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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

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

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CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1990

OUTLINE

This Bill is an omnibus measure proposing a series of amendments to the Customs Act 1901 and the Excise Act 1901, in addition to a consequential repeal to the Administrative Appeals Tribunal Act 1975.

The main proposals contained in the Bill relate to:

i) amendments to the Customs Act 1901 to provide the legislative framework for the introduction of the electronic entry and cargo reporting system for exports (EXIT), and the consequential repeal of the Export Return Scheme (Clauses 15 to 23). The main features of these amendments are:

- the introduction of an electronic/computer option for the communication to Customs of information concerning goods intended for export, to complement the existing documentary/manual export entry and manifesting system (Clause 15, new section 114);

  - Export entry information is required pre-exportation (Clause 15, new section 113), compared to the current post-exportation reporting system (the Export Return Scheme), which should provide more accurate trade figures and more effective Customs control over high risk exports (for example, COCOM goods, or goods to proscribed destinations (South Africa, Iraq),

  - Postponement of the requirement for entry information until after exportation will be available only where required information cannot be ascertained until after exportation, and then only upon the granting of confirming exporter status to a particular exporter in respect of particular information and/or particular goods (Clause 15, new section 114B),

- computer transmission of export information is to be via the EXIT computer system, access to which will be conditional on registration as a registered EXIT user and the entry into an agreement with Customs setting out the terms and conditions of computer access to Customs for the purpose of communications relating to the exportation of goods (Clause 21, new section 122A);

  - A registered user who enters into an EXIT Agreement with Customs will be allocated a unique identifying code for use in any transmission to Customs

- A transmission using the identifying code is taken to be made by the person in whose name the identifying code has been issued (Clause 21, new section 122B), and is actionable for any false or misleading information contained therein (Clause 28), subject to any evidence by the user to the contrary.

The movement of goods following the making of an export entry, including

. the requirement that goods be dealt with in accordance with the export entry,

. the prohibition on the loading of goods for export without an authority to deal, and

. the requirement that goods loaded for exportation be included in the outward manifest of the ship or aircraft on which the goods are loaded

are all to continue, but with amendments to existing provisions of the Customs Act to enable verification of export delivery authorities (Clause 21, new section 122E), to enable the computer transmission of manifest information (Clauses 17 and 18, new sections 117A and 119), and to enable manifests to be compiled by persons other than the master, owner or pilot of a ship or aircraft (Clause 17, new section 117A relating to submanifests)

ii) the repeal of Sections 64 and 74 of the Customs Act 1901 and the introduction of new sections to provide for the advance reporting of ships and aircraft and their cargo and crew, including the electronic reporting of such information (Clause 10), and the corresponding tightening of customs control over the unshipment of imported goods, especially where no cargo report in respect of such goods has been provided, or where such report is not provided sufficiently in advance (Clause 12);

iii) the retrospective savings of the prohibited imports status of goods formerly included in Ministerial declarations under Item 18 of the Second Schedule of the Customs (Prohibited Imports) Regulations, which was declared invalid by the Full Federal Court in the recent Owen v Turner and Jones case.

. the savings provision effectively ensures that any seizures and resulting condemnations of Item 18 goods (which includes such goods as machine guns, bombs, flick knives, land mines, etc.) remain effective; and

iv) three sets of amendments to the Customs Act 1901 provisions dealing with the offences and the control of narcotic goods to correct technical deficiencies in the Customs provisions identified by the Courts and the Director of Public Prosecutions, as follows:

. amendments to Schedules VI and VIII of the Customs Act 1901 (dealing with the prescribed "commercial" and

"trafficable" quantities of proscribed narcotic substances) to address the fact that the Act's control regime for specified narcotic substances does not extend to analogues of those substances. The amendments create a "catch-all" provision for these "designer" drugs, (Clause 35 in particular) to overcome any gap in the legislative control over these substances (paragraphs 4 (a,b,c, d and g), and clauses 30,35,36 and 38);

- amendment to Section 233B of the Customs Act 1901 to clarify the Customs powers of seizure of motor vehicles used in the unlawful conveyance of narcotics (Clause 26); and

- amendment to Section 233BA of the Customs Act 1901 to preserve evidentiary continuity of certificates from drug analysts concerning their drug analysis in narcotic prosecutions under 233B of the Act.

Financial Impact Statement

The cost of implementing the EXIT system (including development, implementation, maintenance, and operational costs) has been estimated over the next ten years, in present dollar values as follows:

$1.671M	in financial year	1989/90
$3.247M	in financial year	1990/91
$3.547M	in financial year	1991/92
$3.187M	in financial year	1992/93
$2.752M	in financial year	1993/94
$3.870M	in financial year	1994/95
$3.244M	in financial year	1995/96
$3.130M	in financial year	1996/97
$2.693M	in financial year	1997/98
$3.210M	in financial year	1998/99
$3.130M	in financial year	1999/2000

$33.683 total for financial years 1989/2000

The other proposed amendments in this Bill have no direct financial implications.

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1990

NOTES ON CLAUSES

Short title etc.

Clause 1 provides for the Act to be cited as the Customs and Excise Legislation Amendment Act 1990.

Commencement

Clause 2 provides for the Act to commence on the following days:

Subclause (1) provides for Proclamation commencements for two substantive sets of amendments contained in the Act, as follows;

. the new provisions associated with the introduction of the electronic entry and data reporting system for exports (EXIT), are to commence by Proclamation early in 1991, to allow the various prescribed forms under the regime to be prepared and approved, to enable the contractual agreements governing some of the computer requirements for the transmission of export information to Customs to be settled, and to allow sufficient time for current users of the post export reporting system to transfer to the pre-export EXIT system.

- the Customs Act 1901 (Customs Act) export provisions and the provisions effecting consequential amendments to existing sections of the Customs Act as a result of the proposed new export reporting regime, are

  .. paragraphs 4(e) and (h);
  Clauses 6,7,8 and 9;
  Clauses 13,14,15,16,17,18,19,20,21,22 and 23;
  Clauses 28,29,31 and 32; and
  paragraphs 34(a)(b), and (c).

- the provisions effecting consequential amendments to existing sections of the Excise Act 1901 (Excise Act) as a result of the proposed new Customs Act export reporting regime are

  .. Clauses 40,41,42,43,44,45 and 46.

- the provisions prescribing the new advance reporting requirements for ships and aircraft and their cargo and crew (Section 64 of the Customs Act), together with the amendment to the provision relating to the unshipment of such cargo, (Section 74 of the Customs Act), are also to commence by Proclamation late in 1990 or early in 1991. This commencement by Proclamation is unrelated to the Proclamation of the export provisions noted previously, however, and will proceed as soon after the Royal Assent of the Act as the various cargo and ship or aircraft related forms are prepared and approved.

  - the new cargo and crew reporting provisions are contained in,

    .. paragraphs 4(f) and (j);
    Clauses 10 and 12;
    Clauses 24 and 25; and
    Clause 37, insofar as that Clause relates to the amendments in Schedule 2 of the Customs Act,except those that relate to Section 209 of that Act.

- the above Proclamation commencements are subject to the standard "sunset" provision in Acts which are expressed to commence by Proclamation; namely, that if the relevant provisions are not proclaimed within a period of six months after the date on which the Act receives the Royal Assent, the provisions are deemed to commence on the first day after that period (subclause 5).

Subclause (2) provides for the Royal Assent commencement of the following amendments;

- Clauses 1,2,3, and 39, which are machinery provisions relating to the short title, the commencement provision and the Customs and Excise Act citation provisions;

- paragraphs 4 (a,b,c,d and g), and Clauses 30,35,36 and 38, which relate to the "drug analogue" amendments and the consequential consolidation of Schedules VI and VIII of the Customs Act (dealing with the proscribed "commercial" and "trafficable" quantities of narcotic substances) into the one Schedule;

- Clause 5, which inserts a new "definition" for an approved statement in Section 4A of the Customs Act to cater for the electronic provision of information to Customs;

- Clause 11, which deals with the means by which Customs may dispose of abandoned or unclaimed goods under Section 72 of the Customs Act;

- Clause 27, which amends Section 233BA of the Customs Act to preserve evidentiary continuity of certificates from drug analysts concerning their drug analysis in narcotic prosecutions under 233B of the Customs Act;

- Clause 37, insofar as it amends the pecuniary ceiling in Section 209 of the Customs Act under which certain forfeited goods may be impounded;

- paragraphs 34(d) and (e) and Clauses 47 and 48, which effect a technical relocation of the review by the Administrative Appeals Tribunal of decisions by Customs relating to the remission, refund or rebate of customs or excise duty, or the drawback of such duty. The review of these decisions is moved from the AAT Act itself to the respective sections of the Customs and Excise Acts which confer jurisdiction on the AAT to review Customs decisions; and

- Clause 49, which is a savings provision designed to preserve the validity of past seizures of goods under Item 18, Second Schedule, Customs (Prohibited Imports) Regulations, following the Full Federal Court's 14 September 1990 decision in Owen v Turner that Item 18 is invalid.

Subclause (3) provides that Clause 26, which amends Section 233B of the Customs Act, is to commence 28 days after the day on which the Act receives the Royal Assent, which is the standard minimum commencement period where a new offence provision is to operate. The amendment to the Section, which deals with the special offence provisions in respect of narcotic goods, will clarify the powers of seizure of motor vehicles used for the unlawful conveyance of narcotics.

Subclause (4) provides that the corrections to various anti-dumping provision references in Section 269T of the Customs Act, effected by Clause 33, are taken to have commenced on 21 December 1989, the date the Customs Tariff (Anti-Dumping) Amendment Act 1989 (Act No. 173 of 1989) commenced. The latter Act made several amendments to the principal Customs Tariff (Anti-Dumping) Act 1975, effectively transferring sections of that Act to the Customs Act. The amendments to Section 269T are necessary to

remove the references to sections of the Customs Tariff (Anti-Dumping) Act 1975 which were omitted by Act 173 of 1989.

PART 2 - AMENDMENTS OF 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:

- omitting paragraph (a) of the definition of "Commercial quantity" in subsection (1) and substituting a new definition which takes account of the consolidation of Schedules VI and VIII effected by Clauses 35 and 36 (paragraph 4(a));

  - "Commercial quantities" of narcotic substances are now specified in column 3 of the new Schedule VI

- omitting from paragraph (b) of the definition of "Commercial quantity" the word "prescribed" (first occurring) (paragraph 4(b));

  - this is a consequential drafting change, as a result of the omission of the term "prescribed narcotic substance", discussed later in this Clause.

- omitting from the definition of "Narcotic substance" in subsection (1) "the name of which is specified" and substituting "that is named or described" to take account of the 'catch-all' provision applying to 'drug analogues' which is introduced into the Schedule by Clause 35 and discussed further in the notes on that Clause (paragraph 4(c));

- omitting paragraph (a) of the definition of "Trafficable quantity" in subsection (1) and substituting a new definition which takes account of the consolidation of Schedules VI and VIII effected by Clauses 35 and 36 (paragraph 4(d));

  - "Trafficable quantities" of narcotic substances are now specified in Column 2 of the new Schedule VI.

