1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1988

REPLACEMENT EXPLANATORY MEMORANDUM

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

THIS MEMORANDUM REPLACES THE EXPLANATORY MEMORANDUM PRESENTED TO THE HOUSE OF REPRESENTATIVES ON 7 NOVEMBER 1988.

10751/89 Cat. No. 89 4288 X

Printed by Authority by the Commonwealth Government Printer

Customs and Excise Legislation Amendment Bill 1988

Outline

This Bill is an omnibus Bill proposing miscellaneous amendments to the Customs Act 1901 and the Excise Act 1901.

The main proposals contained in the Bill are to:

i) amend the manner is which the quantity of beer produced is measured for the purposes of assessing both Customs and Excise duty (Clauses 10 and 33);

ii) amend the controls pertaining to defence exports, so as to permit the Minister for Defence to suspend licences and permissions to export certain such goods from Australia in appropriate circumstances (Clause 8);

iii) extend the duty free entry to the Australian mainland of goods from Christmas Island, Cocos (Keeling) Islands and Norfolk Island to those goods which were 50% produced on those Islands (Clause 11);

iv) remove the sanction of forfeiture of goods for false or misleading statements (Clause 21), and insert instead a pecuniary penalty where such statements are knowingly or recklessly made (Clause 23) and an administrative penalty where statements are made in other circumstances (Clause 23A); and

v) provide, as part of the Government's decision to impose excise duties on Government instrumentalities, that existing legislative provisions protecting those instrumentalities from excise duty are of no effect. (paragraph 29(b) and Clause 30).

In addition, the Bill makes a number of other minor, technical amendments to both the Customs Act 1901 and the Excise Act 1901.

Financial Impact Statement

The change in the manner in which beer is measured for the purposes of assessing duty is not intended to net the Government any more revenue. If necessary, duty rates on beer may be adjusted for an overall, industry-wide revenue neutral result.

The revenue impact of extending duty free concessions to the 3 external territories is difficult to assess, as much depends on the level of exports coming from those Islands. However, it is anticipated that the extension of the concession will only lead to a minimal loss of Government revenues.

The deterrent element of the administrative penalty duty clause is expected to significantly reduce for future years the $26 million duty short-payment in calendar year 1988 which was directly attributable to errors on import entry documentation.

Costs of administration of the new review circumstance proposed for remission decisions under the Clause (new section 243U - Clauses 23A and 27A) is difficult to quantify, but is expected to be in the order of $500,000.

The remaining amendments to the Acts have no direct financial impact.

NOTES ON CLAUSES

PART I - PRELIMINARY

Short Title

Clause 1 provides for the citation of this Act as the Customs and Excise Legislation Amendment Act 1988.

Commencement

Clause 2 provides for the Act to commence on the day on which it receives the Royal Assent, with the exception of the following provisions:

- Clause 6, which shall be taken to have commenced on 8 July 1988, the date the relevant regulations made pursuant to Section 30A of the Principal Act (Statutory Rules 1988 No. 179) were gazetted (subclause (2));

- Paragraph 8(1)(a), which shall be taken to have commenced on 27 August 1987, the date Statutory Rules 1987 No. 176 inserted regulation 13G into the Customs (Prohibited Exports) Regulations (subclause (3));

- Clause 18, which corrects a typographical error, shall be taken to have commenced on 15 October 1987, the date the original amendment inserted by the Sea Installations (Miscellaneous Amendments) Act 1987 commenced (subclause (4));

- Paragraph 29(b) and Clause 30, which remove any exemptions to pay excise duty contained in legislation establishing Government Business Enterprises (GBE's), shall commence operation on 1 July 1989, the day announced by the Treasurer in the May 25 1988 Economic Statement as the date on which GBE's are to commence paying excise duty. In addition, the proposed penalty provisions for the making of a false or misleading statement will commence on 1 July 1989. This will enable both the Customs community and the Customs administration adequate lead time to prepare for the new regime (subclause (5));

. Paragraph 4(b) and clauses 9, 10 and 32 to 36 inclusive, which deal with the manner in which beer is measured for the purposes of both customs or excise duty, commenced operation on 1 February 1989 (subclause (6)).

- This retrospective commencement date was agreed to by both industry and Government as the date the new measurement regime was to commence.

. Part IV of this Act, which corrects a typographic error in the Offshore Installations (Miscellaneous Amendments) Act 1982, shall be taken to have commenced 28 days after the Offshore Installations (Miscellaneous Amendments) Act 1982 received the Royal Assent (ie. 19 July 1982) (subclause (7)).

