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HOUSE OF REPRESENTATIVES

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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

## CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1992

### OUTLINE

The Bill is an omnibus measure proposing a series of amendments to the Customs Act 1901 and the Excise Act 1901.

The main proposals contained in the Bill relate to:

- i) amendments to the Customs Act 1901 to provide the legislative framework for the electronic transmission to the Australian Customs Service of information concerning imported goods, and the electronic lodgement of import entries in respect of such goods. The proposed legislative framework is modelled on the electronic lodgement facility for export documents, known as EXIT, which was implemented in the 1990 Budget Sittings by the Customs and Excise Legislation Amendment Act 1990 (Act No. 111 of 1990). The amendments involve the repeal of the 13 sections in the Act dealing with the existing import entry requirements and movement authorities for goods subject to Customs control (Clauses 7 and 13 refer), and their replacement with 18 new sections (all under the same Part) which remake the Customs control movement provisions for imported goods, and introduce the electronic/computer lodgement option for import entries (Clauses 13 and 16 refer). The main features of the new regime are:
  - . the introduction of an electronic/computer option for both the communication to Customs of information concerning imported goods intended for home consumption or warehousing, and the withdrawal of such information, to complement the existing documentary/manual entry facilities (Clause 13, new sections 68, 71A and 71F refer);
  - . Where the electronic option is selected, computer transmission of information must be via a specified Customs computer system, access to which will be conditional on registration as a registered user and the entry into an agreement with Customs setting out the terms and conditions of computer communication with Customs (Clause 13, new sections 71A and 71L and Clause 16, new section 77A refer);
  - . A registered user who enters into a computer user agreement with Customs will be allocated a unique identifying code, defined in the amendments as a PIN number, for use in any transmission to Customs, along the lines of subsection 122A(8) of the Customs Act 1901, which will effectively serve as evidence that the transmission was made by the person in whose name the personal user identification number has been issued (Clause 16, new section 77A refers);

- Such a transmission will be actionable for any false or misleading information contained therein, including action under the administrative penalty regime in Section 243T of the Act (Clauses 35 and 39 refer);

. The existing controls on the movement of goods following the transmission of an electronic entry, including,

- the requirement that goods be moved in accordance with the authority provided in respect of the entry, and
- the prohibition on the movement of goods without such an authority to deal or other movement authority under the Act

are to continue, but with amendments to enable the computer transmission of the authority to deal (Clause 6 and Clause 13, new section 71B refer);

. A contingency mechanism is also provided where the electronic lodgement option is unavailable because the prescribed computer system is "down" (Clause 16, new section 77C refers);

ii) amendments to the Customs Act 1901 provisions relating to the advance reporting regime for ships and aircraft and their cargo, passengers and crew, which was introduced in the 1990 Budget Sitting by Act No. 111 of 1990. The amendments are designed to enhance the operation of the advance reporting system and, in particular, the ability of Customs to screen and risk assess information for community protection purposes; notably, control of the importation of narcotics.

In particular,

- . an arrival report for aircraft and ships is to be required to expressly include a list of dutiable stores aboard the aircraft or ship on arrival at each port (Clause 9 refers);
- . the impending arrival reports and arrival reports now required for ships and aircraft are to be given to Customs at each port or airport around Australia, and not just the first port of arrival, (Clauses 8 and 9 refer);
- . a passenger and crew report for aircraft is now to be provided (Clause 11 refers); and
- . an obligation upon the master and owner of a ship or the pilot and owner of an aircraft to answer questions from a Collector relating to the craft's cargo, crew, passengers, stores and voyage is provided, similar to the provision previously included in Section 64 of the Act (Clause 12 refers),

iii) amendments to the Customs Act 1901 and the Excise Act 1901 to improve the accountability and administration of the diesel fuel rebate scheme in response to Audit Report No. 27 of 1990/91 tabled in the Parliament on 16 May 1991 by the Australian National Audit Office ('ANAO'). In particular, the amendments:

- . remove the limitation as to what documentation may be required with an application before a rebate is payable (Clauses 28 and 46 refer);
- . extend the obligation to notify a Collector of the sale or disposal of fuel to which an application for rebate relates to use of that fuel by an applicant for rebate for a purpose other than the purpose for which the fuel was purchased (Clauses 29 and 47 refer); and
- . insert new sections 240A (Customs) and 128A (Excise) into the Acts to require applicants for rebate to keep relevant documents for 5 years for audit purposes (Clauses 37 and 50 refers);

iv) miscellaneous amendments to the Customs Act 1901 and the Excise Act 1901 to:

- a) provide a specific head of power in Section 112 of the Customs Act 1901 to allow prohibited exports to be listed in the Gazette or a document published by a Minister (Clause 18 refers);
- b) ensure that the twice yearly indexation of the excise rate on excisable goods results in the collection of the correct amount of duty by amending Section 59 of the Excise Act 1901 (Clause 45 refers).

#### Financial Impact Statement

The cost of implementing the Electronic Lodgement system (including development, implementation, maintenance and operational costs) has been estimated over the next 4 years in present dollar values as follows:

\$ .863m in financial year 1990/91  
\$ .326m in financial year 1991/92  
\$ .314m in financial year 1992/93  
\*\$ .380m in financial year 1993/94

\$1.883m total for financial year 1990-94

\*(the increase in this year over the previous two years is to account for modifications planned to the Electronic Lodgement system to further integrate it with an enhanced version of electronic data interchange).

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

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1992NOTES ON CLAUSESShort title

Clause 1 provides for the Act to be cited as the Customs and Excise Legislation Amendment Act 1992.

Commencement

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

Subclause (1) provides for the Royal Assent commencement of the following amendments;

- . Clauses 1, 2, 3 and 44, are machinery provisions relating to the short title, the commencement provision and the Customs Act 1901 (Customs Act) and Excise Act 1901 (Excise Act) citation provisions;
- . paragraphs 4(c) and (d), effect a technical drafting change to the definition of "the Customs";
- . Clause 18, adds a new subsection to Section 112 relating to prohibited exports to provide a facility to list the goods which may be the subject of an export prohibition in published or Gazetted documents;
- . Clauses 33 and 49, which are technical amendments to subsection 214A(6) of the Customs Act and subsection 99A(6) of the Excise Act respectively, correct references in those sections to offences provisions which were amended by Act No. 24 of 1989;
- . Clause 41, amends the reference in Section 273GAA of the Customs Act to reflect the fact that a decision under subsection 119(2) is made by the "Comptroller" and not the "Minister";
- . paragraph 42(c), is a technical amendment to paragraph 273GA(1)(g) of the Customs Act, to remove the reference to Section 151A, which was repealed by Act No. 76 of 1987; and
- . Clause 45, which amends Section 59 of the Excise Act relating to the payment of excise duty, provides that excise duty is to be fixed at the rate in force at the time excisable goods are delivered into home

consumption or at the time payment is made, whichever is earlier.

Subclause (2) provides for commencement 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, or where new obligations or liabilities are created) for the following amendments:

- . Clauses 8, 9, 10, 11, 12 and 43, which relate to the amendments to the cargo reporting provisions of the Customs Act;
- . Clause 21, which reinstates the penalty of \$10,000 to Section 115 of the Customs Act, following its inadvertent omission as a result of the Exit export entry provisions in Act No. 111 of 1990;
- . Clause 27, which amends Section 130B of the Customs Act, relating to the payment of duty on ship's or aircraft's stores;
- . Clauses 28, 29, 30 and 37, relating to the diesel fuel rebate provisions of the Customs Act, and Clauses 46, 47, 48 and 50, relating to the diesel fuel rebate provisions of the Excise Act, all of which are amended to cater for the new record keeping obligations and notification procedures for diesel fuel rebate applicants; and
- . Clause 34, which amends the definition of "authorised officer" for the purposes of the Detention and Search provisions of the Customs Act;

Subclause (3) provides for a Proclamation commencement for the remaining provisions of the Act. These amendments are related to the introduction of the electronic entry and data reporting system for imports (Electronic Lodgement) and necessary consequential amendments to the EXIT reporting scheme for exports. Both sets of amendments are to commence by Proclamation in September 1992, primarily to allow the various prescribed forms under the new regime to be prepared, and to enable the contractual agreements governing some of the computer requirements for the transmission of import information to Customs to be settled.