- omitting from subsection (1), the definition of "Commercial document" and substituting a

new definition for those words couched in similar terms but excluding from its ambit a record of any transmission to or from Customs under the EXIT computer system (paragraph 4(e));

- The definition of "Commercial document" has been amended as a consequence of Clause 32 which inserts a new section 241 requiring Customs to maintain a record of all transmissions under the EXIT computer system.

. omitting from subsection (1) the definition of "Parts beyond the seas" (paragraph 4(f));

- This amendment is consequential on the amendments contained in Clause 37 and Schedule 2, which substitute the expression "a place outside Australia" for the existing "parts beyond the seas" phrase. The amendment is intended to modernise the expression and as such is a technical drafting change.

. omitting from subsection (1) the definition of "Prescribed narcotic substance" as a consequence of the amendments contained in Clauses 35 and 36 (paragraph 4(g));

- The omission recognises that the control of narcotic substances will now remain essentially under the Act rather than Regulation or subsidiary legislation, especially given the severe penalties which attach to the commission of offences relating to narcotic substances.

. inserting in subsection (1), 8 definitions of terms used in the new export entry and control regime for the exportation of goods (paragraph 4(h));

- In particular, "EXIT agreement" is defined to mean an agreement entered into between Customs and a registered EXIT user under new subsection 122A(7) and "EXIT computer system" is defined to mean the computer facilities specified in each EXIT agreement governing computer communications with Customs relating to the exportation of goods.

. inserting in subsection (1) a definition of "place outside Australia" which is consequential on the deletion of the antiquated "parts beyond the seas" definition noted above (paragraph 4(i)).

- The definition is the same as that presently contained in sections 96A, 96B and 130C of the Principal Act.

Approved forms and approved statements

Clause 5 amends section 4A of the Principal Act by inserting a new subsection 4A(1A). This subsection provides that an approved statement is a statement that is approved, by instrument in writing, by the Comptroller (paragraph 5(a)) and is intended to provide a mechanism whereby the information required for a computer-generated document may be specified in the same way that an approved form is used for paper-based documents.

. An approved statement is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901 in the same way as an approved form currently is.

- This supports a previous undertaking by the Government to the Senate Standing Committee on Regulations and Ordinances that forms approved for the purposes of compliance with various Customs legislative requirements would be made subject to parliamentary scrutiny via the tabling and disallowance procedures applicable to regulations under sections 48-50 of the Acts Interpretation Act 1901.

Paragraph 5(b) inserts "or statement" after "form" in subsection 4A(2) as a consequence of the above amendment.

Customs control of goods

Clause 6 amends Section 30 of the Principal Act insofar as that Section relates to Customs control of export goods, as a consequence of the consolidation of the export entry requirements of the Principal Act and the Excise Act into the Principal Act.

. paragraph (a) amends paragraph 30(d) of the Principal Act to make it clear that Customs Act customs control over export goods includes excisable goods (locally produced goods on which excise duty is payable) which are delivered to a place prescribed for the exportation of goods (a wharf or airport) under the Principal Act,

- Excise Act customs control of excisable goods for export now terminates where such goods are delivered to any prescribed Customs Act place for export (see Clause 44, new Section 61AA).

- By the express amendment in paragraph (a), (and the corollary to it in Clause 44, new sections 61 and 61AA) customs control over excisable export goods under the Customs Act commences at the point in time where customs control over such goods under the Excise Act terminates; eg., the time when the excisable goods are brought into a place prescribed under the Customs Act for the exportation of goods.

. paragraph (b) makes a further amendment to paragraph 30(d) of the Principal Act, to in effect complete the circle in terms of Customs Act customs control over export goods by clarifying when the control terminates, as follows;

  - for customable goods (ie.,imported goods on which customs duty is payable)

    .. Customs Act customs control terminates when the goods are exported to a place outside Australia;

    .. if such goods are no longer to be exported, they remain subject to Customs Act customs control (Clause 15, new subsection 114D(3)) until delivered for home consumption or otherwise dealt with in accordance with paragraph 30(a);

  - for excisable goods (ie., locally produced goods on which excise duty is payable),

    .. Customs Act customs control again terminates when the goods are exported to a place outside Australia;

    .. if such goods are no longer to be exported,Customs Act customs control terminates when the export entry in respect of the goods is withdrawn. At that point in time, the goods revert to customs control under the Excise Act and the withdrawal of the export entry authorises the return of the goods to the Excise Act place from which they were moved for exportation. The return to Excise Act customs control ensures the revenue is protected until the excisable goods are subsequently delivered for home consumption or otherwise dealt with under the Excise Act (Clause 15, new subsection 114D(2)).

- for goods that are neither customable nor excisable (e.g., locally produced goods on which excise duty is not payable)

  .. Customs Act customs control terminates when the goods are exported to a place outside Australia or the goods are no longer to be exported.

Entry of goods for home consumption, warehousing or transhipment

Clause 7 amends section 36 of the Customs Act 1901 by removing any references to entry for export of goods. This amendment is consequential on the introduction of the new Divisions 2, 3 and 4 in Part VI of the Act which provide a new self-contained regime in relation to the exportation of goods from Australia (Clauses 15 and 21 refer).

Information and documents relating to import entries

Clause 8 amends section 38B of the Customs Act 1901 by limiting that section to import entries. The amendments have the effect of removing any references to entries for exportation for the reasons outlined in the Notes on Clause 7.

. A 'sister' provision to section 38B has been included in the new Divisions relating to export entries. That provision is new section 114A which is introduced by Clause 15 and is explained in greater detail in the notes to that Clause.

Authority to deal with goods

Clause 9 amends section 39 of the Customs Act 1901 by:

. limiting that Section to import entries for the reasons outlined in the notes on Clause 7;

. omitting subsection (2) and substituting a new subsection (2) which adds to the condition that authorities to deal may be subject to permisisons under other Commonwealth legislation, the new condition that any authority to deal with goods under Section 39 may be made subject to compliance with any specified obligation under the Customs Act 1901 (new paragraph 39(2)(b)),

- Previously, authorities to deal with goods could only be expressed to be subject to the condition that any specified permissions required under another law of the Commonwealth be obtained. The additional condition ensures that obligations under the Customs Act which

must be met before an authority to deal takes effect, such as lodgement of a cargo report under new section 64AB (see Clause 10) will be complied with.

. The suspension of an authority to deal, currently provided in subsection 39(3), is now made reviewable by the Administrative Appeals Tribunal (Clause 34, paragraph (a)).

Repeal of Section 64 and substitution of new sections

Clause 10 repeals section 64 of the Principal Act and substitutes new sections 64, 64AA, 64AB, 64AC and 64AD.

Section 64 dealt with the reporting of ships, aircraft and their cargoes and passengers. The new sections provide for 4 separate reports to be made, as follows:

s.64 - Impending Arrival Report (for ships and aircraft)
s.64AA - Arrival Report (for ships only)
s.64AB - Cargo Report (for ships and aircraft)
s.64AC - Crew and Passenger Report (for ships only).

The proposed new sections will require the provision of more detailed information than is presently required under the Principal Act and it will require the information at an earlier point in time. In addition, there will be provision for Cargo Reports and the Crew and Passenger Report to be lodged by computer.

. the purpose of the advance reporting is to ensure there is adequate time for Customs to risk assess cargo and persons entering Australia to more effectively control the importation of narcotics.

Given the large time difference between a ship's journey to Australia and an aircraft's flight to Australia, and also the difference between the amount of cargo carried on ships compared with aircraft, the reports for ships are required a greater time in advance of the ships' arrival than the aircrafts' arrival, as follows:

Impending Arrival Report

- 48 hours before arrival, unless the journey is likely to take less than 48 hours, in which case the report is required 24 hours before arrival (new section 64);

Arrival Report

- required on arrival as the information received from this report is used for further ports of call in Australia (new section 64AA);

Cargo Report

- 48 hours before arrival (new section 64AB);

Crew and Passenger Report

- 48 hours before arrival (new section 64AC).

For aircraft, the impending arrival report is required 3 hours before arrival (new section 64) and the cargo report is required prior to unloading (if reporting by computer) or otherwise, within 3 hours of unloading (new section 64AB).

The new provisions relating to the new sections are explained in greater detail below.

Impending arrival report

Section 64 provides that the master of a ship or pilot of an aircraft must report the impending arrival of the ship or aircraft to Customs. In the case of a ship, the master must report its impending arrival not less than 48 hours prior to arrival (new paragraph 64(1)(a)) unless the journey is likely to be less than 48 hours, in which case it must be reported 24 hours before arrival (new paragraph 64(1)(b)). In the case of an aircraft, the pilot must report its impending arrival not later than 3 hours before its arrival (new subsection 64(2)).

. The purpose of the impending arrival report is to ensure there is adequate time for Customs to coordinate Contraband Enforcement Teams (CET) to be present and prepared at the first port or airport of call.

The impending arrival report for both ships and aircraft must be communicated to Customs by sending it or giving it to an officer doing duty in relation to the reporting of ships or aircraft (new paragraph 64(3)(b)).

. New section 64AD specifies when reports for the purposes of sections 64, 64AA, 64AB, 64AC are taken to have been communicated to Customs. The impending arrival report may be sent to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport in any manner which may be prescribed (eg. by radio, by telex or by

facsimile) and it is taken to have been communicated to Customs at such time and in such circumstances as are prescribed (new subsection 64AD(1)). If the impending arrival report is given to an officer doing duty in relation to the reporting of ships or aircraft, then it is taken to have been communicated to Customs when it is received by the officer (new subsection 64AD(2)).

In addition, the report must identify the ship or aircraft concerned, the port or airport at which it is expected to arrive and the report is to state the expected time of arrival at that port or airport (new paragraph 64(3)(b)). The penalty for non-compliance is $500.

Arrival report

Section 64AA provides that the master of a ship that has arrived in Australia must report its arrival in Australia to Customs. The report must be made within 24 hours of arrival (new paragraph 64AA(1)(a)) or, if the ship can arrive, unload and depart the port within 24 hours, before the issue of a Certificate of Clearance under section 119 of the Customs Act 1901 (new paragraph 64AA(1)(b)). The penalty for non-compliance is $500.

. The purpose of the arrival report is to provide Customs with certain information regarding the ship's itinerary in Australia (for the purpose of coordinating CET at further ports of call) and information as to customable articles in the possession of the master and crew.

The arrival report must be in writing (new paragraph 64AA(2)(a)), be in an approved form (new paragraph 64AA(2)(b)), be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of ships at the port of arrival (new paragraph 64AA(2)(c)), contain such information as is required by the form (new paragraph 64AA(2)(d)), and be signed in a manner specified in the form (new paragraph 644AA(2)(c)).

. Similar to the impending arrival report, section 64AD specifies when an arrival report is taken to have been communicated to Customs. The arrival report, which must be in writing (new paragraph 64AA(2)(a)), may be sent in any manner prescribed (eg., by letter, by telex or by facsimile) and is taken to have been communicated to Customs at such time and in such circumstances as are prescribed (new subsection 64AD(1)). If the arrival report is

given to an officer doing duty in relation to the reporting of ships at the port of arrival, then it is taken to have been communicated to Customs when it is received by the officer.

