 23, effects a redraft of Section 58D of the Principal Act, to bring it into line with the similar provision in the Customs Act 1901 (Section 128A). The redraft in essence adds two new sub-sections (sub-sections (3) and (4)) which;

- . make provision for exemption from the obligation imposed on owners of ships or aircraft to not allow the loading of goods intended for use as ship's or aircraft's stores unless authority, pursuant to an entry, has been given,

- . provision is made for regulations to exempt stores from the entry requirement in certain circumstances, and for periodic returns in lieu of entries in other approved situations.

Power to detain and search suspected persons

Clause 24 amends Section 104 of the Principal Act, as a consequence of the requirements of Section 40 of the Sex Discrimination Act 1984. The drafting change updates the search provision, where members of the opposite sex are involved, to now require that where persons are to be searched for the purposes of the section, they are only to be searched by a person of the same sex (proposed new sub-section (2))