PART II - AMENDMENTS TO THE CUSTOMS ACT 1901

Principal Act

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

Interpretation

Clause 4 amends section 4 of the Principal Act by adding a definition of "beer" to the Principal Act, so that the term means any liquor on which, under the name of beer, any duty of Customs imposed by the Parliament is payable.

. This definition will commence operation on 1 February 1989, the day that all other measures relating to the measurement of beer commence operation.

Delegation by Minister

Clause 5 repeals the existing section 9 of the Principal Act and replaces it with a new section 9, to bring the Minister's power of delegation into line with the Comptroller-General's power of delegation under section 14 of the Customs Administration Act 1985, insofar as the Minister may now delegate both powers and functions. This will obviate the need to determine whether something is more properly classified as a power or function (subclause 1)

. This amendment also restricts the class of persons to whom the Minister may delegate his powers to "officers of Customs" (a term defined in subsection 4(1) of the Customs Act 1901, thus acquitting an undertaking given to the Senate Standing Committee for the Scrutiny of Bills (reported in the 16th Report for 1988 of that Committee dated 30 November 1988) to restrict the power of delegation.

- Currently, the Minister is entitled to delegate his powers to "any person".

Subclause (2) is a saving provision that permits delegations of power made by the Minister prior to the commencement of this section to remain in effect.

Exemptions under Torres Strait treaty

Clause 6 inserts the words "or flight" after the word "voyage" in sub-subparagraph 30A(4)(b)(ii)(B).

. Subsection 30A(3) of the Principal Act deals with exemptions from provisions of the Customs Acts where certain ships carry certain passengers on certain voyages. Subsection 30A(4) on the other hand relates to voyages and flights of both ships and aircraft in specified circumstances. The exception to this is found in subsubparagraph 30A(4)(b)(ii)(B) where only voyages are referred to, not voyages and flights. This clause is designed to correct this drafting oversight.

Prohibition of the importation of goods

Clause 7 inserts a new head of power in relation to prohibited imports in section 50 of the Principal Act, to prohibit the importation of goods in certain circumstances.

. This amendment to the prohibited import regime is similar to the proposal amending the prohibited exports regime, discussed in greater detail in the clause note to Clause 8 (below).

Prohibited Exports

Clause 8 amends section 112 of the Principal Act by inserting a new paragraph 112(2)(aa), to permit the prohibition by regulation of the exportation of goods in specified circumstances (paragraph (1)(a))

. This provision, and subclause (2), are designed to place beyond doubt the validity of Regulation 13G of the Customs (Prohibited Exports) Regulations. Regulation 13E prohibits the exportation of goods controlled under Regulation 13E as "dual-use" technology goods to destinations where it is believed the goods will then be forwarded to proscribed destinations (ie. proscribed under Schedule 16 of the Customs (Prohibited Exports) Regulations). It was argued the current head of power in paragraph 112(2)(b) of the Principal Act may not prove sufficient to support this control. The new head of power will also allow the making of regulations in respect of other prohibited exports in circumstances similar to those that arose for Regulation 13G.

Paragraph (1)(b) similarly inserts new subsection 112(2AB), which allows the Minister for Defence to effectively suspend a licence or permission to export goods which are controlled under the Regulations for which the Minister for Defence is responsible (in particular, Regulation 13B and Schedule 13 and Regulation 13E and Schedule 16 to the Customs (Prohibited Exports) Regulations) during the currency of that licence or permission, so that the licensed exporter is prohibited from exporting either all goods or specific goods to a specified place because a situation in that place, or a situation in another place to which there is a reasonable likelihood that such goods will be re-exported from that specified place, makes the exportation of such goods from Australia contrary to the national interest;

. This is intended to provide a necessary control safeguard given the Government's announced relaxation of defence export controls. The new defence export policy is designed to restrict the class of goods currently subject to control via export permissions to essentially only those goods which are designed for military purposes or are of major military significance. However, potentially lethal non-military goods will continue to remain subject to control where circumstances (which are contrary to the national interest) arise in a likely destination of the goods,

. Where the Minister for Defence is of the opinion that such circumstances exist, and publishes a notice that controlled goods are not to be exported to such places, the authority to export in any licence or permission covering such goods is deemed to have been withdrawn (from a day not earlier than the day on which the notice is published in the Gazette - new subsection 2AC) until further notice.

- new subsection 2AD provides that any failure to comply with the requirements of paragraph (2AB)(b) ie. failure to give notice to the holder of the licence or permission, does not affect the validity of a notice that is published in the Gazette and the required newspapers. This "failure to comply with a notice" provision is similar to provisions in other Commonwealth legislation (for example, subsection 34(2) of the Bounty (Books) Act 1986).