Cargo report

Section 64AB provides that ships arriving in Australia from a place outside Australia must have their cargo reported early to Customs in order to obtain a Collector's permit to unship the goods, (see Clause 12 new section 74), and that aircraft arriving in Australia from a place outside Australia must have their cargo reported not later than 3 hours after arrival (for a documentary report) or prior to unloading (for a computer report).

. The purpose of the cargo report is to enable complete screening of the cargo to take place for the purposes of risk assessment, in order for Contraband Enforcement Team resources to be fully utilised.

In the case of ships, the master or owner of the ship must communicate to Customs not later than 48 hours before the arrival of the ship at a particular port a report of the cargo that is intended to be unshipped at that port (new paragraph 64AB(2)(a)) and if any of the cargo is containerised, the cargo report must contain certain information concerning the containers to be unshipped. In the case of aircraft the pilot or owner of the aircraft must communicate to Customs not later than 3 hours after the arrival of the aircraft (if the report is made via a document) at a particular airport a report of the cargo that is intended to be unshipped at that airport (new paragraph 64AB(3)(a)). If the report is made by computer then the report is to be made not later then the time of arrival of the aircraft at that airport.

. The requirement for early reporting is not considered necessary for airline cargo. It is the view of the Australian Customs Service that the present cargo reporting procedures for air cargo enable Customs to adequately identify any risk cargo and so there is not the same need to obligate the early reporting.

. The penalty for non-compliance with the advance reporting of ships' cargo is to be dealt with under new section 74 (see Clause 12) relating to the ability to condition the unshipment of cargo. Where cargo reports are not provided, or are not provided in sufficient time, unshipment might only proceed on the condition that the cargo

be taken to a secure place and kept under Customs surveillance until the cargo report is provided or the screening of the cargo completed. It is considered that the commercial pressure upon the owner to have the goods cleared and entered for home consumption will be sufficient motivation to ensure compliance with the obligation to report the cargo and, in the case of ship's cargo, to report the cargo 48 hours before the ship arrives.

Ship or air cargo reports can be made either by document or by computer (new subsection 64AB(1)). If it is made by document, then it must be communicated to Customs by sending it or giving it to a prescribed officer (new paragraph 64AB(4)(a)), it must be made in an approved form (new paragraph 64AB(4)(b)), it must contain the information required by the form (new subparagraph 64AB(c)(i)), or if there is information which the master, pilot or owner is not privy to, eg., where a freight forwarder or slot charterer is responsible for the cargo, the master, pilot or owner must supply particulars of the person (eg. the freight forwarder or slot charterer) who is able to provide the information required by the form (new subparagraph 64AB(4)(a)(i)) and it must be signed in a manner specified in the form (new paragraph 64AB(4)(d)).

- The obligation to communicate the documentary cargo report to a prescribed officer will ensure that the report is given to an officer doing duty in relation to the reporting of cargo at the port where the cargo is to be unshipped. This obligation will not extend to where the cargo report is made by computer. It is considered that in this case it will be sufficient for the report to be communicated to Customs, and not a specific officer.

If the report is made via a computer then it must be transmitted to Customs using the prescribed computer system (new paragraph 64AB(3)(a)), it must communicate such information as is set out in an approved statement (new paragraph 64AB(5)(b)) and it must be signed by transmitting such identifying information as is prescribed;

- an approved statement is defined in clause 5 as being a statement that is approved, by instrument in writing, by the Comptroller.

Where cargo is on board a ship and the master or owner of the ship would not have sufficient information to make a complete cargo report under new subsection 64AB(2), then the person who has the complete information may communicate to

Customs not later than the master or owner would be required to make a cargo report under new subsection 64AB(2), a report in respect of that cargo in the same fashion as if the person were the master or the owner of the ship (new subsection 64AB(6)).

. This provision covers the responsibilities of slot characters and freight forwarders on whose behalf the shipping company carries the cargo, and where the shipping company would not have the full details of the cargo to enable Customs to accurately risk assess the cargo.

Similarly, where cargo is on board an aircraft and the pilot or owner of the aircraft would not have sufficient information to make a complete cargo report then the person who has the complete information may communicate to Customs not later than the pilot or owner would be required to make a cargo report, a report in respect of that cargo in the same fashion as if the person were the pilot or the owner of the aircraft (new subsection 64AB(7)).

Where any of a ship's cargo is containerised, a report of the containers unshipped must be communicated to Customs (new paragraph 64AB(2)(b)). This information will be contained on the approved form in new paragraph 64AB(4)(b) or in the computer report (via subsection 64AB(5)).

Passenger and Crew Report

Section 64AC(1) provides that the master or owner of a ship which is due to arrive at a port in Australia must communicate to Customs not later than 48 hours before the arrival of the ship at that port, a report of all the crew and passengers who will be on board the ship when it arrives.

. This obligation will enable Customs to accurately risk assess the passengers and crew in order to identify any potential smugglers of narcotic substances.

The passenger and crew report may be communicated to Customs by document or by computer. If it is made via a document it must be communicated to Customs by giving it or sending it to a prescribed officer (new paragraph 64AC(2)(a)), it must be in an approved form (now paragraph 64AC(2)(6)), it must contain the information required by the form (new paragraph 64AC(2)(c)) and it must be signed in the manner specified on the form (new paragraph 64AC(2)(d)).

If the passenger and crew report is made via a computer it must be transmitted to Customs using the prescribed computer system (new paragraph 64AC(3)(b)) and be signed by transmitting such identifying information as is prescribed (new paragraph 64AC(3)(c)).

Communication of impending arrival reports, arrival reports, cargo reports, and passenger and crew reports

Section 64AD specifies when the various reports referred to in sections 64, 64AA, 64AB and 64AC are taken to have been communicated to Customs.

Where an impending arrival repot, an arrival report, a documentary cargo report or a documentary passenger and crew report is to be sent to an officer referred to in the relevant subsections in any manner prescribed, then when it is so sent, it is taken to have been communicated to Customs at such time and in such circumstances as are prescribed (new subsection (1));

Where an impending arrival report, an arrival report, a documentary cargo report or a documentary passenger and crew report is given to an officer referred to in the relevant subsections, it is taken to have been communicated to Customs when it is received by the officer (new subsection (3));

Where a cargo report or a crew/passenger report is transmitted to Customs via computer, the report, is taken to have been communicated to Customs when an acknowledgement of the report is transmitted to the person identified in the report as the person transmitting the report.

Failure to make entries

Clause 11 inserts the words "or otherwise dispose of" after "sell" in subsection 72(2) and subsection 72(4) of the Principal Act

- this amendment is intended to give the Collector greater flexibility in disposing of goods which are required to be entered, but which have not been entered within prescribed periods and become abandoned or unclaimed in terms of the provision.

- While the power to sell the goods is given, it is considered that the amendment will make the Section sufficiently flexible to deal with other situations, for the disposal of goods, especially where selling the goods may not

always be the most appropriate course eg. hazardous, perishable or prohibited goods.

Repeal of section 74 and substitution of new section

Clause 12 repeals section 74 and substitutes a new section.

Authority for unshipment

Section 74 provides that the master or owner of a ship or the pilot or owner of an aircraft must not unship goods at a port or airport otherwise than in accordance with a a Collector's permit (new subsection 74(1)) which may be subject to such conditions as are specified in the permit (new subsection 74(2)).

- This provision ensures that goods will not be able to be unshipped unless Customs has received the cargo report relating to those goods and has had adequate time to risk assess the report, or, if the goods are unshipped, a condition of the permit will reflect the need for those goods to be stored in a secure area.

- The penalty for unshipment without a Collector's permit being obtained, or unshipment not is accordance with the conditions specified in the permit, is $25,000. This new penalty is in line with other penalties in the Customs Act dealing with moving or interfering with cargo under Customs control eg. Section 73 (breaking bulk cargo), Section 33 (moving goods subject to the control of Customs) and Section 58 (ships and aircraft to enter prescribed ports or airports only, unless the permission of a Collector is obtained).

Entry of warehoused goods

Clause 13 amends section 99 of the Customs Act 1901 by removing the reference in subsection 99(3) to the Export Scheme (section 114A) (paragraph 12(a)) and by substituting a reference to "section 114C" for "section 39" to reflect the insertion of a new authority to deal provision for exports (paragraph 12(b))

- The Export Return Scheme is repealed by Clause 15 which also introduces, inter alia, the new section 114C.

  - The Export Return Scheme was a manual system introduced in 1978 which allowed exporters to lodge their export details after export of their goods, on a periodic basis.

Insertion of new heading

Clause 14 effects a technical drafting change to Part VI of the Customs Act 1901 so as to place the legislative control over prohibited exports in a separate Division within Part VI.

Repeal of sections and substituting of new heading and sections

Clause 15 Subclause (1)

repeals sections 113, 114 and 114A of the Customs Act 1901 and inserts a new Division 2 into Part VI of the Act. The Division creates a new regime for the entry and clearance of goods for export and provides for the option of electronic clearance and reporting of such goods under the "EXIT" system. The other main feature introduced by this Division is the requirement to provide information before exportation rather than after exportation.

- The pre-export reporting requirement is intended to redress two principal deficiencies in the post-exportation Export Return Scheme (Section 114A, which is to be repealed); notably, the distortion of Australia's trade figures and the undermining of Customs control over high risk exports.

Division 2 - Entry and clearance of goods for export

Entry of goods for export

new section 113 provides that the owner of goods intended for export must enter the goods for export (new paragraph 113(1)(a)) and must not allow the goods to leave the place of exportation if they are themselves a ship or aircraft (new subparagraph 113(1)(b)(i)) or to be loaded on the ship or aircraft in which they are to be exported if they are other goods (new subparagraph 113(1)(b)(ii)) unless an authority to deal with the goods has been given under section 114C. The new subsection 113(1) is substantially the same as the old subsection 114(1), and a penalty of $5,000 applies to a breach of the obligations.

New subsection 113(2) exempts from the entry requirements in subsection (1) most of those goods which are currently exempt by regulation 100 of the Customs Regulations, such as accompanied or unaccompanied baggage (new paragraph 113(2)(a)) and reusable containers (new paragraphs 113(2)(d) and (e))

- The exemption relating to accompanied or unaccompanied baggage is subject to the qualifications in new subsection 113(3) that the quantities not exceed what could reasonably be expected to be required by a passenger or crew member and that the goods included in the baggage will not be sold, or used in the course of trading, outside Australia.

  - This qualification currently applies in the current exemption, contained in Regulation 100.

- A consequential repeal of regulation 100 is intended when the new subsection 113(2) becomes law.

New paragraph 113(2)(f) provides a power for regulations to exempt goods from the entry requirements in subsection (1), either absolutely or on such terms and conditions as are specified in the regulations. This power is necessary to provide a facility for future exemption of goods or classes of goods which cannot presently be ascertained.

- the current regulation 100A exemption for coal is proposed not be continued, thereby making coal subject to the new export regime in the same way as other goods. Similarly, the exemption which previously applied to excisable goods via paragraph 114(3)(a) no longer applies because excisable goods intended for export must now be entered for export under Part VI of the Customs Act 1901 rather than under the Excise Act 1901 as was previously the case (Clause 40 paragraph (b) refers).