- . The provisions which amend the Customs Act as a result of the proposed new electronic reporting regime for imported goods are:
  - Paragraphs 4(a),(b) and (e)  
 Clauses 5, 6 and 7;  
 Clauses 13, 15 and 16;  
 Clauses 19 and 20;  
 Clauses 31 and 32;  
 Clauses 35 and 36;  
 Clauses 38, 39 and 40;  
 paragraphs 42(a) and (b).
- . The provisions which propose consequential amendments to the existing electronic entry provisions of the Customs Act for goods intended for export as a result of the proposed new provisions associated with the introduction of Electronic Lodgement for imported goods, are
  - Clauses 19, 20, 22, 23, 24, 25 and 26.
- . The 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 (4)).

#### 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:

- . paragraph (a);  
 adding to the definition of "Commercial document" a similar exclusion for import documents to that added as a consequence of the "EXIT" export entry amendments in 1990.
  - The amendment excludes from the ambit of the definition of "commercial document" any transmission to or from Customs in respect of an import entry concerning the goods, or a withdrawal of such an entry.
  - The amendment is a consequence of Clause 38, which inserts a new subsection 241(1), requiring Customs to

maintain a record of all transmissions made to it or by it under the COMPILE Computer system. As a result, the like obligation in Section 240 on the importer/owner of goods to keep such documents is unnecessary.

. paragraph (b);

adding to the definition of "authority to deal" the new section reference relating to such authorisations given in respect of import entries as a consequence of the introduction of the electronic/computer option for the lodgement of import entry documentation in Clause 13. The new authority to deal provision (new Section 71B) is a redrafted version of the existing Section 39.

. paragraphs (c) and (d);

effecting a slight drafting change to the current definition reference of "The Customs", by omitting the definite article before the word "Customs".

. paragraph (e);

inserting in subsection (1) eight new definitions of terms used in the new import entry and movement control regime for imported goods introduced by Clauses 13 and 16;

In particular,

- "COMPILE computer system", "COMPILE user agreement", "Registered COMPILE user", and "PIN Number", are the new phrases introduced in Clause 16, new Section 77A to govern computer communications with Customs relating to the importation of goods,
- "Import entry" is defined by reference to new Section 71A inserted by Clause 13, and is modelled on Section 114 relating to export entries, which was introduced in 1990 by Act No. 111 of 1990 when the electronic entry facility for exports was inserted into the Principal Act. The new section highlights the fact that an import entry which is required to be made under the Act may now be given (communicated) to Customs via computer,
- "Import entry advice" is defined by



reference to new Section 71B inserted by Clause 13. The advice in respect of import entries lodged via computer is effectively an acknowledgement by Customs of its receipt of an import entry transmission from a particular registered computer user, and, together with new Section 71L, serves to evidence the point in time when a computer entry is taken to have been given (communicated) to Customs. This in turn is necessary to satisfy the entry requirement in respect of the goods (new Sections 68 and 71A(b) refer),

- "Movement application" is defined by reference to new Section 71E inserted by Clause 13. It relates to the documentary request for permission to move goods which are subject to Customs control; this movement permission regime effectively remakes existing Section 40AA of the Principal Act,
- "Visual examination application" is defined by reference to new Section 71C inserted by Clause 13. It relates to the documentary request for permission to examine goods to enable the completion of the entry which is required in respect of the goods; this visual examination regime effectively remakes existing Section 69 of the Principal Act.

#### Alteration to heading

Clause 5 amends the heading to Part III of the Principal Act by removing "Entries", as a consequence of the relocation and redrafting of all the existing provisions relating to the entry of imported goods. Those provisions are now contained in Division 4 of Part IV of the Act. Their inclusion in redrafted form is primarily to cater for the electronic/computer option for the communication to Customs of information concerning imported goods, and the electronic lodgement of import entries in respect of such goods.

#### Customs control of goods

Clause 6 amends Section 30 of the Principal Act, as follows:

paragraph (a) omits existing paragraph (a) dealing with the Customs control provision over goods which have been imported, and substitutes five new

paragraphs to clarify the point in time at which imported goods move out of Customs control, and the two principal authorities necessary to move goods out of Customs Control.

The new paragraphs are intended to resolve two principal areas of concern with the current provision. The first is to ensure that Customs control over imported goods terminates when delivery of the goods to which an import entry relates is effected pursuant to an authorisation granted in respect of the entry.

- . The present wording of subparagraph 30(a)(i), (which ends customs control when imported goods are dealt with in accordance with a home consumption entry) can have the effect of extending customs control in respect of goods entered for a particular end use until that end use is in fact satisfied. In some cases, that may be months, or even years, after the importation of the goods.

The notion of extending Customs control well beyond the barrier to ensure compliance with end use requirements is unsatisfactory, principally because where the end use requirements are not met, innocent third parties who have previously dealt with the goods become liable to a substantial penalty for breach of the movement requirements which attach to Customs controlled goods.

- . The Australian Law Reform Commission has again highlighted this anomaly in its Discussion Paper 45 - "Australian Customs and Excise draft Legislation" - (paragraphs 177-179 of Volume 2 refer).

The proposed new paragraphs will effectively terminate Customs control over imported goods once delivery into home consumption in accordance with an authority to deal on a home consumption entry is effected, or, in respect of certain categories of special goods, delivery into home consumption is effected via a special permission.

The second area of concern with the current Customs control provision is that it does not clearly identify the particular movement authorisations relating to imported goods by which delivery of such goods may be effected. The result is that the relationship between Collector's permits under Section 74 to unship goods, and authorities to take delivery of goods which have been entered, is unclear.

- . The proposed new paragraphs highlight each of the authorities or permissions which are required to be obtained before goods can move out of Customs control; for the bulk of imports, which happen to be cargo in the terms of 64AB of the Act, the situation concerning Customs control will be that such goods will be subject to Customs control from the time of importation until both unshipment in accordance with a Collector's permit (Section 74) and delivery into home consumption in accordance with either a permission under new Sections 69 or 70, or existing Section 162A, or an authority to deal under new Section 71B.

In particular, the new paragraphs provide:

new paragraph (a);

This paragraph extends Customs control over the bulk of imported goods that are unshipped in Australia. It applies in particular to goods to which new Section 68(1)(a), (b), or (c) applies, and provides that such goods (which come within the meaning of cargo in Section 64 AB of the Act) are subject to Customs control,

- . from the time of importation until unshipment in accordance with a Collector's permit under Section 74 and delivery into home consumption either in accordance with
  - an authority to deal under new Section 71B (the old Section 39 authority to deal), or
  - a permission under new Sections 69 or 70 (the old Section 71B permission) or existing Section 162A.
- .. if unshipped goods are not delivered into home consumption, (for instance, they are warehoused and then subsequently exported), Customs control ceases when the goods are in fact exported.

new paragraph (aa);

This paragraph applies to the same goods as noted in new paragraph (a). Where such goods are not in fact unshipped, neither a Collector's permit under Section 74 or a movement authority on an import entry are relevant. Such goods in fact leave Customs control when they are subsequently exported.

new paragraph (ab);

This paragraph deals with the goods falling to new paragraphs 68(1)(e)(f) and (i) (ie. goods for which an import entry is not required under new Section 71A, essentially because they are small value imports).

- . These goods are still cargo in terms of Section 64AB. Thus, if they are unshipped, Customs control extends from the time of importation until there has been both unshipment in accordance with a Collector's permit for unshipment under Section 74, and delivery into home consumption in accordance with an authority under new subsection 71(2).
- . Where such goods are not unshipped, Customs control, extends from the time of importation until the goods are subsequently exported, similar to new paragraph (aa).

new paragraph (ac);

This paragraph deals with goods falling to new paragraphs 68(1)(g) and (h) (ie. containers used in international trade).

- . Containers are cargo in terms of Section 64AB, and thus subject to a Collector's permit for unshipment under Section 74. They are not goods for which an entry under new Section 71A, or other information under new Section 71, is required. Customs control therefore only extends until there has been compliance with a Collector's permit for the containers' unshipment.

new paragraph (ad);

This paragraph deals with goods falling to new paragraph 68(1)(d) (accompanied or unaccompanied personal baggage or household effects).