Manner of fixing duty

Clause 9 is a technical amendment to Section 136 of the Principal Act to make clear that the method used to determine the amount of customs duty payable on goods that are entered according to the good's reputed quantity (as prescribed by section 136), does not apply to beer entered for home consumption after 31 January 1989, when the new section 137 (added by clause 10 below) commences operation.

. This clause commenced operation on 1 February 1989, when all provisions relating to the measurement of beer commenced operation.

Manner of determining volumes of and fixing duty on, beer

Clause 10 inserts a new section 137 of the Principal Act, which sets down the manner in which the dutiable quantity of beer in containers is to be assessed.

. The new section 137 provides that the procedure to be employed in determining the dutiable contents of containers will now be:

(a) for beer packaged in "bulk containers" (i.e. containers with more than 2 litres of beer in them, as defined in new subsection 137(4)), which is entered for home consumption between 1 February 1989 and 30 June 1991 and

30 June 1991 and where the volume of the contents of the container has been nominated for the purposes of the entry:

(i) if the actual contents of the container do not exceed 101.5% of the nominated volume, the container shall be deemed to contain the nominated volume of beer for the purposes of assessing customs duty (new paragraph 137(1)(a));

(ii) if the actual contents exceed 101.5% of the nominated volume, the dutiable contents of the container will be deemed to be the nominated volume of the container plus the amount of beer packaged in the container that exceeds 101.5% of the nominated volume of the container (new paragraph 137(1)(b));

(b) for beer packaged in bulk containers entered for home consumption after 30 June 1991 and where the volume of the contents of the container has been nominated for the purposes of the entry:

(i) if the actual contents of the container do not exceed 101% of the nominated volume, the container shall be deemed to contain the nominated volume of beer for the purposes of assessing customs duty (new paragraph 137(1)(c);

(ii) if the actual contents exceed 101% of the nominated volume, the dutiable contents of the container will be deemed to be the nominated volume of the container plus the amount of beer packaged in the container that exceeds 101% of the nominated volume of the container (paragraph 137(1)(d));

(c) for beer packaged in bulk containers entered for home consumption after 31 January 1991 and where the volume of the contents of the container has not been nominated for the purposes of the entry, customs duty will be payable on the actual contents of the bulk container (new paragraph 137(1)(e).

(d) for beer packaged in containers other than "bulk containers" (ie. containers with 2 litres of beer or less in them, as defined in new subsection 137(4)) entered for home consumption after 1 February 1989 and where

the volume of the contents of the container has been indicated on the container;

(i) if the actual contents of the container do not exceed 101.5% of the labelled volume, the container shall be deemed to contain the labelled volume of beer for the purposes of assessing customs duty (new paragraph 137(2)(a));

(ii) if the actual contents exceed 101.5% of the labelled volume, the dutiable contents of the container will be deemed to be the labelled volume of the container plus the amount of beer packaged in the container that exceeds 101.5% of the labelled volume of the container (new paragraph 137(2)(b)); and

(e) for beer packaged in containers other than bulk containers and entered for home consumption after 31 January 1991, where the volume of the contents of the container has not been indicated on the container customs duty will be payable on the actual contents of the container (new paragraph 137(2)(c));

New subsection 137(3) permits the Customs Service to ascertain the volume of beer produced by a manufacturer by methods of sampling approved by the Comptroller-General of Customs, rather than measuring the contents of each container and bulk container of beer.

. It is not possible to measure the volume of beer in all containers and bulk vessels, due to the sheer magnitude of the task. Additionally, the gaseous nature of the product does not permit accurate metering unless highly sophisticated and very expensive meters are installed. Large production runs of almost identical containers and bulk vessels enable statistically defensible sampling schemes (that are continually being refined) to be applied in arriving at a true average volume for each container. Customs are therefore able to be confident that the correct amount of duty is being collected.

The background and methodology for any new sampling method is only implemented following extensive consultation with the brewing industry.

This clause commenced operation on 1 February 1989, when all provisions relating to the measurement of beer commenced operation.

When goods treated as the produce or manufacture of a country

Clause 11 amends section 151 of the Principal Act by inserting a new subsection 151(12A), which allows goods to be considered to be the manufacture of the external territories of Christmas Island, Norfolk Island and Cocos (Keeling) Islands, where not less than 50% of the goods' factory or works costs is represented by the value of labour and/or materials from those territories or from Australia and those territories.

This is a reduction from the current 75% "local content" requirement under subsection 151(12). This is part of the Government's effort to assist the diversification of each Territory's local economy by encouraging local residents to develop small industries that will generate local employment and income.