What is an export entry

new section 114 provides that an export entry is a communication to Customs of certain information concerning goods intended for export. The communication of that entry may be effected by document or computer (subsection (1)). The ability to communicate an export entry by computer is at the heart of the new export regime and is intended to both facilitate the pre-export reporting of goods intended for export and streamline the administrative processes associated with exportation.

subsection (2) provides how a documentary export entry is to be made and communicated to Customs. It must be in an approved form and contain the information required by the form. It must be made by the owner of the goods and may be

communicated to Customs by sending or giving it to an officer doing duty in relation to export entries.

. since the entry is an "approved form" it must comply with the tabling and disallowance procedures provided for disallowable instruments in section 46A of the Acts Interpretation Act 1901 (Section 4A of the Principal Act refers)

. The communication to an officer doing duty in relation to export entries rather than simply to an officer of Customs serves to facilitate the approval and authority to deal process.

subsection (3) provides how a computer export entry is to be made and communicated to Customs. In this case the entry must:

- be transmitted by a registered EXIT user as the owner, or on behalf of the owner, of the goods, using the EXIT computer system (paragraphs 3(a) and (b));

- communicate such information as is set out in an approved statement (paragraph 3(c)); and

- be signed by transmitting the registered EXIT user's identifying code (paragraph 3(d))

  . `Approved statements are discussed in the notes to Clause 5.

  . The registered EXIT user's identifying code is the code allocated to the user under new subsection 122A(8) (Clause 21 refers) and is unique to that user. As such it constitutes an `electronic signature' for the particular registered user in question.

Subsection (4) provides that where a permission is required to be produced to Customs by operation of any law of the Commonwealth (including the Customs Act 1901) before goods can be exported from Australia, that obligation will be taken to have been complied with if the permission is adequately identified on the export entry. This means that in certain circumstances, the permission may be taken to have been produced by quoting the relevant permit number in the entry.

Subsection (5) provides a reservation to subsection (4) by making it subject to the power of an officer of Customs to require the

production of such permission. This provision is intended as a safeguard over possible misuse of the 'shorthand' method of producing permissions which is envisaged by subsection (4) and will be exercised as part of the normal processes of risk assessment.

Subsection (6) provides that goods to which an export entry relates are taken to have been entered when that entry is taken to have been communicated to Customs in accordance with section 119D. (Clause 19 refers)

Information and documents relating to export entries etc.

new section 114A provides a power to refuse an authority to deal with the goods in accordance with the entry until an officer doing duty in relation to export entries has verified particulars of the goods shown in the entry. The new section reproduces the terms of section 38B and provides the same powers in respect of export entries as section 38B currently provides in respect of entries under section 68; that is, entries for home consumption, entries for warehousing, and entries for transhipment.

Confirming exporters

new section 114B provides a facility to effectively postpone the requirement of pre-exportation information. It is to be distinguished from the 'substantive' exemptions from the principal obligation to enter goods which are intended for export provided for in new subsection 113(2), on the basis that the exception created by this section starts from the proposition that the goods to be exported are required to be entered for export. However, some of the information relating to those goods might not be available, or might not be available with sufficient precision, until after exportation.

Where a person who proposes to communicate an export entry relating to particular goods (or is likely to communicate, from time to time, export entries in relation to goods of a particular kind) is unable to include in an export entry particular information in relation to those goods because it cannot be ascertained until after exportation, the person may apply to the Comptroller-General for confirming exporter status in respect of that information and those goods (subsection (1)).

The application must be in writing in an approved form and contain the particulars

required by the form including the reasons the information cannot be ascertained before exportation (subsection (2)). The Comptroller must then either grant the applicant confirming exporter status by signing a notice to that effect (which will also specify the conditions for the grant (paragraph (3)(a)) or refuse that status by signing a notice which sets out the reasons for the refusal (paragraph (3)(b)).

- a decision of the Comptroller to refuse to grant a person confirming exporter status is reviewable by the Administrative Appeals Tribunal (Clause 34 paragraph (b))

Any grant of confirming exporter status has effect from the day on which the relevant notice is signed (subsection (4)).

Although the grant is not limited as to the conditions it may be subject to, it must include:

- a requirement that the confirming exporter status be specified in any export entry relating to goods for which it was granted and in respect of which the confirming exporter proposes to rely (paragraph (5)(a));

- a requirement that full details of the information for which confirming exporter status was granted will be provided as soon as practicable after exportation and not later than the time indicated in the notice (paragraph (5)(b)); and

- a requirement to notify the Comptroller forthwith if to the knowledge of the confirming exporter the relevant information becomes able to be ascertained (paragraph 5(c))

Where the notification in paragraph (5)(c) is made the Comptroller must sign a notice in writing either cancelling the confirming exporter status or modifying it so that it no longer relates to that information (subsection (6)).

Penalties applicable to confirming exporters who fail, without reasonable excuse, to comply with a condition of the grant are provided for in subsections (7) and (8). The penalty is $1,000, but even where no proceedings are brought against the person under subsection (7), the Comptroller may cancel the status (paragraph 8(c)) or modify the status in

relation to the information covered by it or its conditions (paragraph (8)(d)) by signing a notice to that effect setting out the reasons for the cancellation or modification.

- a decision of the Comptroller to cancel or modify a person's status as a confirming exporter is reviewable by the Administrative Appeals Tribunal (Clause 34, paragraph (b)).

As with the grant or refusal of confirming exporter status, a cancellation or modification of that status has effect on the day the relevant notice was signed (subsection (9)) and the notice must be served on the person concerned as soon as practicable, although a failure to do so does not alter the effect of the notice (subsection (10)).

Authority to deal with goods under section 114

new section 114C follows on from the basic requirement in subsection 113(1) that goods required to be entered for export must not be loaded for export until an authority to deal with them has been given. The new section 114C provides what constitutes the authority to deal and the conditions which may apply to its use.

Subsection (1) provides that where an entry in respect of goods has been sent, given or transmitted to Customs, Customs must give an export entry advice, in a manner and form prescribed by regulation, that constitutes either an authority to deal with the goods to which the entry relates or a refusal to provide such an authority.

- It is proposed that the export entry advice will consist of a Customs identifier for the entry (subsection 114C(2) refers), the registered user's identifier of the entry, and a message from Customs that the consignment is or is not clear. It is the "clear" advice which constitutes the requisite authority to export and this advice will be cited by the user, carriers, etc. in all circumstances where an authority to deal is required. If the advice is in "error" the message will indicate that fact and why it is in error. In that case an amendment or withdrawal of that entry will be required. The amendment and withdrawal of entries etc. is provided for in new sections 119A and 119B (Clause 20 refers).

Subsections (3),(4) and (5) provide that the same conditions which section 39 attaches to authorities to deal with goods the subject of import entries are attached to authorities to deal with goods the subject of an export entry. Therefore, an authority to deal is subject to the condition that:

- any information transmitted to Customs for the purposes of entry of the goods may be verified by an officer of Customs within 5 years after the goods are exported (subsection (3)); and

- any permission required under another law of the Commonwealth must be obtained or any specified obligation under the Customs Act 1901 must be complied with (subsection (5)) before an authority to deal will be legally effective.

Cancellation of an authority to deal is covered in subsection (6) which provides that the Comptroller may cancel the authority at any time before the goods are exported. Such cancellation is effected by:

- in the case of documentary entries: signing a notice setting out the reasons for cancellation and serving a copy on the person who made the entry (paragraph (6)(a)); and

- in the case of computer entries: transmitting the notice to the registered EXIT user (paragraph (6)(b))

  - If the computer system fails the notice may be provided as set out in paragraph (6)(a).

- a decision of the Comptroller to cancel an authority to deal with goods is reviewable the Administrative Appeals Tribunal (Clause 34(b) refers).

Goods to be dealt with in accordance with export entry

new section 114D inserts a provision similar to existing Section 40 of the Principal Act, to oblige the owner of goods in respect of which an export entry is made to deal with the goods as soon as practicable after an authority in respect of the goods is granted (paragraph 114D(1)(a))

The section also incorporates several new obligations on owners of goods and restrictions on the movement of goods subject to export entries as follows:

. the movement of export goods the subject of an entry is controlled by the requirement to only move the goods, or pass them along the export chain, in accordance with the export entry (paragraph 1(b)).

- If such goods are not goods already subject to the control of customs (eg. excisable goods, new subsection (2), or customable goods (new subsection (3)) then before such goods reach a place prescribed for the exportation of goods under paragraph 30(d) of the Principal Act (see discussed in Clause 6) at which time the goods come within Customs control (including the control on the manner in which the goods may be moved (Section 33 of the Principal Act), the goods may only be moved for the purpose of effecting their exportation in accordance with the authority of the entry, and such goods may only be removed from the possession of a person effecting their exportation if the entry in respect of those goods is withdrawn.

.. this provision, together with new section 116 (see Clause 16 following), will ensure that goods which are declared for export via an export entry, are in fact exported in accordance with that declaration and the authority grant under it. If the goods are not exported or are no longer to be exported, the export declaration in respect of the goods must be withdrawn.

. Where an export entry in respect of goods is withdrawn pursuant to subsection (1) (ie., the goods are no longer to be exported) but the goods are "controlled" goods in a Customs sense, the withdrawal of the entry does not free the goods from that control, as follows:

- for excisable goods (eg., locally produced goods on which excise duty is payable), new subsection (2) provides;

.. Customs Act customs control terminates when the export entry in respect of the goods is withdrawn (new paragraph 2(a)). At that point in time, the goods revert to customs control under the Excise Act and the withdrawal of the export entry authorises the return of the goods to

the place from which they were moved for exportation.

.. The return to Excise Act customs control ensures the excise revenue is protected until the excisable goods are subsequently entered for home consumption or otherwise dealt with under the Excise Act.

- for customable goods (eg., imported goods on which customs duty is payable) new subsection (3) provides;

.. the goods remain subject to Customs Act customs control until entered for home consumption or otherwise dealt with in accordance with paragraph 30(a) of the Principal Act.

.. the maintenance of Customs Act customs control ensures the customs revenue (import duty) is protected.

Subclause (2)

is a savings provision in relation to goods delivered for export before the repeal of Section 114A, the Export Return Scheme, which is effected by subclause (1).

The savings provision preserves the effect of Section 114A, and any regulations made under the Section (especially as regards obligations imposed on exporters under the scheme to supply necessary information relating to exported goods within a specified period after exportation) as if the Section and regulations had not been repealed.

Repeal of sections and substitution of new sections

Clause 16 repeals Sections 115 and 116 of the Principal Act and substitutes 2 new sections which take account of changes to the export regime effected by other amendments to Part VI of the Act.

Goods not to be taken on board without authority to deal

new section 115 is couched in much the same terms as previously, except insofar as it now refers to an authority to deal granted under the new Section 114C. The control is therefore that the owner of a ship or aircraft shall not permit goods required to be entered to be taken on board the ship or aircraft for the purpose of exportation unless an authority to deal with the goods has been granted under new Section 114C.