- . Such goods are not goods for which an import entry under new Section 71A is required, because by definition (new subsection 68(4)) they are goods for personal use, and not for resale, or for use in the course of trading. They are goods however, for which import information will be required under new Section 71. Customs control therefore extends until there has been delivery into home consumption in accordance with an authority under new subsection 71(2).

paragraphs (b), (c) and (d)

effect minor grammatical and punctuation changes to the remaining paragraphs of Section 30.

#### Repeal of certain sections

Clause 7 repeals 8 sections in the Principal Act relating to the manner and form of making and giving an import entry to Customs and the authorisation for the delivery of goods the subject of such entries, as a consequence of the redrafting occasioned by the introduction of the electronic/computer lodgement option for import entries. The sections have effectively been remade and relocated into the Part of the Act dealing with the importation of goods (Part IV, Division 4) as follows:

- . Section 36 - redrafted as new Section 68;
- . Section 37 - incorporated as part of new Sections 68 and 71A (paragraph 68(1)(b), and subsections 68(2) and 71A(7));
- . Section 38 - redrafted as new Sections 71F and 71H;
- . Section 38A - redrafted as new Section 71G;
- . Section 38B - redrafted as new Section 71D;
- . Section 40 - This provision has not been reinstated;
- . Section 40AA- redrafted as new Section 71E.

#### Impending Arrival Report

Clause 8 amends Section 64 of the Principal Act by:

- . inserting new subsection 64(1A), which provides that the obligation to report the impending arrival of a ship or aircraft only applies to ships or aircraft on a voyage or flight to Australia from a place outside Australia (paragraph 8(a));
- . enabling the owner as well as the master of a ship to report its impending arrival to Customs (paragraph 8(b));
  - this amendment will also allow people acting as agent for the owner (the definition of "owner" in subsection 4(1) of the Principal Act includes someone acting as the owner's agent) to be able to report the ship's impending arrival to Customs. This should assist in streamlining the reporting process, especially with regard to the major carriers;

- . introducing an obligation to report the ship's impending arrival at each port around Australia and not just the first one (paragraphs 8(b) and 8(c));
  - this amendment should ensure Customs has adequate time to coordinate local Customs enforcement needs (drug enforcement teams and the like) and assist the speedy Customs clearance of ships and aircraft not considered to pose a high risk; and
- . inserting a new subsection 64(2) which provides similar changes to those introduced in paragraphs 8(b) and 8(c) relating to the reporting of the impending arrival of aircraft. The changes also allow the impending arrival reports of aircraft which are on short journeys (a journey which is likely to take less than 3 hours) to be made 1 hour prior to arrival, and not 3 hours prior to arrival (paragraph 8(d));
  - these amendments are intended to facilitate Customs clearance procedures for operators of such services whilst ensuring that sufficient time is available for Customs to screen information for community protection purposes.

### Arrival Report

Clause 9 amends Section 64AA of the Principal Act by:

- . inserting a new subsection 64AA(1AA) which provides that the obligation to report the arrival of a ship or aircraft only applies to ship's or aircraft on a voyage or flight to Australia from a place outside Australia (paragraph 9(a));
- . enabling the owner as well as the master of a ship to report its arrival to Customs (paragraph 9(b)),
  - similar to amendments to the Impending Arrival Report contained in paragraph 8(b), this amendment will enable people acting as agent for the owner to report the ship's arrival to Customs;
- . ensuring that the Arrival Report can contain information relating to the ship's stores by providing a specific head of power to enable such information to be given to Customs, and introducing an obligation to report the ship's arrival (together with

particulars of the ship's stores) at each port around Australia and not just the first one (paragraphs 9(b) and 9(c)):

- these amendments are necessary to enable Customs to ascertain whether any evasion of duty has taken place, or is likely to take place, with regard to the misuse of ship's stores;
- . inserting a new subsection 64AA(1A) which will facilitate procedures for owners or agents responsible for reporting the arrival of ships, together with its stores, by specifying that reports do not have to be made on Sundays or holidays, but should be made on the next available working day (paragraph 9(e));
- . inserting a new subsection 64AA(1B) which introduces an Arrival Report for aircraft arriving from overseas. The pilot or owner of such an aircraft must report the aircraft's arrival to Customs, together with details relating to its stores. The report must be made at each airport of call, and must be made before 3 hours after the aircraft's arrival at that airport or before the issue of a Certificate of Clearance under Section 118 of the Principal Act (paragraph 9(c)); and
- . making minor amendments to subsection 64AA(2) to specify that, similar to a ship's arrival report, an aircraft arrival report must:
  - be in writing;
  - be in an approved form;
  - be communicated to Customs by sending or giving it to an officer doing duty in relation to the reporting of aircraft at the airport of arrival;
  - contain such information as is required by the form; and
  - be signed in a manner specified in the form.

### Cargo Report

#### Clause 10

amends Section 64AB of the Principal Act by reducing the period of time before which the master or owner of a ship must communicate to Customs a Cargo Report in situations where the journey to the particular port is likely to take less than 48 hours. In these cases, the report must be communicated to Customs not less than 24 hours before the ship's arrival.

- . This amendment will assist in ensuring that the information provided to Customs via the Cargo Report is as accurate as possible.

### Passenger and Crew Report

Clause 11 amends Section 64AC of the Principal Act by:

- . introducing a Passenger and Crew report for aircraft arriving from overseas (paragraphs 11(a) and 11(b)) which will assist Customs in fulfilling its community protection role.
  - Paragraph 11(b) inserts a new subsection 64AC(2A) into the Principal Act which places an obligation upon the pilot or owner of an aircraft arriving from overseas to communicate to Customs a report of the full name and date of birth of each crew member and the number of passengers who were or will be on board the aircraft at the time of its arrival. The report must be made at each airport of call in Australia and can be made by document or by computer. If the report is made by document, it must be made in accordance with subsection 64AC(3) of the Principal Act. If it is made by computer it must be in accordance with subsection 64AC(4) of the Principal Act:
    - .. the documentary report must be communicated to Customs within 3 hours after the arrival of the aircraft at the airport and the computer report must be communicated to Customs not later than the time of arrival of the aircraft at the airport. These time frames conform to those time frames already set for the aircraft cargo reports, because the two reports will usually be given by the same person (ie. principal agent for the owner); and
- . amending Section 64AC by omitting subsection 64AC(2) and replacing it with a new subsection 64AC(2) which reduces the period of time before which the master or owner of a ship must communicate to Customs a Passenger and Crew Report in situations where the journey to the particular port is likely to take less than 48 hours. In these cases, the report must be communicated to



Customs not less than 24 hours before the ship's arrival.

- similar to the amendment to section 64AB of the Principal Act by Clause 10, this amendment will assist in ensuring that the information provided to Customs via the Passenger and Crew report is as accurate as possible.

#### Obligation to answer questions and produce documents

Clause 12 inserts a new Section 64AE into the Principal Act which places an obligation upon the master and owner of a ship on a voyage to Australia from a place outside Australia or the pilot and owner of an aircraft on a flight to Australia from a place outside Australia to answer questions and to produce documents relating to the ship or aircraft and its cargo, crew, passengers, stores or voyage.

- . These new provisions are considered necessary for Customs to be able to ascertain whether the information it receives from reports under sections 64AA, 64AB or 64AC is correct. A similar provision previously existed in Section 64 of the Principal Act prior to that Section's removal when the advance cargo reporting regime was introduced into the Principal Act in 1990 by Act No. 111 of 1990.
- . The reinstated obligation to produce documents only relates to those documents in the possession or control of the master or owner or the pilot and owner at the time the Collector requests their production (new paragraphs 64AE(1)(b) and 64AE(2)(b)).

#### Repeal of certain sections and substitution of new sections

Clause 13 repeals 5 existing sections in the Act and substitutes new sections dealing with the entry of imported goods for home consumption, warehousing or transshipment. The new provisions provide for the electronic transmission and lodgement of import entries via the COMPILE computer system. In essence this facility complements the electronic lodgement facility for export entries, known as EXIT, which was implemented by the Customs and Excise Legislation Act 1990 (Act No. 111 of 1990).