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

Clause 12 corrects a typographical error contained in section 164 of the Principal Act, by omitting the words 'because only that' and substituting 'only because' (paragraph 12(1)(a)); and

inserts:

. a new subsection 164(4AA) which will require a person applying for diesel fuel rebate to do so according to a form approved by the Comptroller-General of Customs (paragraph 12(1)(b))

- Currently, the forms that must be used by persons who are required to tender information pursuant to this section are prescribed for the purpose by regulation. So as to permit greater flexibility amongst the different kinds of users, and obviate the need to amend the Customs Regulations every time an alteration to the forms is required, it is now proposed to allow persons to use forms that have been approved for the purpose by the Comptroller,

The existing paragraphs 164(4A)(a),(b) and (c) (paragraph 12(1)(c)) are deleted, as they are now unnecessary following the insertion of the new subsection 164(4AA).

Interpretation

Clause 13 amends section 180 of the Principal Act, so that in Part XI of the Principal Act, (which deals with the licensing and disciplining of licensed Customs Agents), references to the Comptroller shall be read as references to a Collector of Customs of a State or Territory, except in the sections of the Principal Act specified in this Clause.

in the Customs Administration (Transitional Provisions and Consequential Amendments) Act 1986 (Act No. 10, 1986), 10, 1986), the functions of the Minister contained in Part XI of the Principal Act were added to the responsibilities already exercised by the Comptroller under this Part. Whilst it was intended that State and Territory Collectors exercise the powers previously held by the Comptroller, it was not intended for the Collectors to be vested with the responsibilities previously vested in the Minister. This clause makes the necessary amendments to the Principal Act to give effect to that intent.

Renewal of licence

Clause 14 amends section 183CJ of the Principal Act, to preserve the right of a Collector of Customs of a State or Territory to renew a Customs Agents' licence, unless the Comptroller orders that the licence not be renewed, pursuant to paragraph 183CS(1)(d) of the Principal Act, or the Customs Agent has failed to give a security as required.

. The clause also provides that Customs Agents may now have two months within which to renew their Customs license, rather than the current one month.

- Customs agents licences commonly expire at the end of a given calendar year, which means agents must apply for renewal during the busy month of December. The proposed extension of the period within which one might apply for renewal will alleviate this problem, and is supported by the relevant Customs Agents' Organisations.

. This change is supported by the relevant Customs Agents' Organisations.

Investigation of matters relating to an agents licence

Clause 15 makes minor amendments to the wording of section 183CQ of the Principal Act as a consequence of the amendments to the Principal Act proposed in Clause 14.

Interim suspension by Comptroller

Clause 16 makes a minor amendment to the wording of section 183CR of the Principal Act as a consequence of the amendment to the Principal Act proposed in Clause 14.

National Customs Agents Licensing Advisory Committee

Clause 17 makes minor amendments to the wording of section 183D of the Principal Act as a consequence of the amendment to the Principal Act proposed in clause 14.

Power to board and search

Clause 18 corrects a typographical error in paragraph 187(c) of the Principal Act (inserted by Act No. 104 of 1987) by changing a reference in that paragraph from "an" resources installation to "a resources installation".

. This clause shall commence operation on 15 October 1987, the day the Sea Installations (Miscellaneous Amendments) Act 1987 commenced operation.

Power to impound certain forfeited goods and release them on payment of duty and penalty.

Clause 19 amends section 209 of the Principal Act by·

. removing the reference to paragraph 229(1)(i) of the Principal Act (paragraph (a))

- section 209 deals with the manner by which a person may recover certain goods that are deemed to have been forfeited because of the operation of section 229 of the Principal Act. As paragraph 229(1)(i) has been removed from the Act, (see clause 21) the reference contained in section 209 must be removed; and

. amending subsection 209(6) by clarifying that when a person pays an amount of duty and penalty for the release of forfeited goods, the amount of penalty payable is an amount equal to twice the amount of duty avoided, not twice the amount of duty per se.

- This amendment clarifies the policy behind the provision, which is that a person is only liable to pay as a penalty the difference between the duty paid and the duty owed; not twice the duty owed.

Forfeited ships and aircraft

Clause 20 amends section 228 of the Principal Act by replacing the reference to "ships or boats not exceeding 250 tons registered tonnage' with a reference to 'ships or boats not exceeding 80 metres in overall length'.

. Section 228 of the Principal Act currently provides that vessels that are less than 250 tons registered tonnage that are involved in the offences specified in section 228 of the Principal Act, are subject to forfeiture.

A review of section 228 has shown that referring to ships by "registered tonnage" is ambiguous, as there is no statutory or judicial authority defining the phrase.

Thus, the term "overall length" is to be substituted, which is determined in accordance with the definition set out in section 10 of the Shipping Registration Act 1901, reproduced in new subsection 228(2).

The length of 80 metres has been chosen as the appropriate qualifying measure as it is considered that the Master of a ship or boat should be able to exercise sufficient control over a ship or boat not exceeding 80 metres in overall length to warrant forfeiture if one of the circumstances set out in section 228 is established.