. the new Section no longer refers to an entry for export because the owner of a ship or aircraft is only concerned as to the existence of an authority to deal. In any case, a necessary relationship exists between an authority to deal and an entry for export by virtue of the operation of Section 114C itself.

What happens when goods are not dealt with in accordance with an export entry?

new section 116 remakes the current Section 116 in the Principal Act, dealing with short-shipped goods (ie. goods entered for export but not in fact exported). The new Section picks up the statistical "adjustment" requirements for export entries in respect of such goods, as the corollary to new Section 114D (Clause 15 refers), which dealt with the movement requirements for such goods.

new subsection (1) provides that where goods entered for export have not all been exported within the period of 30 days after the date of exportation notified in the export entry,

. the authority to deal granted in respect of the goods not exported (new Section 114C, Clause 15 refers) effectively lapses

.. the provision acknowledges that from a commercial point of view exportation of goods oftentimes proceeds "on the next available flight or vessel"; therefore, a period of 30 days to effect the exportation is provided, after which time, the exportation, if it is to proceed, must be subject to a new entry and authority to deal. For statistical purposes, the "adjustment" obligations of new subsection (2) also arise;

new subsection (2) provides that the owner of goods in respect of which an export entry has been made, but in respect of which the exportation has not proceeded (either in whole or in part) within the 30 day time period noted in subsection (1), must, within a further 7 days, "correct" the information relating to the exportation of the goods by either

- withdrawing the entry completely if no goods were exported (paragraph 2(a)), or

- amending the entry so that it effectively deals with only that portion of goods actually exported (paragraph 2(b)).

- The goods not exported, either all the goods the subject of the entry, or just the balance, must be dealt with under a fresh entry if they are still to be exported, as per new subsection (1).

. A penalty of $5,000 applies for failure to comply with these "adjustment of entry" obligations.

new subsection (3) is consequential on the "amendment" obligation referred to in paragraph (2)(b) above, to effectively preserve the legality (from an entry and authority to deal point of view) of the portion of goods which actually were exported.

Insertion of new section

Clause 17 provides for a new section 117A to be inserted in the Customs Act 1901 after section 117 to provide a facility for submanifests. An outward manifest is meant to accurately record the full details of the cargo which a particular ship or aircraft is conveying out of Australia. However, because consolidation of cargo is arranged by people other than the primary carrier e.g. slot charters or freight forwarders, the new section is intended to recognise that fact by allowing a submanifest to be compiled by any person responsible for consolidating goods for export. The submanifest may then be incorporated by reference to its particular number in the outward manifest.

Submanifests may be prepared before goods are exported

new section 117A

provides that a person involved in the exportation of goods otherwise than as master or owner of the ship or pilot or owner of the aircraft may prepare and communicate a submanifest by document or computer in respect of those goods, to facilitate the obtaining of a certificate of clearance for export (subsection (1)).

A documentary submanifest or computer submanifest must be made and communicated to Customs in a similar way to that provided for in section 114 in respect of entries (subsections (2) and (3)).

The receipt of a submanifest must be acknowledged by:

- in the case of a documentary submanifest; the officer giving the compiler a notice in

writing specifying a submanifest number (subsection (4)); and

- in the case of a computer submanifest: Customs transmitting a notice acknowledging its receipt and giving the compiler a submanifest number (subsection (5)).

The submanifest numbers may then be included in any outward manifest purportedly relating to the goods concerned, thus obviating the need for the master or pilot to fully detail the goods in the Outward Manifest under Section 119 (Clause 18 refers).

Requisites for obtaining Certificate of Clearance

Clause 18 amends section 119 of the Customs Act 1901 so as to allow for an outward manifest to be communicated to Customs by computer as well as by document (paragraph 18(a)). A documentary outward manifest or computer outward manifest must be made and communicated to Customs in a similar way to that provided for in respect of entries and submanifests (paragraphs 18(b) and (c) which substitute new subsections 119(2) and (2A) refer). New subsection 119(2B) reproduces the old subsection 119(2) and provides a facility for a master or pilot of the ship or aircraft concerned to apply to the Comptroller for a Certificate of Clearance if one has not been given, within 24 hours after an outward manifest was communicated to Customs.

Insertion of new section

Clause 19 inserts 4 new sections into the Customs Act 1901 to provide for the amendment and withdrawal of export entries, outward manifests and submanifests and to explain how such entries, manifests and submanifests are to be taken as communicated; both in their creation and their withdrawal.

Withdrawal of export entries, submanifests and outward manifests

new section 119A

provides that an export entry, submanifest or outward manifest may be withdrawn by document or computer at any time before the goods to which the document relates are exported (subsection (1)). The withdrawal must be made and communicated in a similar manner to that previously discussed for the making and communicating of the entry, submanifest or manifest (Clauses 15, 17 and 18 refer), whether it be by document (subsection (2)) or computer (subsection (3)).

The withdrawal of an entry, submanifest or manifest has effect when, in accordance with section 119D (discussed below), it is communicated to Customs (subsection (4)).

Effects of withdrawal

new section 119B

provides that once an export entry has been withdrawn, any authority to deal with the goods the subject of the entry is revoked (subsection (1)), but the entry (or submanifest or outward manifest) is still actionable for an offence in respect of it, as if it had not been withdrawn (subsection (2)).

. This means, for example, that a person could still be prosecuted and a penalty imposed in respect of false statements made on an entry, submanifest or manifest which is subsequently withdrawn.

Subsection (3) repeats the underlying basis of the current paragraph 38(4)(a) that the withdrawal of a documentary entry, submanifest or manifest, the original of which was sent or given to an officer, does not entitle the person who communicated it to have it returned.

Change of computer entries, submanifests and outward manifests treated as withdrawals

new section 119C

provides that where a person who has communicated a computer export entry changes information included in that entry, they are taken to have withdrawn the entry as it previously stood, from the time when an export entry advice is transmitted in respect of the altered entry (subsection (1)). The same rule applies to computer submanifests and computer outward manifests with the exception of the time of effect which in this case is from when an acknowledgement of the altered submanifest or manifest is transmitted (subsection (2)).

. The requirement for deemed withdrawal of computer entries, submanifests and manifests where they are amended in any way is a legislative recognition of the fact that in the electronic sphere, there is an ability to almost instantaneously alter information appearing on a computer screen. Therefore, in order to maintain security over the information provided and to keep track of that information there is a need to provide for

such a mechanism. In this way each amendment creates a new version of the document in question which can be traced accordingly.

Communication of entries, outward manifests, submanifests and withdrawals

new section 119D specifies when the reports referred to in this Division, (export entries, submanifests, outward manifests, or withdrawals of same), are taken to have been communicated to Customs.

Where a documentary entry, manifest, submanifest, or any documentary withdrawal of such, is sent to an officer referred to in the relevant subsections in any manner prescribed, then when it is so sent, it is taken to have been communicated to Customs at such time and in such circumstances as are prescribed (new subsection (1));

Where a documentary entry, manifest, submanifest, or any documentary withdrawal of such is given to an officer referred to in the relevant subsections, it is taken to have been communicated to Customs when it is received by the officer (new subsection (2));

Where the above reports are transmitted to Customs via computer, the reports are taken to have been communicated to Customs when an acknowledgement of the report is transmitted to the registered EXIT user whose identifying code appears on the transmission (new subsection (3)).

Shipment of goods

Clause 20 amends Section 120 of the Customs Act by omitting paragraphs (b), (c), and (d) and substituting "; and (b) goods prescribed for the purpose of this section"

. Section 120 of the Customs Act 1901 currently provides that the master of a ship or the pilot of an aircraft shall not suffer to be taken on board his ship or aircraft any goods other than those specified in the four paragraphs which follow. A penalty of $10,000 attaches to an offence against the section. Paragraph (a) maintains the exemption for goods which are specified or referred to in the Outward Manifest but paragraph (b) has been created as a 'catch-all' provision in recognition of the fact that the issue of what goods should be the subject of exemption is presently under review and the mechanisms of prescribing goods in the regulations provides

the necessary flexibility as to what specific categories should receive exemptions.

- It is anticipated that any regulations would prescribe in a general sense, the goods which were previously the subject of paragraphs (b),(c) and (d); although a distinction maybe made between accompanied and unaccompanied baggage for example, and exemptions may be qualified.

Insertion of new Division and new heading

Clause 21 inserts, after section 122 in Part VI of the Customs Act 1901, a new Division dealing with use of the EXIT computer system for export related purposes (subclause 1) and validates any EXIT user registration made before the commencement of this new Division (subclause 2).

New Division 3 contains five sections which provide a framework for use of the EXIT system in the clearance of export cargo and departing ships and aircraft. There are provisions for users of the EXIT system to be registered with Customs (new subsections 122(1) to (6)), to enter into an EXIT user agreement which will, amongst other things, entitle them to an EXIT identifying code (new subsections 122(7) and (8) and to accept prima-facie responsibility for communications using their identifying code (new section 122B).

A power will be conferred on the Comptroller to cancel a user's registration in particular circumstances (new subsections 122(9) to (11)).

The remaining sections provide for contingency arrangements that can be used in the case of a system failure (new sections 122C and 122D); and create a right for third parties involved in the delivery of export cargo, to seek confirmation of the Customs position in regard to goods they are dealing with (new section 122E). The provisions relating to Division 3 and to the saving of previous EXIT registrations, are explained in greater detail below.

Division 3 - the use of computers for entry and clearance purposes

Registered EXIT users

new section 122A provides the basis on which Customs may provide, deny or withdraw a person's access to computer communications with Customs in regard to export related matters.

Subsection (1) requires a person to become a registered EXIT user for these purposes. It is this requirement which provides the foundation on which the contractual and various other aspects of a user's participation in EXIT are based.

subsections (2),(3) and (4) prescribe the arrangements whereby intending users may seek registration. Applicants will be required to provide details such as their personal or corporate identity, the type of computer facilities (including software) they will use, the number of access "mailboxes" required and the preferred identifying codes of those "mailboxes".

subsection (5) obliges the Comptroller, having received the application and information required by subsections (2) to (4), to formally notify the applicant that registration has been approved or, for stated reasons, refused. Refusals will be appealable to the Administrative Appeals Tribunal (Clause 34(c) refers).

subsection (6) sets the date of registration at the date the notification under subsection (4) is signed.

subsection (7) requires registered users to enter into an EXIT user agreement with Customs. This requirement provides a basis for the contractual elements of the user's participation in EXIT. User agreements will deal with technical matters (including training), commercial arrangements, and other terms and conditions on which the parties will communicate using the EXIT system. The agreement will outline the rights, obligations, liabilities and indemnities of the parties. It will also reinforce certain provisions of the legislation such as the maintenance of security over identifying codes (new section 234AC, Clause 29 refers).

subsection (8) provides that once a user is registered, the Comptroller must allocate to the person an identifying code. The person's code will serve as that person's access key and electronic signature.

subsection (9) authorises the Comptroller, subject to review by the Administrative Appeals Tribunal (Clause 34(c) refers), to cancel a user's registration for failure to comply with either this Act or the user's agreement. A notice of cancellation specifying reasons must be signed by the

Comptroller.

subsection (10) stipulates that a cancellation has effect from the date the notice under subsection (9) is signed.

subsection (11) directs the Comptroller to serve a copy of the notice of cancellation on the user as soon as practicable, but it does not invalidate the cancellation if a notice is not served.