The proposed electronic lodgement regime for import entries mirrors the EXIT legislative regime in terms of two fundamentals:

- . the first is that the introduction of an

electronic/computer lodgement facility is optional, not mandatory. Import entries may still be created and lodged manually. Where the computer option is selected, the computer transmission must be made in a prescribed way using the computer system designated by Customs.

- . The second element is consequential on the first. Where the computer option is taken, computer transmission of information is to be via the ACS computer system, access to which will be conditional on the entering of a contract with the ACS, which will set out the terms and conditions of such access, including the fee payable for such access.

The provisions which presently deal with the entry and clearance of imported goods and the integrity of customs control adhere to the legislative structure that has been in place since 1901, when all trading information was recorded and processed on paper, and the pace of trade was obviously much slower. As the amendments which are required to provide for the electronic trading system which has been developed by the Australian Customs Service deal with such threshold issues as the creation and lodgement of entry information in respect of imported goods, the movement, clearance and authority to deal with such goods and the maintenance of customs control over goods in the electronic environment, it has been necessary to repeal the existing provisions which have become outdated, and insert entirely new provisions dealing with these matters.

The main features of the new regime are:

- . the introduction of an electronic/computer option for the communication to Customs of information concerning imported goods intended for home consumption or warehousing to complement the existing documentary/manual entry facilities (new Section 71A);
- . where the electronic option is taken, computer transmission of information must be via the specified Customs computer system, access to which will be conditional on registration as a registered 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 importation of goods (new Section 71A and Clause 16);

- . a registered user who enters into a user agreement with Customs will be allocated a unique identifying code, defined in the amendments as a PIN number, for use in any transmission to Customs, along the lines of subsection 122A(8) of the Customs Act 1901, which will effectively serve as evidence that the transmission was made by the person in whose name the code has been issued. Such a transmission will be actionable for any false or misleading information contained therein, including action under the administrative penalty regime in Section 243T (Clause 35 and 39);
- . the existing controls on the movement of goods following an electronic lodgement entry, including
  - the requirement that goods only be delivered into home consumption in accordance with the authority to deal given on the entry, and
  - the prohibition on the movement of goods without an authority to deal or other movement authority under the Act
 are to continue, but with amendments to existing provisions to enable the computer transmission of the authority to deal (new Section 71B and Clause 6);
- . the provision of contingency mechanisms where the electronic lodgement computer system is 'down', or for goods which need immediate clearance (new Sections 69, 70 and 77C).

The 5 existing sections dealing with the entry of imported goods have effectively been remade and combined with the entry provisions from Part III of the Act, principally to cater for the electronic context in which they now operate. Those sections, and their new counterparts are:

- Section 68 - redrafted with modifications as new Section 68;
- Section 69 - redrafted as new Section 71C
- Section 71 - redrafted as new Section 71C; and
- Sections 71A and 71B - incorporated into new Sections 69 and 70.

The individual amendments are outlined in more detail below:

### Entry of imported goods

new Section 68 provides that imported goods, other than certain specified goods, must be entered for home consumption, warehousing or transshipment. In essence, the new Section remakes existing Section 68 and provides the basic entry requirement in respect of imported goods.

Goods may be entered at any time after the ship or aircraft carrying the goods has commenced its journey to Australia and before the ship arrives at the first port in Australia at which any goods are to be discharged (new paragraph (1)(b) and subsection (2)).

- . This maintains the advance entry facility currently provided for in Section 37, which is repealed by Clause 7.

Where imported goods have not been entered in advance of arrival the owner must enter the goods on or after the time when the ship or aircraft arrives at the first port at which any goods are to be discharged (new subsection (3)).

The goods which are specifically exempted from the entry requirement are those goods which pursuant to current Section 71A and Regulation 42 of the Customs Regulations are exempted from the import entry obligation. In particular,

- . accompanied or unaccompanied personal or household effects of a passenger or crew member of a ship or aircraft (new paragraph (1)(d) and subsection (4));
- . goods sent by post that have a value not exceeding \$1000 (new paragraph (1)(e));
- . goods consigned to another person which were sent other than by post and that were transported in the same ship or aircraft and that have a value not exceeding \$250 (new paragraph (1)(f));
- . containers that were imported on a temporary basis (new paragraph (1)(g)) or containers that were manufactured in Australia and were, when imported, the property of a person carrying on business in Australia, and which remained the property of that person when exported from Australia (new paragraph (1)(h)); and
- . other goods which may be prescribed by the regulations to be exempt from the import entry requirement

- This Bill has in fact placed all the current exemptions from the import entry requirement in Regulation 42 into the Principal Act. Where however, new fact situations arise which might justify an exemption from the commercial entry obligation, those situations may be catered for via subsidiary legislation.
- Those categories of goods for which an import entry is not required might still be subject to an obligation to provide information to Customs, however, under new Section 71.

### Like-customable goods

new Section 69 provides that persons who import 'like customizable goods' may apply for permission to deliver such goods into home consumption without first making an entry for home consumption (new subsection 69(2)). Permission may be given in respect of the particular goods the subject of a specific importation, or for like customizable goods of a particular kind on a continuing basis.

"Like customizable goods" means those goods which if manufactured locally would be subject to excise duty (principally, imported petroleum products, tobacco products and liquor). These goods are classified under a subheading specified in column 1 of the Table to section 26 of the Customs Tariff Act 1907 (new subsection (1)). Under the Excise Act 1901 there is a facility for an officer to authorise the delivery of such locally produced goods into home consumption without first making an entry for that purpose, and it is necessary to provide for a similar mechanism under the Principal Act to accommodate bulk imports of these products.

Permission to deliver like customizable goods into home consumption may only be granted where:

- 1) the goods have been, or on importation will be, entered for warehousing (new paragraph (4)(a));
  - this ensures that Customs control is maintained and proper investigations of the goods can be undertaken, because goods stored in licensed warehouses are subject to strict controls, and the information that is required in an entry for warehousing is virtually identical to that required for home consumption entries. On the basis of that information the goods may then be

fully checked and risk-assessed;

- ii) such other conditions as are considered appropriate are complied with (new paragraph (4)(b)).

The person to whom the permission is granted must give Customs a return in an approved form containing such information as is required in respect of goods delivered into home consumption, at such intervals as is specified in the permission. Such returns must be given at intervals of at least every 2 months (new paragraph (5)(c));

- . In addition, when the return is given to Customs, any duty owing on the goods (at the rate applicable when the goods were delivered into home consumption) must be paid (new paragraph (5)(d)).

Customs may cancel a permission where an officer is satisfied that a person to whom a permission was granted has failed to comply with any of the conditions to which the permission was subject (new subsection (6)).

- . Such decisions are reviewable by the AAT (Clause 42, paragraph (b) refers).

#### Special clearance goods

new Section 70 provides for the delivery of goods into home consumption without entry where clearance is urgently required. This provision replaces the existing power to deliver goods without entry in Section 71B of the Act.

'special clearance goods' are defined in new subsection (1) as:

- a) goods reasonably required to provide emergency disaster relief or for urgent medical purposes; or
- b) engines or spare parts that are unavailable in Australia and are urgently required for ships or aircraft, or for other machinery that serves a public purpose; or
- c) perishable food.

An importer may apply for permission to deliver without entry goods that are reasonably required for emergency relief or for urgent medical purposes at any time (new subsection (2)). While the electronic lodgement facility has drastically reduced the time taken to clear goods from Customs control, the need for a mechanism to

deliver goods into home consumption without any delay at all is aptly illustrated by urgent medical goods eg. donor hearts or kidneys. Such goods only become available to the importer at very short notice, and by their nature must be cleared quickly.