The penalty specified in section 228 in relation to those vessels which are not subject to forfeiture as they exceed 80 metres in overall length, but are liable to a fine, has been increased from $10,000 to $100,000. The penalty was last amended in 1967, and it is now felt to be insufficient, as it does not equate

proportionally to the replacement cost of vessels under 80 metres in overall length, which in some cases could be worth hundreds of thousands of dollars.

Forfeited Goods

Clause 21 deletes the existing forfeiture circumstance in paragraph 229(1)(i), so that forfeiture of goods will no longer result from a false or misleading statement made in respect of goods. This proposed amendment is the corollary to the proposed amendment to the offence provision for the making of a false or misleading statement (Section 234(1)(d) of the Customs Act 1901), which will now require intent to be proven or reckless indifference to be established (see (Clause 23).

Evidence of analyst

Clause 22 inserts a new section 233BA into the Principal Act.

The new section will permit the Comptroller-General of Customs to appoint a person to be an "analyst" for the purposes of proceedings under section 233B of the Principal Act (which deal with offences relating to the importation of narcotic goods) (new subsection (1)).

The analyst may issue a certificate which details the results of the analyst's analysis or examination of a substance, and the results of the analysis or examination will serve as prima facie evidence of the results achieved and the correctness of the manner in which the examination or analysis was conducted, in actions launched by the Crown pursuant to section 233B of the Principal Act, which deals with offences relating to the importation of narcotic goods (new subsection (2)). However, the certificate may not be admitted as evidence unless the accused's solicitor has been given a copy of the certificate within 14 days from the time it is proposed to admit the certificate as evidence, as well as reasonable notice of the fact that the prosecutor will use the certificate as part of the evidence in the proceedings against the accused (new subsection (4)). The accused still retains the right to require the Crown to call the analyst as a prosecution witness, and to cross-examine the analyst as if the analyst had given evidence in the usual manner (new subsection (5)) so long as either the accused has given the prosecutor 4 days notice of the accused's intention to call the analyst, or the

Court has otherwise given the accused leave to call the analyst (new subsection (6)).

. This provision is designed to expedite Court proceedings, and has been inserted on the recommendation of the Director of Public Prosecutions; the proposed new section is similar to other provisions in Commonwealth legislation (for example - see section 12 of the Crimes (Biological Weapons) Act 1976).

Customs Offences

Clause 23 amends section 234 of the Principal Act by omitting the existing paragraphs 234(1)(d),(e) and (f) of the Principal Act and substituting a new paragraph (d) which provides that it is an offence to knowingly or recklessly make a statement (or to omit from a statement) information that is false or misleading in a material particular

. the new offence provision is now dependent upon intent or recklessness; it is not a strict liability offence (paragraph a)

. the penalty upon conviction for the redrafted offence, where the relevant misstatement was made in respect of the amount of duty payable in relation to particular goods, is an amount not exceeding the sum of $5000 and twice the amount of the duty payable on the goods (paragraph c).

- this penalty level is to be compared to the lesser penalty level for a false or misleading statement under the administrative penalty regime in proposed new Section 243T (Clause 23A following) which is calculated as twice the difference between the amount of duty payable on the goods, and the amount which in fact was paid.

Clause 23A adds the following new division to the Principal Act:

DIVISION IV - PENALTY FOR MAKING FALSE STATEMENTS ETC.

Penalty for making false statements etc.

section 243T inserts a new administrative penalty provision which provides that where a person makes a statement to an officer which is false or misleading in a material particular, or omits from a statement any

matter without which the statement is misleading in a material particular, and as a result of the misstatement the amount of duty properly payable on the goods is more than is or has been paid on the goods, the Comptroller may, within 12 months after the statement was made, issue a notice requiring the owner of the goods (expressly "defined" as not including an agent of the owner) to pay within 90 days a penalty equal to twice the amount of the difference between the amount of duty actually paid and the amount of duty actually owed. (new subsection (1)) New subsection (2) provides that the penalty notice may be served on the owner of the goods, or that person's agent. Should a person fail to pay the amount within 90 days from the day the notice is issued, the amount becomes a debt due to the Commonwealth in a Court of competent jurisdiction ((new subsection (3)). Subsection (4) provides that the 90 day period prescribed for the payment of penalty duty is stayed where any application is made to the Administrative Appeals Tribunal for review of the decision as to the amount of duty payable on the relevant goods. Further, the notice for penalty duty (which is calculated on the basis of the difference between the duty payable on the goods and the duty which in fact is paid) is effectively amended, as necessary, where an AAT decision determines that the duty payable on the goods is less than was in fact demanded. Finally, new subsection (5) provides that where the Collector elects to serve a notice on a person pursuant to this section, the Commonwealth is then precluded from launching a prosecution against a person under section 234 of the Principal Act for that person's false or misleading statement.