Unauthorised use of registered EXIT user's identifying code

new section 122B in conjunction with the provisions of Clause 28 holds the registered user to be prima facie responsible for any EXIT communications signed with that user's identifying code. The user is provided with the protections of being able to:

- present any evidence available to refute his or her prima facie responsibility in any case; and
- absolve himself or herself from ongoing responsibility for unauthorised use of the code by notifying Customs of any actual or suspected breaches of security in regard to a code.

What happens if the EXIT computer system is down?

new section 122C provides contingency arrangements to facilitate the processes of seeking and granting export approval for registered users in the event that a malfunction prevents the EXIT system from relaying either export entries or customs replies to export entries.

subsection (1) sets out that:

- a user may seek a provisional clearance where there is a malfunction which may delay the exportation in question (paragraphs (a), (b) and (d));
- an officer may request any information which would ordinarily be shown on an export entry (paragraph (c)).

subsection (2) provides that where the requirements of subsection (1) are met the officer must:

- grant a provisional clearance in a particular form, if satisfied that export approval would normally have been given (paragraph (a)); or

. refuse a provisional clearance, if not satisfied that approval would normally be given (paragraph (b)).

subsection (3) preserves the validity of a provisional clearance in circumstances where goods are exported before the usual export entry and export authorisation processes can be completed, whether an export authorisation is, as a consequence of new section 122D, ultimately granted or refused.

. This provision removes the risk of prosecution for loading or exporting goods without an export authorisation (where such an authorisation is subsequently refused). It provides no protection against action under provisions such as:

- section 233 of the Principal Act for exporting prohibited exports; or

- section 234 of the Principal Act for making false or misleading statements to an officer when, for instance, seeking a provisional clearance;

Acquittal of provisional clearance

new section 122D requires that a person granted a provisional clearance to export goods under new section 122C must, within 48 hours of the EXIT malfunction being rectified:

. withdraw any computer export entry that was being processed in regard to those goods at the time the malfunction occurred;

. transmit or retransmit a computer export entry in regard to any goods covered by a provisional clearance

. include in that entry, particulars of the provisional clearance.

subsection (2) is a technical provision which backdates the operative date of any export authorisation given as a result of an entry referred to in sub-section (1), to the date on which the provisional clearance was given.

Third party inquiries

new section 122E provides that parties involved in various aspects of the exportation of goods and the outward clearance of ships and aircraft may seek verification of the existence of an authority to deal with the goods or of a

submanifest in respect to those goods. This is particularly necessary in view of the move from a paperbased to a paperless system.

New section 113 in conjunction with sections 115 and 122 of the Customs Act 1901 seeks to prevent the loading or exportation of cargo unless it has been properly dealt with from a Customs viewpoint. It is therefore necessary for those involved in the delivery, packing and loading operations to be able to confirm that any Customs authorisation required in respect to that cargo has been granted.

Subsection (1) provides a right to seek Customs' confirmation that goods which are required to be entered under new section 113 are covered by an authority to export.

Subsection (2) allows a person who is preparing a manifest (in order to seek a Certificate of Clearance for a vessel or aircraft) to confirm that particular goods which have been included on a submanifest are covered by an authority to export.

Subsection (3) requires a person seeking confirmation under subsection (1) to quote the number of the authority to deal which he or she is seeking to confirm.

Subsection (4) requires a person seeking confirmation under subsection (2) to quote the relevant submanifest number.

Division 4 - exportation proceeds after certificate of clearance issued

Sections 123 to 126 inclusive, of the Customs Act 1901 form Division 4 and have not been amended in any way.

Subclause (2);

is a savings provision in respect of persons who had been authorised to use computer facilities for communication with Customs relating to the export of goods before the commencement of this section and provides that such persons are to be treated, on and after that day, as if they had been registered as a registered EXIT user under subsection 122A(5) of the Customs Act 1901 on the commencement of the section.

- The savings provision is intended to obviate the need for persons who have been using the EXIT computer system for exportation of their goods prior to the commencement of the new regime in Part VI (as part of the extensive trialling of the system) to reapply for registration as a registered EXIT user.

Insertion of new heading

Clause 22 effects a technical drafting change to Part VI of the Principal Act by adding a new division heading: "Division 5 - Miscellaneous".

Insertion of new section

Clause 23 inserts a new section 126C into Division 5 of Part VI of the Customs Act 1901 as follows:

Size of exporting vessel

new section 126C provides that goods subject to the control of Customs must not be exported in a ship of less than 50 tons gross register without the written permission of the Collector.

- This amendment is a technical drafting change consequential upon Clause 14 of this Bill which repealed section 113 of the Principal Act which previously contained this control. Division 5 therefore consists of sections 126A, 126B and 126C.

Duty on goods in report of cargo that are not produced or landed

Clause 24 provides for a minor technical drafting amendment to section 149 of the Principal Act to modernise the language of the section.

Forfeited Goods

Clause 25 amends paragraph 229(1)(e) of the Principal Act by omitting "Inward Manifest" and substituting "cargo report made under section 64AB".

. this amendment is consequential upon clause 10 which repeals section 64 and substitutes new sections 64, 64AA, 64AB, 64AC and 64AD and in so doing removes the reference to Inward Manifest and replaces it with a "cargo report made under section 64AB"

Special provisions with respect to narcotic goods

Clause 26 inserts new paragraph (caa) in subsection 233B(1) of the Principal Act to ensure vehicles used in the unlawful conveyance of narcotics are subject to seizure.

. in a recent Federal Court decision (Bogdin Stincovic v AFP) Mr Justice Neaves highlighted some difficulties under the Customs Act 1901 in seizing motor vehicles used in the conveyance of illegally imported narcotics and commented that it was an area that may be appropriate for legislative amendment.

Paragraph 229(1)(j) of the Principal Act forfeits any carriage or animal used in smuggling or in the unlawful importation, exportation or conveyance of any goods to the Crown. Paragraph 233(1)(d) of the Principal Act makes it an offence to unlawfully convey smuggled goods or prohibited imports, but subsection 233(5) expressly excludes narcotic goods from that section. To overcome this anomaly, paragraph 233B(1)(caa) is inserted to ensure vehicles used in the unlawful conveyance of narcotics are subject to seizure.

Evidence of Analyst

Clause 27 amends section 233BA of the Principal Act by omitting subsection (2) and substituting a new subsection.

. the purpose of section 233BA is to permit the use of certificates of analysts as prima facie evidence of dzug analysis, thus obviating the need to call the analyst to give oral evidence of his or her findings (unless the defence

calls the analyst pursuant to section 233BA(5)).

The present amendment is considered necessary as it is now noted that section 233BA does not effectively establish that the drugs analysed were those seized by Customs. It is argued that presentation of the certificate of analysis of certain substances does not establish that the substances were those found in the possession of the accused, seized by Customs and passed on to the Australian Government Analytical Laboratories for analysis. It would seem that there is still a need for the analyst to attend court to give evidence to ensure the above facts are established.

. the amendment to subsection (2) will obviate this need, by providing that a certificate of an analyst in an approved form is prima facie evidence of the matters in the certificate and of the correctness of the result of the analysis. The approved form shall state:

- that the analyst signing the certificate is appointed under subsection (1) (new paragraph (a)),
- when and from whom the substance was received (new paragraph (b)),
- what, if any, labels or other means of identifying the substance accompanied it when it was received (new paragraph (c))
- what container or containers the substance was contained in when it was received (new paragraph (d)),
- a description, and the weight, of the substance received (new paragraph (e))
- when the substance was analysed (new paragraph (f)),
- a description of the method of analysis (new paragraph (g)),
- the results of the analysis (new paragraph (h)) and
- how the substance was dealt with after handling by the analyst (new paragraph (j)).

Customs offences

Clause 28 amends section 234 of the Customs Act 1901 by inserting 2 new subsections after subsection (2) to cover statements transmitted electronically under EXIT.

. Section 234 is an offence provision for, inter alia, false or misleading statements.

new subsection (2A) provides that where a computer export entry, submanifest or outward manifest is taken, under section 122B to have been communicated to Customs, then for the purposes of paragraph 234(1)(d) the transmission to Customs is deemed to be a statement made to an officer (paragraph (2A)(a)) by the person with whose identifying code the relevant transmission was signed (paragraph (2A)(b)). The new subsection (2A) also applies to withdrawals of computer export entries, submanifests or outward manifests.

. The cross-reference to section 122B ensures that any evidence by the user to the contrary is taken into account in terms of the potential application of paragraph (2A)(b).

. It should be noted that a prosecution under section 234 does not preclude the Comptroller from deregistering an EXIT user under subsection 122A(9).

new subsection (2B) makes it clear that nothing in subsection (2A) affects the primary liability of the owner for acts of the owner's agent, as set out in subsection 183(4) of the Customs Act 1901. This provision is intended to make clear that a registered EXIT user who is the agent of an owner of goods to be exported should not be liable, to the exclusion of the owner, for statements made by him based on information provided by the owner and relied upon in good faith by the agent.

Insertion of new section

Clause 29 inserts a new offence provision into the Customs Act 1901 after section 234AB to provide for a penalty in relation to unathorised use of identifying codes as follows:

Unauthorised use of identifying codes

new section 234AC requires a registered EXIT user to take all reasonable steps to safeguard the security of the identifying code allocated to him (paragraph (e)) and to notify Customs at the earliest available opportunity if that

identifying code is, or is likely to be known by an unauthorised person (paragraph (b)).

The penalty for a breach of the section is $5,000, which is intended to discourage irresponsible security of identifying codes.

. If a code is lost or stolen and Customs is notified in this respect by the registered EXIT user a new code will be provided and the earlier one cancelled so as to minimize the chances of unauthorised access to the EXIT system.

- Unauthorised access to EXIT is adequately dealt with by the existing provisions of Part VIA of the Crimes Act 1914 (Cth) which was inserted by the Crimes Legislation Amendment Act 1989 to address the problem of computer "hacking".

Penalties for offences in relation to narcotic goods

Clause 30 provides for a minor technical amendment to section 235 of the Principal Act, by removing references to a prescribed narcotic substance, which is consequential upon clauses 35 and 36.

. This amendment recognizes that the control of narcotics will now remain essentially under the Principal Act rather than subsidiary legislation, which is appropriate given the severe penalties which attach to the commission of offences relating to narcotic substances.

Commercial documents to be kept

Clause 31 amends section 240 (document retention provision) of the Customs Act 1901 by:

. omitting from subsection (1) "imports goods" and substituting "is the owner of goods imported" to make it clear that the obligation to retain commercial documents is on the "owner" as defined in section 4 of the Act (paragraph (a));

. omitting from subsection (1) "to ascertain whether the goods are properly described and, in the case of goods that are entered for home consumption, properly valued or rated for duty" and substituting "to enable a Collector to satisfy himself or herself of the correctness of the particulars shown in the entry", in order to properly relate the document retention obligation to all particulars which are specified on an entry,

and not just the description of goods and their duty aspects (paragraph (b));

- inserting after subsection (1) a new subsection (1A) which extends the obligation to keep relevant commercial documents to the circumstance of entry of goods for export (paragraph (c));

- amending subsections (2), (3), (4) and (6) as a consequence of the new subsection (1A) inserted by paragraphs (c) (paragraphs (d),(e),(f),(g) and (i)).