With respect to urgently required engines or ship or aircraft spare parts and perishable food (new paragraphs (1)(b) and (c)), the justification for relieving an importer of the normal entry requirements, which their competitors must comply with, is less strong than emergency relief for medical goods. Accordingly, applications for permission to deliver these goods as special clearance goods may only be made in certain circumstances:

- a) the goods must become subject to Customs control outside the hours of business for dealing with entries (new subsections (3) and (9));
  - as goods may be entered before arrival of the ship or aircraft, and must be entered once the ship or aircraft arrives at the first port at which any goods are to be discharged (not necessarily the urgent spare parts or perishable food) the importer must comply with the entry requirement at that time, if that time is within the prescribed hours for dealing with entries. Any later claim for special clearance is banned, even if the goods arrive at the port or intended port of discharge for those goods outside the hours of business for dealing with entries. This is because at the time when the importer became lawfully obliged to enter the goods, he or she was able to do so (new paragraph (3)(a));
- b) the application for special clearance must be made before the hours of business for dealing with entries resume (new paragraph (3)(b)); and
- c) permission to deliver perishable food as special clearance goods without entry must not be made unless a Collector is satisfied that if permission were refused, the goods would be of little or no commercial value (new subsection 6). This limitation is necessary to ensure that the special clearance facility is only available in appropriate and urgent

circumstances outside the importer's control and that importers of food products continue to enter goods as required by the Act. The special clearance facility is not to be seen as a commercially expedient way of clearing goods from Customs control without satisfying all entry requirements.

Where permission is granted to deliver into home consumption special clearance goods without an entry, the person to whom the permission was granted must complete and give to Customs a return within 7 days of delivery of the goods into home consumption, and pay any duty owing on the goods at the rate applicable when the goods were delivered into home consumption. The returns would contain information similar to that required in an entry for home consumption (new subsection (7) and Section 71K).

Customs may cancel a permission where an officer is satisfied the person to whom the permission was granted has failed to comply with any condition to which the permission is subject (new subsection (8)).

- . Such decisions are reviewable by the AAT (Clause 42, paragraph (b) refers).

#### Information in relation to goods not requiring an import entry

new Section 71 provides that the owner of goods of a kind referred to in new paragraphs 68(1), (d), (e), (f) or (i), which are goods excluded from the general entry requirement in new subsection 68(3), must give such information as is prescribed by the regulations (new subsection (1)). Where information is given in respect of such imported goods, Customs must authorise the delivery into home consumption of such goods or refuse to so authorise such delivery and give reasons for refusal (new subsection (2)).

A decision to refuse to authorise the delivery into home consumption of such goods is subject to review by the Administrative Appeals Tribunal (Clause 42, paragraph (b) refers).

#### Making an import entry

new Section 71A provides that an import entry is a communication to Customs of certain information concerning imported goods. The communication of that entry may now be effected by document or by computer (subsection (1)). The ability to communicate an import entry by computer is at the heart of the new import entry regime and is intended to both



facilitate the administrative and risk management functions associated with importation and facilitate commercial improvements and efficiencies for Australian traders.

Subsection (2) prescribes how a documentary import entry is to be made and communicated to Customs. Such an entry must be in an approved form and contain the information required by the form (new Section 71K refers). It must be made by the owner of the goods and must be communicated to Customs by giving it to an officer doing duty in relation to import entries or by leaving it at a place allocated for the lodgement of import entries.

- . as the entry is required to be in 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)

Subsection (3) provides that a computer import entry must be transmitted by a registered COMPILE user (defined in new section 77A) as the owner of the goods or on behalf of the owner of the goods. Where a registered COMPILE user transmits an entry on behalf of the owner of goods, the user must be a licensed customs Agent under Part XI of the Act. (This requirement only applies at places which the Comptroller has declared under subsection 181(2) to be places at which an owner of goods shall not authorize another person to be his agent for the purposes of the Customs Acts unless that other person is an employee of the owner, or a licensed customs agent).

- . The manner of communicating with Customs by computer is dealt with in new section 71L.
- . Computer entries are not available for transshipment goods (paragraph (1)(b) refers)

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 imported into Australia, that obligation will be taken to have been complied with if the permission is adequately identified on the import entry. This means that in certain circumstances, the permission may be taken to have been produced to Customs 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.

#### Authority to deal with goods entered under Section 71A

new Section 71B provides for the giving of an authority to deal with goods that have been the subject of an import entry. It is only by Customs giving an authority to deal with goods that the owner is authorised to move goods which are subject to Customs control ie. by moving them to a warehouse or transshipping the goods, or by delivering them into home consumption (Clause 5). In essence, an authority to deal under this new provision has the same effect as an authority to deal granted under current section 39.

The new authority to deal provisions provide a 2 step procedure:

- . where goods are entered, Customs must give an import entry advice (new subsection (1));
- . where the advice is that subject to the payment of any duty the goods will be cleared for home consumption, warehousing or transshipment, and the duty is so paid, Customs must give an authority to deal with the goods (new subsection (4)).

In particular;

Subsection (1) provides that where an entry has been given or transmitted to Customs by document or computer, Customs must give an "import entry advice" by document or computer in respect of the entered goods.

Subsections (2) and (3) provide that an "import entry advice" in respect of a documentary or computer entry must be given to the owner or be made available for collection at the Customs office where it was lodged, or be transmitted via the COMPILE computer system to the registered COMPILE user whose PIN number was transmitted in relation to the entry, respectively. Similarly, these subsections require that both documentary and computer import entry advices must contain:

- i) a statement to the effect that, subject to payment of any designated amount, the goods will be cleared for home consumption or warehousing (computer entry), or home consumption, warehousing or transshipment

(documentary entry), or

- ii) a statement that the goods are directed for further examination.

In commercial jargon the first statement is known as the 'green line' message, and the latter statement is the 'red line' message. All information on an import entry, both computer and documentary, is processed by the Customs computer system through the risk assessment profiles and an import entry advice, either 'green' or 'red' will only be given after the risk status of the entry has been assessed.

Subsection (4) provides that where an import entry advice has been given, and any duty amounts specified in the advice have been paid, Customs must give the person to whom the advice was given or transmitted an authority to take the goods into home consumption, or warehouse or transship them, as the case requires.

Subsection (5) provides that the authority to deal, whether given by document or computer, must set out the date on which it was given, and any conditions to which the authority may be subject.

Subsection (6) provides that an authority may be subject to a condition that a specified permission be obtained under another law of the Commonwealth before the goods are authorised to be taken into home consumption, or warehousing, or transshipment, as the case may be. This provision is necessary to ensure that a clearance by Customs in respect of imported goods may not entitle an importer to take delivery of goods if those goods are subject to other Commonwealth import controls eg. quarantine, food inspection certificates, etc.

Subsection (7) provides that where an authority to deal with goods is expressed to be subject to the condition that a specified permission (subsection (6)) be obtained, the authority is not taken to have been given until that permission is obtained. By operating as a condition precedent to the Customs authority to deal which has been given to the importer, the legislation allows importers to satisfy all requirements without undue delay while still protecting community interests, as the Customs authority to deal is only perfected when the other permission has been obtained by the importer. If such permission is not obtained, the imported goods remain under Customs control, and thus the various provisions in the Act governing the movement of such goods without authority come into play (Sections 33 and

229(1)(g) in particular).

Cancellation of an authority to deal is covered in subsection (8) which provides that an officer doing duty in relation to import entries may cancel the authority at any time before goods authorised to be taken into home consumption, warehoused or transhipped, are so dealt with. 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, or, if that person does not have possession of the goods, on the person who has such possession, (paragraph (8)(a)); and
- . in the case of computer entries; transmitting the notice to the registered COMPILE user (paragraph 8(b));
  - If the computer system fails the notice may be provided as set out in paragraph (8)(a).
- . a decision to cancel an authority to deal with goods is reviewable by the Administrative Appeals Tribunal (Clause 42, paragraph (b) refers).

#### Visual examination in presence of an officer

new Section 71C provides for the visual examination of goods in the presence of a Customs officer by a person permitted or required to make an entry where that person does not have the necessary information to complete the entry. These matters are dealt with in current Section 69 and are known as sight entries.

Subsection (1) provides that a person who is permitted or required to make an import entry and who does not have the information to complete the entry may apply for a visual examination of the goods in accordance with this section. An application must be in writing and be given to an officer doing duty in relation to import entries (subsection (2)).

When an application is given to Customs an officer of Customs must give the applicant permission to examine the goods on a day and at a place nominated by Customs in the notice (subsection (3)).

The integrity of customs control over the goods is maintained by the presence of the officer supervising the inspection, who will keep a

record of the examination.