Remission of penalty

section 243U provides that where a notice is served on a person pursuant to section 243T of the Principal Act, a person may write to the Comptroller-General within 30 days of receiving the 243T notice, seeking to have the penalty remitted. The Comptroller then has 30 days from receipt of the application to decide whether or not the penalty should be remitted (new subsection (2)). Should the Comptroller fail to inform the applicant within 30 days, it shall be taken that the Comptroller has decided not to remit the

penalty. In determining whether or not to remit the penalty, the Comptroller is obliged to only have regard to the considerations listed in new subsection (4). eg.

- whether the applicant for remission (the owner responsible for payment of the penalty in subsection (1)), or the owner's agent, voluntarily admitted the error (paragraph a),
- the seriousness of the error (from a revenue point of view (paragraph b)
- the "quality control" procedures of the applicant or his agent to prevent such errors (paragraph c), and
- the applicant or his agents previous record with such errors (paragraph d).

Finally, the new subsection (5) obliges the Comptroller to remit any penalty imposed to the extent necessary to give effect to a decision of the Administrative Appeals Tribunal which varies the amount of duty owed on the goods (and thus the penalty payable), pursuant to section 167 and subsection 273GA(2) of the Principal Act.

- It should be noted that further to the above facility to remit any penalty imposed pursuant to section 243T, a person may seek to have the decision of the Comptroller not to remit penalty, or part only of a penalty, reviewed by the Administrative Appeals Tribunal (see Clause 27A).

Section 243T not to apply in certain cases

section 243V provides a mechanism by which persons who are genuinely uncertain as to the truth of information to be submitted to Customs can exempt that information from penalty duty under Section 243T if in fact the information turns out to be false or misleading in a material particular.

- to gain the benefit of the exemption, the information about which one is uncertain must be nominated on the particular statement, and the reasons or grounds for that uncertainty must be included.

. New subsection (1) provides that where the owner or agent of the goods is uncertain as to the accuracy of information included in a statement made in respect of those goods, and that person records that concern and the reasons for it in writing on the statement itself, should the information ultimately be false or misleading in a material particular, no penalty will be imposed pursuant to section 243T of the Act. New subsection (2) provides the same protection for an owner or agent who indicates in a statement that information has been omitted and the person gives reasons for omitting that information.

Institution of prosecutions

Clause 24 is a technical amendment to section 245 of the Principal Act to make it clear that officers of the Australian Customs Service who have received a delegation from the Comptroller-General of Customs (pursuant to section 14 of the Customs Administration Act 1985) to exercise the power vested in the Comptroller-General by section 245 of the Principal Act may, as delegates of the Comptroller-General, initiate prosecutions in courts ranging from Magistrate courts to State Supreme courts.

. The section also transfers to the Comptroller-General the right of a Collector to commence proceedings in lower courts.

Repeal of section 245A

Clause 25 repeals section 245A of the Principal Act.

. Section 245A, which details the manner in which a prosecutor can prove that he or she is acting with the authority of the Collector, is now no longer necessary, as the responsibility for initiating all prosecutions now vests with the Comptroller-General of Customs.

Undertakings relating to tenders

Clause 26 makes minor amendments to the wording of section 267 of the Principal Act, which are designed to clarify the effect of the section, dealing with undertakings given for the purposes of section 266 of the Principal Act.

Regulations

Clause 27 inserts a new head of power in section 270 of the Principal Act, which will allow a reference in regulations made under the Principal Act to the document known as the Australian Harmonized Export Commodity Classification (AHECC), published by the Australian Bureau of Statistics (ABS), to mean the most recent version of that document.

. At present this document is defined in the Customs Regulations by reference to the specific date on which the AHECC was last reprinted. As the ABS reprints the AHECC twice a year, this necessitates amending regulation 99B of the Customs Regulations twice a year as well. This amendment will eliminate the need to repeatedly amend this Regulation, and any others which might in future refer to this document.

Review of Decisions

Clause 27A adds a new paragraph (ka) to section 273GA of the Principal Act, to provide for the review by the AAT of a decision of the Comptroller under proposed subsection 243U (see Clause 23A) not to remit a penalty payable under proposed section 243T, or to remit only part of the penalty.

PART III – AMENDMENTS TO THE EXCISE ACT 1901

Principal Act

Clause 28 identifies the Excise Act 1901 as the Principal Act being amended by this Part.

Interpretation

Clause 29 provides a definition of the term "Commonwealth authority" for the purposes of the new section 54A of the Act, inserted by Clause 30 (discussed below).