Insertion of new section

Clause 32 inserts a new section 241 in the Customs Act 1901 as follows:

Certain records to be kept by Customs

new section 241 requires Customs to maintain a record of all transmissions made to or by Customs under the EXIT computer system (subsection (1)) and further provides that that record is admissible as prima facie evidence that either the person by whom or with whose identifying code the transmission was signed made the statements contained in the transmission (subparagraph (2)(b)(i)) or that Customs made the statements contained in the transmission (subparagraph (2)(b)(ii)).

- this provision should be read together with the amendment to the definition of 'commercial document' effected by paragraph (e) of Clause 4 and is intended to avoid some of the difficulties in establishing who made a statement in a transmission and at what point in time for the purposes of prosecutions.

Interpretation

Clause 33 amends the Principal Act by omitting from subsection 269T(1) the definitions of "countervailing duty", "countervailing duty notice" and "dumping duty notice" and substituting the following definitions:

- "countervailing duty" means duty payable on goods under section 10 (other than duties so payable by virtue of a declaration under subsection 269TJ(4), (5) or (6) of this Act).

- "countervailing duty notice" means a notice published by the Minister under subsection 269TJ(1) or (2) or 269TK(1) or (2).

. "dumping duty notice" means a notice published by the Minister under subsection 269TG(1) or (2) or 269TH(1) or (2).

- these amendments are consequential upon Act No. 173 of 1989 which made several amendments to the Customs Tariff (Anti-Dumping) Act 1975 including omitting certain sections which the Principal Act referred to in these definitions. The substance of these provisions was added to the Principal Act by Customs Legislation (Anti-Dumping)Act 1989 (Act No. 174 of 1989) and are the provisions to which these definitions now refer.

The commencement of this clause is proposed to be 21 December 1989, which is the date on which Act No. 173 of 1989 commenced.

Review of Decisions

Clause 34 amends subsection 273GA(1) of the Principal Act to provide for review by the Administrative Appeals Tribunal of the following decisions:

. a decision by the Comptroller under section 39 as proposed to be amended under Clause 9 of this Bill, to cancel an authority to deal with goods (new paragraph (1)(aaaa));

. a decision by the Comptroller under proposed section 114B to refuse to grant a person confirming exporter status (new paragraph (1)ba));

. a decision by the Comptroller under proposed section 114B to cancel or modify a person's status as a confirmed exporter (new paragraph (1)(bb));

. a decision by an officer under section 114C to cancel an authority to deal with goods (new paragraph (1)(b)(bc));

. a decision by the Comptroller under proposed section 122A to refuse to register a person as a registered EXIT user (new paragraph (1)(ca));

. a decision by the Comptroller under proposed section 122A to cancel a person's registration as a registered EXIT user (new paragraph (1)(cb));

. a decision of a Collector under section 163 in relation to an application for a refund, rebate or remission of duty (new paragraph (10(Haaa));

- this provision transfers jurisdiction to review such decisions from Part XIII of Schedule 1 of the Administrative Appeals Tribunal Act 1975 to the Principal Act which is a more satisfactory and convenient basis of jurisdiction;

- as a consequence Part XIII of Schedule 1 of the Administrative Appeals Tribunal Act 1975 has been repealed (Clause 47);

. a decision of a Collector under section 168 in relation to an application for a drawback of duty (new paragraph (1)(jb));

- this provision operates to transfer jurisdiction in the same manner and for the same reasons cited in respect of decisions under section 163 referred to above.

Repeal and substitution of Schedule VI

Clause 35 repeals Schedule VI to the Principal Act and substitutes a new Schedule, as set out in Schedule 1.

The new Schedule contains certain drugs and their trafficable quantities as specified in Schedule VI, certain drugs and their commercial quantities as specified in Schedule VIII, drugs (with their trafficable quantities and commercial quantities) which were previously the subject of an amendment to the Customs (Narcotic Substances) Regulations by Statutory Rules No. 380 of 1989 and which were not already included in Schedule VI and drug analogues.

. The previous amendment to the Customs (Narcotic Substances) Regulations was only to be an interim measure designed to meet exceptional circumstances and it was intended to have them included in the Principal Act when it was next amended. Inclusion in the Principal Act is appropriate given the severe penalties which attach to the commission of offences relating to narcotic substances which is not thought to be appropriate for subsidiary legislation.

Drugs which were the subject of the amendment to the Customs (Narcotic Substances) Regulations and which were not included in Schedule VIII to the Principal Act and are to be listed in the new Schedule are listed below including each drug's trafficable quantity and commercial quantity.

	Trafficable Quantities (grams)	Commercia Quantitie (kilogram
Acetyl-alpha-methyfentanyl	0.005	0.005
Alpha-methylfentanyl	0.005	0.005
Alpha-methylthiofentanyl	0.005	0.005
Beta-hydroxyfentanyl	0.005	0.005
Beta-hydroxy-3-methylfentanyl	0.005	0.005
3,4-Methylenedioxymethamphetamine	0.50	0.50
3-Methylfentanyl	0.005	0.005
1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)	2.00	2.00
3-Methylthiofentanyl	0.005	0.005
Para-fluorofentanyl	0.005	0.005
1-Phenylethyl-4-phenyl-4-acetoxypiperidine (PEPAP)	2.00	2.00
Thiofentanyl	0.005	0.50

. Drug analogues are structural variations of an existing narcotic substance. The inclusion of a general drug provision in the new Schedule will adequately cover newly synthesized drugs. The definition of drug analogue to be used in the new Schedule is a substance which is, in relation to another substance specified elsewhere in this Schedule, a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a substance:

a) a stereoisomer; or
b) a structural isomer having the same constituent groups; or
c) an alkaloid; or
d) a structural modification obtained in 1 or more of the following ways:
   i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic structures;
   ii) by the addition of hydrogen atoms to 1 or more unsaturated bonds;
   iii) by the addition of 1 or more of the following groups, namely alkoxy, cyclic diether, acyl, acyloxy, mono-amino and dialkylamino groups with up to 6 carbon atoms in any alkyl residue; alkyl, alkenyl and alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon; and halogen, hydroxy, nitro and amino groups;
   iv) by the replacement of 1 or more of the groups specified in subparagraph (iii) with another such group or groups;
   v) by the conversion of a carboxy or an ester group into an amide group; or
e) otherwise an homologue, analogue, chemical

derivative or substance substantially similar in chemical structure;

however obtained, except where the drug analogue is separately specified in this Schedule.

The minimum trafficable quantity of a drug analogue is the trafficable quantity of that other substance in relation to which the substance is a drug analogue, or if there is more than 1 such other substance, that other substance having the lest minimum trafficable quantity.

The minimum commercial quantity, if any, of a drug analogue is the commercial quantity of that other substance in relation to which the substance is a drug analogue, or if there is more than 1 other such substance, that other substance having the least minimum commercial quantity.

Repeal of Schedule VIII

Clause 36 repeals Schedule VIII

. As noted in the note to clause 35 the controls under Schedule VIII are transferred to the new Schedule VI which is the new Schedule in Schedule 1 to this Bill.

Further Amendments of the Principal Act

Clause 37 provides that the Principal Act is further amended as set out in Schedule 2 to this Bill.

. the phrase "parts beyond the seas" (wherever occurring) is omitted from the following sections of the Principal Act and replaced with "a place outside Australia": section 30, subsection 30A(6), section 31, section 60, section 126B, section 127, paragraph 187(b), section 274 and section 275.

- this is a technical drafting change intended to modernise each of the sections by the use of a more precise geographical expression.

. the definition of "place outside Australia" is omitted from the following sections of the Principal Act: subsection 96A(1), subsection 96B(1) and section 130C.

- this is an amendment consequential upon the definition of "place outside Australia" being included in clause 4. The definition is omitted from the above sections to ensure the expression applies uniformly throughout the Principal Act.

. subsections 209(3) and 209(3B) of the

Principal Act are amended by omitting "$500" and substituting "$1000".

- section 209 of the Principal Act provides that in lieu of seizing certain forfeited goods under section 203 of the Principal Act, an officer may impound the goods and release them on payment of duty and penalty duty. Such an action may be taken where the amount of duty sought to be evaded is less than $500. The $500 threshold was introduced in 1980. To restore the effectiveness of the provision, the threshold needs to be raised to $1000.

  -- the purpose of this provision is to enable an officer to impose a penalty in cases where formal seizure of low value/low duty goods would be too harsh.

Continuation of certain proceedings

Clause 38 is a savings provision to provide that where, before the Royal Assent of this Act, proceedings had been instituted but not determined in respect of a narcotic substance that was included in either Schedule VIII or was declared by the regulations to be a prescribed narcotic substance, those proceedings may continue as if the amendments to the Principal Act by paragraphs 4(a),(b),(c), (d) and (g) and Clauses 30, 35 and 36 of this Act had not been made.

- Schedule VIII, which proscribes the various commercial quantities for narcotic substances, is consolidated into Schedule VI in this Act, and is therefore repealed (Clause 36). The savings provision ensures that for the purposes of any drug prosecutions on foot at the commencement of the repeal (the date the Act receives the Royal Assent), the repeal will have prospective effect only, and will not affect those proceedings.

PART 3 - AMENDMENTS OF THE EXCISE ACT 1901

Principal Act

Clause 39 identifies the Excise Act 1901 as the Principal Act being amended by this Part.

Interpretation

Clause 40 amends Section 4 of the Principal Act by inserting in subsection (1) a definition of "place outside Australia".

. The definition is the same as that presently contained in Section 61D of the Principal Act. It has been relocated to the general interpretation provision of the Principal Act so that the phrase has general application throughout the Act, especially to those provisions which previously used the antiquated "parts beyond the seas" reference. That latter reference has been omitted from the Principal Act, similar to the technical drafting change effected to the Customs Act in Clause 4 paragraphs (f) and (i).

Entry for home consumption etc.

Clause 41 amends Section 58 of the Principal Act, relating to the entry requirements for excisable goods, to effectively remove the requirement from the Excise Act that excisable goods be entered for exportation, as follows:

. paragraph (a) removes paragraph 58(1)(c) from the Principal Act, dealing with the entry requirement for excisable goods. Such goods are now required to be entered for export under the new Division 2 of Part VI of the Customs Act, inserted by Clause 15 (paragraph (b) following refers)

. paragraph (b) inserts a new subsection 58(1B) into the Principal Act, to expressly require that excisable goods intended for export are to be entered for export under the new export entry provisions of the Customs Act, particularly new sections 113 and 114 (Clause 15 refers).

- to safeguard the revenue, on excisable goods on which duty has not been paid, the granting of an authority to deal with excisable goods which have been entered for export under the new export entry provisions of the Customs Act (Clause 15, new section 114C) does not of itself affect any customs control over those goods pursuant to Section 61 of the Excise Act.