An officer of Customs may request additional information

new Section 71D provides a power for officers of Customs doing duty in relation to import entries to withhold giving an authority to deal with goods that have been entered until the officer:

- (a) has verified particulars of the goods shown in the entry; or
- (b) is satisfied of any other matter that may be relevant to the granting of an authority to deal (new subsection (1)).

This power remakes that provided for in Section 38B of the Act, which is repealed by Clause 7.

The power of an officer to ask additional information under this provision includes;

- . a power to require the owner of goods to deliver to the officer "Commercial documents" relating to the goods which are in the owner's possession or under the owner's control (new paragraph (2)(a));
  - 'commercial documents' are defined in Section 4 of the Principal Act as any documents prepared in the ordinary course of business for the purpose of a commercial transaction involving the goods or the carriage of goods. This definition excludes records of transactions made under the EXIT computer system for export entries, as Customs is obliged to maintain such records. A similar consequential amendment excluding records of transactions made under the Compile system for import entries is made under Clause 4;
- . a power to require the owner to deliver to the officer information in writing as specified in a notice made under this section that is within the knowledge of the owner, or that the owner is reasonably able to obtain. This provision is intended to provide a power to require written information even where the owner may not have commercial documents eg. where the information relates to matters in respect of which the overseas supplier has the commercial documents but is information which it is reasonable to expect that the Australian owner can obtain from the

supplier (new paragraph (2)(b));

- . a power to ask the owner of goods which have been entered, and the person who communicated the entry on the owners behalf ie. a Customs Agent, questions relating to the goods (new subsection (5)); and
- . a power to require the owner of goods to verify particulars shown in the entry by declarations or by the production of documents (new subsection (6));

Customs may notify an owner of goods of a requirement to deliver commercial documents or information under subsection (2) by either document or computer. The manner in which Customs must require the delivery of documents or information in respect of an import entry is specified in subsection(3) (for a documentary requirement) and subsection (4) (for a computer requirement). It is important to note that where goods were the subject of a computer import entry under section 71A, the notice requiring delivery of information may be given by computer (subsection(4)) or by document (subsection (3)). Similarly an officer may issue more than one notice under (subsection (2)) eg. where an initial query in relation to a tariff classification issue is resolved by the delivery of commercial documents, but a question then arises as to the valuation of the goods as a result of the information disclosed by these commercial documents. An officer may then wish to be satisfied as to that further issue before granting an authority to deal with the goods.

Subsection (7) provides that where the owner of entered goods has been required to deliver documents or information (subsection (2)), answer questions (subsection (5)) or verify particulars (subsection (6)), authority to deal with the goods must not be given until the request has been completed or withdrawn, or the question answered to the satisfaction of an officer, or the notice has been withdrawn.

Subsection (8) provides that where a commercial document is delivered to an officer, the officer must deal with that document and return it to the person who delivered it.

## Application for movement permission

new Section 71E provides for the granting of a permission for the movement of goods that are subject to Customs control. This new provision essentially remakes existing Section 40AA, which is repealed by Clause 7 as a consequence of the introduction of the electronic lodgement option for import entries.

Subsection (2) provides that an application for a movement permission must be made by the owner of the goods and be given to an officer doing duty in relation to import entries or the movement of goods subject to Customs control. When an application is communicated to Customs, an officer must, under new subsection (3), give a notice in writing which gives permission to move the goods to a specified place, subject to such conditions, if any, as are specified, or refuse the application and give reasons. A refusal of an application is subject to review by the Administrative Appeals Tribunal (Clause 42, paragraph (b) refers).

As the goods which have been moved pursuant to a permission remain subject to Customs control, it is necessary for Customs to reserve powers over the goods to protect the revenue, and ensure any quarantine or other community protection interests are not unduly prejudiced. Accordingly, (subsection(4)) provides a power for an officer to direct that goods be moved to a specified warehouse. If such goods are not moved in accordance with such a direction, an officer may arrange for them to be so moved (subsection (5)) and Customs has a lien over the goods for any expenses incurred in connection with any such removal (subsection (6)).

## Withdrawal of import entries

new Section 71F provides that an import entry may be withdrawn at any time before the goods to which the entry relates are dealt with in accordance with the entry (subsection (1)). The withdrawal may be made and communicated by document (subsection (2)) or by computer (subsection (3)), similar to the option previously discussed for the making and communicating of the entry, new sections 71A, 71K and 71L refer.

It is not necessary for Customs to authorise the withdrawal of an entry; however, similar to the making of an entry, where a withdrawal is effected by computer Customs must acknowledge receipt of the withdrawal. A withdrawal of an entry, by document or computer, is effected when it is, or is taken to have been, under Section

71L, communicated to Customs (subsection (5)). A withdrawal has no effect, however, when a requirement under (subsection 71D (2)) to deliver documents or information, answer questions or verify particulars, is outstanding (subsection (4))

#### Goods not to be entered while an entry is outstanding

new Section 71G provides that a person must not communicate a further entry for home consumption in respect of goods that are already the subject of such an entry, unless the first entry for home consumption is withdrawn. The communication of such a further entry is liable to a penalty of \$1500.

- . This new provision essentially remakes existing Section 38A, which is repealed by Clause 7 as a consequence of the introduction of the electronic lodgement option for import entries.

#### Effect of withdrawal

new Section 71H provides that once an import entry has been withdrawn, any authority to deal with the goods the subject of the entry is revoked (subsection (1)), but the entry is still actionable for an offence or administrative penalty under section 243T as if it had not been withdrawn (subsection (2)).

- . This means, for example, an administrative penalty could be imposed or a person could still be prosecuted and a penalty imposed in respect of false statements made on an entry which is subsequently withdrawn.
- . This essentially remakes existing subsection 38(4).

Subsection (3) provides that where the withdrawal is of a documentary entry, the person who communicated the entry is not entitled to have it returned.

#### Change of import entry treated as withdrawal

new Section 71J provides that where a person who has communicated an import entry changes information included in that entry, the person is taken to have withdrawn the entry as it previously stood from the time when an import entry advice is transmitted in respect of the altered entry.

- . The requirement for deemed withdrawal of import entries, where the entries



are amended in any way, is a legislative recognition of the fact that, especially in the electronic context, 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.

While the need for this provision is highest in respect of computer entries, and is in fact a consequence of the introduction of the electronic lodgement system, there is a need to provide an audit trail in respect of amended documentary entries. Hence, this provision does not distinguish between the effect of amendments to computer or documentary entries.

#### Manner of communicating with Customs by document

new Section 71K provides the administrative requirements for communicating with Customs by document. Documentary communications include import entries (new Section 71A), withdrawal of such entries (new section 71F), visual examination applications (new Section 71C), movement applications (new Section 71E) and returns for new Sections 69(5) and 70(7). Such documentary communications must be made in an approved form, include such information as is required by the form, and be signed in the manner indicated in the form.

- Approved forms are defined in Section 4A of the Act as forms which are approved by instrument in writing by the Comptroller. Such forms are disallowable instruments for the purposes of Section 46A of the Acts Interpretation Act 1901, which effectively subjects the forms to Parliamentary scrutiny via mandatory tabling requirements, and the possibility of Parliamentary disallowance.

#### Manner and effect of communicating with Customs by computer

new Section 71L provides the administrative requirements for the communications by importers and their

representatives to Customs using the COMPILE Computer system. The electronic communication of entries and related information about imported goods which the Compile system for imports effects, and the similar EXIT system for exports introduced by Act No. 111 of 1990, is the cornerstone of the paperless trading system.

The heart of the electronic lodgement option for imports is the COMPILE computer system. Access to the COMPILE system is governed by detailed provisions contained in new Clause 16.

The communications which may be made to Customs by computer are the communication of an import entry, and the withdrawal of such an entry. As part of the usual entry procedures, an owner who disputes the amount or rate of duty levied on particular goods the subject of an entry may pay that duty under protest by the computer system, as a result of Clause 31, which amends existing Section 167 of the Act.

The information that must be communicated in such a computer 'document' is set out in an approved statement (new paragraph (1)(c)).