. The effect of the clause is that all bodies that are established for a purpose of the Commonwealth, or a body or authority established by legislation by the Commonwealth (such as Telecom or Australia Post) or by an Ordinance of the Australian Capital Territory (such as the ACT Electricity and Water Authority) are considered to be "Commonwealth Authorities".

- This provision will commence operation on 1 July 1989, the day on which Government Business Enterprises will commence paying excise duty.

Liability of Commonwealth authorities to pay Excise duty

Clause 30 adds a new subsection 54A(1) to the Act, which overrides any provision in law that exempts either commonwealth authorities (as defined in clause 29 above) from paying excise duty, or persons who enter goods for home consumption that are to be ultimately used by a Commonwealth authority, as from 1 July 1989.

. This gives partial effect to a decision of the Government announced in the 1988 May Economic Statement that Commonwealth authorities will now be required to pay excise duty. The substantive amendments giving effect to that decision are contained in the Excise Tariff Act (No. 2) 1988.

The new subsection 54A(2) to the Act provides that the only Commonwealth authorities that will be exempt from paying Excise duty are those authorities that are expressly exempted from paying excise duties by legislation enacted after 30 June 1989.

Entry for home consumption

Clause 31 is a minor technical amendment to section 58 of the Principal Act specifying that an entry for home consumption shall be made in a form that has been approved for the purpose by the Comptroller-General of Customs.

. This "approved form" provision is similar to other such provisions in Customs and Bounty and Subsidy legislation (see for instance subsection 14(4) of the Bounty (Books) Act 1986; and subsection 269TB(3) of the Customs Act 1901).

Interpretation

Clause 32 amends section 77A of the Principal Act by replacing the definitions of "barrel", "half-hogshead", "hogshead", "kilderkin" and "vessel" (paragraph 32(a)) for the purposes of Part VIIA of the Principal Act ("special provisions related to beer) with a definition of "bulk containers" (containers with more than 2 litres of beer in them) and "containers"

(bottles, cans &c. containing 2 litres of beer or less) (paragraph 32(b))

. The definitions being removed by this amendment are descriptions of vessels that held specific quantities of beer (e.g. "barrel" meant a vessel containing between 150 and 164 litres of beer] that were formerly the standard size of kegs used in the brewing industry. As these vessels are no longer the standard, these definitions have been removed.

- This clause commenced operation on 1 February 1989, when all the provisions relating to the measurement of beer commenced operation.

Manner of determining volumes of and fixing duty on beer

Clause 33 replaces the existing manner of measuring the amount of beer produced for the purposes of assessing excise by repealing the existing section 77B, and replacing it with a new section.

. The previous section 77B deemed that a quantity of beer was produced depending upon the vessel into which the beer was packaged eg. beer packaged in a barrel was deemed to have 160 litres of beer.

The procedure now to be employed will be:

(a) for beer packaged in bulk containers (i.e. containers with more than 2 litres of beer in them), which is entered for home consumption between 1 February 1989 and 30 June 1991 and where the volume of the contents of the container has been nominated for the purposes of the entry:

(i) if the actual contents of the container do not exceed 101.5% of the nominated volume, the container shall be deemed to contain the nominated volume of beer for the purposes of assessing excise (new paragraph 77B(1)(a));

(ii) if the actual contents exceed 101.5% of the nominated volume, the dutiable contents of the container will be deemed to be the actual contents of the container plus the amount of beer packaged in the container that exceeds 101.5% of the

nominated volume of the container (new paragraph 77B(1)(b);

(b) for beer packaged in bulk containers entered for home consumption after 30 June 1991 and where the volume of the contents of the container has been nominated for the purposes of the entry:

(i) if the actual contents of the container do not exceed 101% of the nominated volume, the container shall be deemed to contain the nominated volume of beer for the purposes of assessing excise (new paragraph 77B(1)(c);

(ii) if the actual contents exceed 101% of the nominated volume, the dutiable contents of the container will be deemed to be the actual contents of the container plus the amount of beer packaged in the container that exceeds 101% of the nominated volume of the container (new paragraph 77B(1)(d);

(c) for beer packaged in bulk containers entered for home consumption after 31 January 1991 and where the volume of the contents of the container has not been nominated for the purposes of the entry, excise will be payable on the actual contents of the bulk container (new paragraph 77B(1)(e);

(d) for beer packaged in containers (i.e. containers with 2 litres of beer or less in them) entered for home consumption after 1 February 1989 and where the volume of the contents of the container has been indicated on the container:

(i) if the actual contents of the container do not exceed 101.5% of the nominated volume, the container shall be deemed to contain the labelled volume of beer for the purposes of assessing excise (new paragraph 77B(2)(a));

(ii) if the actual contents exceed 101.5% of the nominated volume, the dutiable contents of the container will be deemed to be the actual contents of the container plus the amount of beer packaged in the container that exceeds 101.5% of the

nominated volume of the container (new paragraph 77B(2)(b); and

(e) for beer packaged in containers and entered for home consumption after 31 January 1991 and where the volume of the contents of the container has not been indicated on the container, excise will be payable on the actual contents of the container (new paragraph 77B(2)(c)).