.. thus, excisable goods intended for export remain the subject of customs control under the Excise Act until such time as the goods are delivered to (brought into) a place prescribed for the exportation of goods under the Customs Act (Clause 44, new sections 61 and 61AA) at which point in time the goods "transfer" to customs control under the Customs Act (Clause 6 refers).

.. the fact the excisable goods which are

intended for export may have been entered for export under the Customs Act (Clause 15, new section 114) and granted an authority to deal under the Customs Act (Clause 15, new section 114C) does not remove the goods from customs control under the Excise Act. That only occurs when the excisable goods are delivered for exportation to a place prescribed for the exportation of goods under the Customs Act. The authority to deal however authorises that movement of the goods (for instance, from the place at which the goods are being held under the Excise Act to the export wharf or airport Clause 44, new section 61AB refers.

. paragraph (c) remakes existing subsection 58(2) of the Principal Act, to acknowledge the fact that the entry of goods for exportation is now to be done under the Customs Act.

- the effect of new subsection (2) will be to continue the requirement that excisable stabilised crude petroleum oil and excisable liquefied petroleum gas must be entered for home consumption (or treated as if the product has been so entered) prior to any entry of the product for exportation. This effectively ensures that such product remains liable for the payment of excise duty under Section 59 of the Principal Act.

Repeal of sections 58A and 58B

Clause 42 Subclause (1) repeals Sections 58A and 58B of the Principal Act as a consequence of the general transfer of the entry requirements for excisable export goods to new Division 2 of Part VI of the Customs Act, inserted by Clause 15.

. Section 58A, which is the Excise Act export return scheme equivalent to Section 114A of the Customs Act (which is to be repealed by subclause 15(1)) is no longer appropriate with the change to an export entry system based predominantly on pre-export information. Where required information cannot be ascertained until after exportation however, facility to be accorded confirming exporter status under Clause 15, new Section 114B in respect of that information may be obtained, permitting such information to be given at an agreed time after exportation.

. Section 58B (which is the Customs Act equivalent to Section 115), dealing with the

prohibition on the loading of excisable goods for exportation until such goods have been entered for export and given an authority to deal, is now effectively dealt with under the export entry provisions of the Customs Act (Clause 15, new Section 113 and Clause 16, new Section 115).

Subclause (2) is a savings provision in relation to goods delivered for export before the repeal of the Excise Act export return scheme (Section 58A of the Principal Act).

- The savings provision is similar to the savings provision for Section 114A of the Customs Act (see subclause 15(2)), and preserves the effect of the Section and any regulations made under the Section (especially as regards obligations imposed on exporters under the scheme to supply necessary information relating to exported goods within a specified period after exportation) as if the Section and regulations had not been repealed.

Payment of duty

Clause 43 effects a consequential drafting change to Section 59 of the Principal Act, dealing with the point in time at which excise duty is payable on excisable goods, to once again cater for the general transfer of the entry requirements for excisable export goods to new Division 2 of Part VI of the Customs Act, inserted by Clause 15.

In particular, paragraph 59(b) is omitted, and two new paragraphs inserted in its place, as follows:

- new paragraph (b) effectively repeats the general requirement in the existing paragraph 59(b), specifying the time when excise duty is payable on excisable goods as a point in time before the entry for home consumption in respect of those goods is passed.

- new paragraph (c) effectively repeats the exception in the existing paragraph 59(b), specifying the time when excise duty is payable on excisable goods which are not entered for home consumption (via a permission under Section 61C of the Principal Act) as the time specified in the relevant permission under Section 61C (see especially, subsection 61C(3)).

Repeal of section and substitution of new sections

Clause 44 repeals Section 61 of the Principal Act, dealing

with customs control of excisable goods, and remakes that section, together with the addition of two new sections, to cater for the movement and customs control of excisable goods for exportation, which are now subject to the new entry requirements for export goods in Division 2 of Part VI of the Customs Act, inserted by Clause 15.

The three new sections provide as follows:

Customs control

new section 61 specifies the extent of customs control over excisable goods in identical terms to those currently in Section 61 of the Act, with the only exception being the substitution of the more modern "place outside Australia" phrase for the existing "parts beyond the seas" phrase, as discussed in Clause 40

- Customs control over excisable goods continues to extend until such goods are either delivered for home consumption or delivered for exportation, whichever shall first occur.

Delivery for exportation

new section 61AA introduces a "definition" of what constitutes a delivery for exportation, so that the point in time when the Section 61 customs control over export goods terminates can be readily ascertained. The amendments to Section 30 of the Customs Act (see discussed in Clause 6) make similar changes to that Act to expressly provide when customs control over excisable export goods under that Act commences.

- new subsection (1) provides that except for excisable goods sold to a traveller in an outwards duty free shop (subsection 61D(2)), Excise Act customs control over excisable goods for export terminates where such goods are delivered (brought into) a place for export prescribed for the purposes of paragraph 30(d) of the Customs Act.

  - By the express amendment to Section 30 of the Customs Act in Clause 6, paragraph (a), customs control over excisable export good under the Customs Act commences at the point in time where customs control over such goods under the Excise Act terminates; eg., the time when the excisable goods are brought into a place prescribed under the Customs Act for the exportation of goods.

. new subsection (2) defines delivery for exportation in terms of goods obtained from outward duty-free shops (Section 61D) as the point in time when such goods are received by the relevant traveller.

  - At such time, customs control over such goods ceases.

Permission to deliver for exportation

new section 61AB provides the mechanism whereby excisable goods for exportation, which are subject to the new entry requirements for export goods in Division 2 of Part VI of the Customs Act (inserted by Clause 15) may be lawfully delivered for exportation, as follows:

. excisable goods intended for export remain the subject of customs control under the Excise Act until such time as the goods are delivered to (brought into) a place prescribed for the exportation of goods under the Customs Act (new sections 61 and 61AA above), at which point in time the good "transfer" to customs control under the Customs Act (Clause 6 refers).

. the fact the excisable goods which are intended for export may have been entered for export under the Customs Act Clause 15, new section 114) and granted an authority to deal under the Customs Act (Clause 15, new section 114C) does not remove the goods from customs control under the Excise Act. That only occurs when the excisable goods are delivered for exportation to a place for the exportation of goods under the Customs Act. The authority to deal with the goods in accordance with the export entry (Clause 15, new Section 114C) however, authorises that movement of the goods (for instance, from the licenced excise establishment under the Excise Act to the prescribed export wharf under the Customs Act).

Permission to deliver certain goods for home consumption without entry

Clause 45 effects 6 technical drafting changes to Section 61C of the Principal Act, to effectively restrict this permission provision to the home consumption scenario, following the general transfer of the entry requirements for excisable export goods to new Division 2 of Part VI of the Customs Act, inserted by Clause 15.

In particular, with the express repeal of subsection 61C(1A) (paragraph (a), and the removal of any reference to "delivery for exportation" throughout the existing Section, the Section has been restricted to a permission regime to deliver excisable goods for home consumption without an entry for home consumption.

- The concept of a delivery for exportation without an entry for exportation, especially with regard to the excisable goods previously dealt with in subsection 61C(1A) (eg. stabilised crude petroleum oil or liquefied petroleum gas) no longer applies per se. All excisable goods for export are now required to be entered for export under the Customs Act (Clause 15 new Section 113), unless specifically exempted under that new section or via Regulations made under that section. Where such goods are required to be entered though, they may be the subject of confirming exporter status under Clause 15, new Section 114B, which can postpone the requirement to provide some of the pre-export entry information details to an agreed time post-exportation.

Outwards duty free shops

Clause 46 amends Section 61D of the Principal Act, dealing with outwards duty free shops, to repeal the definition of "place outside Australia" from subsection (1), as a consequence of the relocation of the definition to the general interpretation provision of the Principal Act. This is designed to cater for its more general use throughout the Act in place of the antiquated "parts beyond the seas" reference (especially Section 61)(Clause 40 refers).

Review of decisions

Clause 47 amends Section 162C of the Principal Act to effectively relocate review by the Administrative Appeals Tribunal of certain Excise Act decisions to the general AAT review provision of the Principal Act:

- paragraph (a) now makes reviewable a decision of a Collector under Section 78 in relation to an application for a refund, rebate or remission of duty;

  - this provision transfers jurisdiction to review such decisions from Part XIII of Schedule 1 of the Administrative Appeals Tribunal Act 1975 to the Principal Act, which is a more logical location for such jurisdiction;

  - as a consequence Part XIII of Schedule 1 of the Administrative Appeals Tribunal Act 1975 has been repealed (Clause 48 and Schedule 3 refer);

- paragraph (b) now makes reviewable a decision of a Collector under section 79 in relation to an application for a drawback of duty;

  - this provision operates to transfer jurisdiction in the same manner and for the reasons cited in respect of decisions under Section 78 referred to above.

PART 4 - MISCELLANEOUS

Consequential amendments of Administrative Appeals Tribunal Act 1975

Clause 48 amends the Administrative Appeals Act 1975 by omitting Section 26 and Schedule 1 of that Act, which give the Administrative Appeals Tribunal jurisdiction to review certain decisions under the Customs Regulations and Excise Regulations. Jurisdiction to review these decisions has been transferred to the Customs Act 1901 and the Excise Act 1901, Sections 273GA and 162C respectively, as noted in Clauses 34 and 47 respectively.

Customs (Prohibited Imports) Regulations

Clause 49 introduces a savings provision to validate past seizures of goods where the seizure was effected on the ground that the particular goods were prohibited imports under Item 18 of the Second Schedule of the Customs (Prohibited Imports) Regulations;

- The Item 18 prohibition was introduced on 14 December 1956 and prohibited the importation of "Goods which, in the opinion of the Minister, are of a dangerous character and a menace to the community". That prohibition,

however, was held to be an invalid delegation of the Governor-General's power to make Regulations under Section 50 of the Customs Act by the Federal Court of Australia in Owen v Turner and Jones. The single Judge's decision of 21 December 1989 was upheld on appeal on this aspect by the Full Court on 14 September 1990.

. The future control over the importation of dangerous goods has been addressed by amendment to the Regulations in Statutory Rules No. 324 of 11 October 1990. These amendments inserted new Items into the Second Schedule to prohibit the importation of most goods previously "controlled" by Item 18, which was formally repealed. The proposed amendment in this Clause is intended to preserve the prohibited imports status of Item 18 goods prior to that item's repeal. This will effectively validate past seizures of such dangerous goods ensuring thereby that they are not required to be released into the community. The Attorney-General's Department has confirmed both the necessity of the savings provision, and its retrospective operation to 14 December 1956, to ensure that no goods which had been seized as prohibited imports, purportedly under Item 18, are required to be released. The savings provision thus operates from 14 December 1956 - the commencement date of the Item 18 prohibition, to 11 October 1990, being the date when the new controls were inserted into the Regulations, and Item 18 was formally repealed.

- Whilst recognizing that retrospective provisions are open to criticism in that they operate to prejudice persons' legal rights, it is felt in the present situation that the dangers posed to the community should any Item 18 goods (which include machine guns, bombs, flick knives, land mines etc.) be required to be released into home consumption is a circumstance where a retrospective provision validating otherwise invalid, although bona fide, seizures is both legitimate and justified.

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