- . Approved Statements are defined in Section 4A of the Principal Act as instruments approved in writing by the Comptroller-General of Customs. Such statements are disallowable instruments under Section 46A of the Acts Interpretation Act 1901, and as such are subject to parliamentary scrutiny via mandatory tabling in Parliament, and possible disallowance.

Paragraph (1)(a) provides that communications with Customs by computer must be transmitted using the COMPILE Computer System during the hours of business prescribed by regulations for the purpose of transmitting computer import entries to Customs. By force of this section, the same hours apply in respect of transmitting a withdrawal of such an entry.

Paragraph (1)(b) provides that communications to Customs must be signed by transmitting in relation to the entry or withdrawal the Personal User identification Number allocated to a registered COMPILE user under Clause 16,

The requirement for a signature in respect of communications by computer is a necessary part of the process of validating and assessing information in respect of imported goods.

The effect of any signature is a unique marking to authenticate that the information contained in the substantive 'document' is given and attested to by the signatory. Unlike a documentary signature, which appears at the bottom of a document and authenticates the information preceding it, an 'electronic' signature cannot be seen on a document, and indeed is never displayed on the computer screen for security reasons (the registered COMPILE user is under strict obligations to ensure the secrecy and security of his or her PIN number (Clauses 16 and 36 refer)). To overcome this problem, the COMPILE system operates on the basis that before a computer entry or withdrawal can be communicated to Customs, the registered COMPILE user must first transmit his or her PIN number. If that is accepted and recognised, the user may then proceed to transmit the entry or withdraw information. In this way the PIN number serves as the electronic signature of the registered user for the entry or withdrawal messages in relation to which it was transmitted, and operates to authenticate the substantive communications and identify the author of that communication.

Subsection (2) provides that an import entry is taken to have been communicated to Customs when an import entry advice (new Section 71B refers) is communicated by Customs to the registered COMPILE user whose PIN number was transmitted in relation to the entry. Similarly, a withdrawal of such an entry is taken to have been communicated to Customs when an acknowledgement of the withdrawal, which Customs must provide, is transmitted to the registered COMPILE user whose PIN number was transmitted in relation to the withdrawal.

Failure to make entries

- Clause 14 amends Section 72 of the Principal Act by omitting from paragraph 4(b) the reference to Section 39 and inserting a reference to the new authority to deal provision inserted by Clause 13 (new Section 71B).
- . this is a consequential amendment on the electronic lodgement provisions.

Breaking Bulk

- Clause 15 Amends Section 73 of the Principal Act by omitting from subsection (3) the reference to Section 39 and inserting a reference to the new authority to deal provision inserted by Clause 13 (new Section 71(B)).
- . this is a consequential amendment on the electronic lodgement provisions.

Insertion of new Division

- Clause 16 Division 4A - the use of computers for import entry purposes

- Subclause (1) inserts after section 77 in Part IV of the Customs Act 1901 a new Division dealing with access to and the use of the COMPILE computer system for import related purposes (subclause 16(1)) and validates any COMPILE user registration made before the commencement of this new Division (subclause 16(2)).

New Division 4A introduces 3 new sections which provide a framework for use of the COMPILE system in the entry and clearance of imported goods. The first section introduces provisions requiring users of the COMPILE system to be registered with Customs, and requires such users to enter into a COMPILE user agreement which will, amongst other things, entitle them to be allocated a PIN number or numbers (new section 77A).

A power will be conferred on the Comptroller to cancel a user's registration in particular circumstances (new subsections 77A(10) to (12)).

The remaining two Sections attach prima facie responsibility on the user for any communications to Customs which use that users PIN number (new Section 77B), and provide for contingency arrangements that can be used in the case of a system failure (new Section 77C). The provisions relating to Division 4A and to the saving of previous COMPILE registrations, are explained in greater detail below.

new Section 77A provides the basis on which Customs may provide, deny or withdraw a person's access to computer communications with Customs in regard to import related matters.

Subsection (1) requires a person to become a registered COMPILE 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 COMPILE are based.

Subsections (2), (3) and (4) prescribe the arrangements whereby intending users may seek registration. Applicants will be required to provide in their application such details as their personal or corporate identity, the type of computer facilities (including software) they will use, the number of access "mailboxes" required and any preferred identifying codes of those "mailboxes". The Comptroller may require additional information from an applicant and may refuse to register an applicant until such information is given to the Comptroller's satisfaction (new subsection (4));

Subsection (5) obliges the Comptroller to formally notify the applicant that registration has been approved or, for stated reasons, refused, once he or she has received the application and information required by subsections (2) to (4). In particular subsection (6) provides that the Comptroller may refuse to register an applicant who does not, and will not within a reasonable time, have computer facilities compatible with the COMPILE system. Refusals for any reason are appealable to the Administrative Appeals Tribunal (Clause 42, paragraph (b) refers).

Subsection (7) sets the date of registration at the date the notification under subsection (4) is signed;

Subsection (8) requires registered users to enter into a COMPILE user agreement with Customs. This requirement provides the basis for the contractual elements of the user's participation in COMPILE. User agreements will deal with technical matters (including training), commercial arrangements, and other terms and conditions by which the parties will communicate using the COMPILE 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;

Subsection (9) provides that once a user is registered, the Comptroller must allocate a PIN number for the applicant, and for the nominated employees of the applicant. Where the applicant is a Customs Agent, the employees to which PIN numbers may be distributed must, in accordance with the agreement, be licensed Customs Agents under Part XI of the Act. A person's PIN number will serve as that person's access key and electronic signature (new Section 77B and Clause 35 refer);

Subsection (10) empowers the Comptroller to cancel a user's registration for failure to comply with either this Act or the user's agreement.

- . Decisions to cancel a user's registration are appealable to the Administrative appeals Tribunal (Clause 42, paragraph (b) refers).

#### Unauthorised use of registered COMPILE user's PIN number

new Section 77B provides in conjunction with the provisions of Clause 36 that the registered user is to be prima facie responsible for any communications "signed" with that user's PIN Number.

- . The user can rebut this prima facie presumption by presenting evidence to show that the communication was transmitted without the authority of the user;
- . The users can also absolve themselves from ongoing responsibility for unauthorised use of the number by notifying Customs of any actual or suspected breaches of security in regard to the number.

#### What happens if the COMPILE computer system is down?

new Section 77C provides contingency arrangements to registered users in the event that a malfunction prevents the COMPILE system from relaying either import entries or Customs replies to import entries.

Subsection (1) provides that where a registered user is unable to transmit an import entry, or Customs is unable to transmit an import entry advice to that user, because the Compile computer system is inoperative, the user may prepare a 'contingency entry' in respect of the goods.

Subsection (2) provides for the manner of making a contingency entry, specifically requiring that such an entry be on an approved form containing that information which would have been required if the COMPILE system was

operative. This is necessary to ensure that Customs receives such minimum information to enable the goods to be properly risk-assessed for prohibited imports and community protection concerns.

Where a contingency entry is given, subsection (3) provides that the provisions of the Act that apply to documentary entries, including clearance of goods and giving authority to deal under new Section 71B (Clause 13 refers), also apply to contingency entries.

Subsection (4) provides a power for an officer of Customs to require additional information in respect of goods the subject of a contingency entry. This power however is expressly additional to, and does not derogate from, officers' powers to require the production of documents or delivery of information under new Section 71D (Clause 13).

Subclause (2) is a savings provision for persons who have already entered into an agreement for the use of the COMPILE system and have been allocated a PIN number or numbers. Such persons are taken to have been registered as a registered COMPILE user under new subsection 77A(5), but must enter into a new COMPILE user agreement within 2 months from the commencement of Clause 16, or their registration will, at the end of that 2 months, be taken to be cancelled.

#### Entry of warehoused goods

Clause 17 amends Section 99 of the Principal Act by omitting from subsection (2) the references to Sections 71A and 71B and inserting a reference to the new delivery without entry provisions inserted by Clause 13 (new Sections 69 and 70) (paragraph (a) refers), and omitting from that subsection the reference to Section 39 and inserting in its place the reference to the new authority to deal provision inserted by Clause 13 (new Section 71B).

- these reference changes are consequential on the electronic lodgement amendments introduced in this Bill.