New subsection 77B(3) permits the Customs Service to measure the contents of containers of bulk containers by methods of sampling approved by the Comptroller-General of Customs, rather than measuring the contents of each container and bulk container of beer.

. The reason for this change is discussed in the clause note to the new subsection 137(3) to the Customs Act 1901 (discussed in Clause 10)

- This clause commenced operation on 1 February 1989, when all the provisions relating to the measurement of beer commenced operation.

Marking and labelling of containers and packages

Clause 34 is a consequential amendment to Section 77C of the Principal Act, replacing the old term "vessel(s)" with the new term "container(s)", as a result of the amendments proposed in Clause 33.

. This clause commenced operation on 1 February 1989, when all the provisions relating to the measurement of beer commenced operation.

Spoilt beer

Clause 35 is a consequential amendment to Section 77D of the Principal Act, replacing the old term "vessels" with the new term "containers", as a result of the amendments proposed in Clause 33.

. This clause commenced operation on 1 February 1989, when all the provisions relating to the measurement of beer commenced operation.

Disposal of beer by Collector on cancellation etc. of licenc

Clause 36 is a consequential amendment to Section 77F of the Principal Act, replacing the old term "vessels" with the new term "containers, as a result of the amendments proposed in Clause 33.

. This clause commenced operation on 1 February 1989 when all the provisions relating to the measurement of beer commenced operation.

Rebate of duty in respect of diesel fuel for certain purposes

Clause 37 corrects a typographical error contained in section 78A of the Principal Act by omitting th words 'because only that' appearing currently in the provision, with the words 'only because'(paragraph 37(1)(a)); in addition;

. a new subsection 78(4AA) is inserted, which will require a person applying for diesel fuel rebate to do so according to a form approved by the Comptroller-General of Customs (paragraph 37(1)(b)).

- Currently, the forms that must be used by persons who are required to tender information pursuant to this section are prescribed for the purpose by regulation. So as to permit greater flexibility amongst the different kinds of users, and obviate the need to amend the Excise Regulations every time an alteration to the forms is required, it is now proposed to allow persons to use forms that have been approved for the purpose by the Comptroller;

- The existing paragraphs 78A(4A) (a), (b) and (c) are deleted, as they are now unnecessary following the insertion of the new subsection 78(4AA) (paragraph 37(1)(c)).

Officers to have access to factories and approved places

Clause 38 is a consequential amendment to Section 86 of the Principal Act, removing the old term "vessels" with the new term "containers", as a result of the amendments proposed in Clause 33.

. This clause commenced operation on 1 February 1989, when all the provisions relating to the measurement of beer commenced operation.

Offences

Clause 39 makes the same amendments to section 120 of the Principal Act that are proposed to section 234 of the Customs Act 1901 discussed in Clause 23 above (ie. the new offence provision where a person has made a statement to Customs that is false or misleading in a material particular).

Institution of prosecutions

Clause 40 is a technical amendment to section 134 of the Principal Act to make it clear that officers of the Australian Customs Service who have received a delegation from the Comptroller-General (pursuant to section 14 of the Customs Administration Act 1985) to exercise the power vested in the Comptroller-General by section 134 of the Principal Act may, as delegates of the Comptroller-General, initiate prosecutions in courts ranging from Magistrate's courts to State Supreme courts.

. The section also transfers the right of a Collector to commence proceedings in lower courts to the Comptroller-General.

Repeal of section 134A

Clause 41 repeals section 134A of the Principal Act.

. Section 134A, which prescribes the manner in which a prosecutor can prove that he or she is acting with the authority of the Collector is now no longer necessary, as the responsibility for initiating all prosecutions now vests in the Comptroller-General of Customs.

PART IV

AMENDMENT OF OFF-SHORE INSTALLATIONS (MISCELLANEOUS AMENDMENTS) ACT 1982

Principal Act

Clause 42 identifies the Off-Shore Installations (Act 51,1982) as the Act being amended by this Part.

Amendment of section 5

Clause 43 corrects a typographical error contained in section 5 of the Principal Act by replacing the term "Part II" with "Part I".

This amendment shall be deemed to have commenced operation on 19 July 1982, when the section first commenced operation.