Prohibited exports

Clause 18 amends Section 112 of the Principal Act by:

- . providing a head of power to enable a Minister to publish a list or other document which specifies goods which are to be prohibited exports (new subparagraph 112(2AA));
- . enabling the Minister to amend that list or document from time to time (new subparagraph 112(2A)(aa)(ii));
  - this amendment is considered appropriate to facilitate Australia's obligations as a member country of the Coordinating Committee for Multilateral Export Controls (COCOM). The list of goods subject to export prohibition under COCOM guidelines is altered regularly as a result of frequent COCOM deliberations and recommendations. To accord appropriate timeliness to the alterations, it is considered a head of power to enable the Minister (in this case the Minister for Defence) to amend this list from time to time is appropriate.
  - Any amendments made by a Minister to the list or document is subject to appropriate notice provisions and parliamentary scrutiny, by virtue of paragraph (b), which makes the amendment a disallowable instrument within the meaning of Section 46A of the Acts Interpretation Act 1901.

What is an export entry?

Clause 19 provides for a technical drafting change to Section 114 of the Principal Act, which is consequential upon the introduction of the Electronic Lodgement provisions in this Act.

- . See discussed under Clause 13 (new Section 71L, on pages 30 and 31).

Authority to deal with goods under section 114

Clause 20 amends Section 114C of the Principal Act as follows:

paragraph 18(1)(a) omits sections (3), (4) and (5) and introduces two new subsections, 114C(3) and 114C(4), which amend the authority to deal regime for goods entered for exportation, to



mirror new subsections 71B(6) and 71B(7) (Clause 13 refers) which provide for the new authority to deal regime for goods entered for importation;

- paragraphs 18(1)(b) and 18(1)(c), which relate to the cancellation of an authority to deal with goods intended for exportation, are consequential upon new paragraph 71B(8) (Clause 13 refers) which provides for the cancellation of an authority to deal with goods entered for importation; and
- subclause 18(2) is a standard savings provision which ensures that a valid authority to deal granted under Section 114C before the commencement of this Clause shall remain valid.

#### Goods not to be taken on board without authority to deal

Clause 21 amends Section 115 of the Principal Act by reinstating the penalty of \$10,000 for the loading of goods for exportation without an authority to deal having been provided on an export entry under section 114C of the Principal Act. This pecuniary penalty was inadvertently omitted from the Act with the introduction of the EXIT export entry provisions in Act No. 111 of 1990.

#### Submanifests may be prepared before goods are exported

Clause 22 provides for a technical drafting change to Section 117A of the Principal Act consequential upon the introduction of the Electronic Lodgement provisions in this Act, and is similar to the proposed change in Clause 19.

#### Requisites for obtaining Certificate of Clearance

Clause 23 amends Section 119 of the Principal Act as follows:

- paragraph 23(a) imposes an additional obligation upon the master or owner of a ship or the pilot or owner of an aircraft to communicate to Customs not only a report of goods taken on board the ship (new paragraph 119(1)(a)(i)), but also, if there are no such goods taken on board, to communicate to Customs a nil return (new paragraph 119(1)(a)(ii)), so Customs can ensure it has complete information with regard to that particular ship; and
- paragraph 23(b) provides a technical drafting change to subsection 119(2A) which

is consequential upon the introduction of the Electronic Lodgement provisions in this Act, and is similar to the proposed change in Clause 19

Withdrawal of entries, submanifests and manifests

Clause 24 amends Section 119A of the Principal Act as follows:

- paragraph 24(a) ensures that reports communicated to Customs under this Section are communicated to the relevant officer - a report for a withdrawal of an entry will be given to an officer doing duty in relation to export entries (new paragraph 119A(2)(b)(i)) and a report for a withdrawal of a submanifest or manifest will be given to an officer doing duty in relation to the clearance of ships or aircraft; and
- paragraph 24(b) provides for a technical drafting change to Section 119A of the Principal Act which is consequential upon the introduction of the Electronic Lodgement provisions in this Act, and is similar to the proposed change in Clause 17.

Notification of export entries, submanifests, manifests and withdrawals

Clause 25 amends Section 119D of the Principal Act consequential upon the introduction of the Electronic Lodgement provisions in this Act, and is similar to the proposed change in Clause 19.

Amendment of heading

Clause 26 amends the heading to Division 3 of Part VI to highlight that this Division deals with export entries, whereas the new Division 4A of Part IV (inserted by Clause 16) deals with the use of computers for import entry purposes.

Payment of duty on ship's or aircraft's stores

Clause 27 amends Section 130B of the Principal Act by omitting subsection 130B (2) and substituting new subsection 130B(2) and new subsection 130B(2AA):

- new subsection 130B (2) provides that the report which the owner or master of a ship might be required to give to Customs relating to the ship's stores and goods taken on board as ship's stores shall be in accordance with an approved form.

- This amendment will assist in providing

more uniformity in the reporting and processing of ship's cargo and stores; the aim being that all such reports should be made via approved forms.

- Such forms are defined in Section 4A of the Principal Act as forms which are approved in writing by the Comptroller-General of Customs, and are subject to Parliamentary scrutiny (tabling and disallowance) by virtue of their status as disallowable instruments for the purposes of Section 46A of the Acts Interpretation Act 1901
- . new subsection (2AA) ensures that the return referred to in subsection (2) must include details of any drugs that are prohibited imports and also details of firearms and ammunition that are ship's stores or have been taken on board as ship's stores.
- This amendment will ensure that Customs receives accurate and timely information with regard to these items.

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

Clause 28

amends subsections 164(4A) and (4B) of the Principal Act in response to a recommendation by the Australian National Audit Office ('ANAO') that invoices of diesel-fuel sales, which are required to be submitted with a claim for diesel-fuel rebate, be replaced by a Schedule of fuel purchases prepared by the claimant and verified by the seller.

- . The ANAO performed an efficiency audit of the diesel fuel rebate scheme earlier this year and tabled its report (Audit Report No. 27 of 1990/91) in Parliament on 16 May 1991.
- . Under subsection 164(4A) and regulation 128D of the Principal Act and Customs Regulations, a rebate is not payable unless the applicant gives to the Collector, together with the rebate application, an invoice or similar document (or certified copy of same) prepared by the seller, containing particulars of the purchase of diesel fuel. Subsection 164(4B) provides that a Collector may approve a claim notwithstanding the non-production of such a document where the applicant cannot produce

the document due to circumstances beyond his or her control.

Paragraph (a) removes the limitation in paragraph 164(4A)(d) as to what kinds of documentation may be prescribed to accompany an application for rebate before such rebate is payable.

- . It is considered there is no need to prescribe in the Principal Act the exact kind of documentation required to evidence or verify diesel fuel purchases. This mechanical function is more appropriate for Regulations.
- . The removal of the limitation is broadly in accordance with the ANAO's Report (Recommendation 32). The ANAO's recommendation that the seller verify the Schedule of fuel purchases, however, has not been proceeded with, principally because it would impose an unreasonable burden on fuel distributors and agents, many of whom are proprietors of small businesses. It is also relevant to note that as the seller who would be required to verify this element of a claim for rebate is not the beneficiary of a claim and is not eligible for rebate, he might have little incentive to do so.

Paragraphs (b) and (c) amend subsection 164(4B) of the Act as a consequence of the amendments to subsection 164(4A) effected by paragraph (a). The amendment effected by paragraph (c) removes the requirement in the current paragraph 164(4B)(b) of the Act to give the Collector a statutory declaration verifying the matters set out in the relevant document. This is in light of the less stringent documentary requirements which are provided for in subsection (4A).

#### Diesel fuel rebate - notification of sale etc.

Clause 29 amends section 164A of the Principal Act to extend the notification obligation in that Section to use of the fuel by an applicant for rebate for a purpose other than the purpose for which the fuel was purchased.

- . Section 164A requires an applicant for rebate to notify the Collector within 21 days of the sale or disposal of the fuel to which the application relates; and on prosecution, provides for a penalty for failing to do so of between 2 and 5 times the rebate applied for. The notification obligation now extends to the situation

where a diesel-fuel rebate claimant uses the diesel fuel for a purpose other than the purpose for which he or she purchased the fuel.

- . This amendment gives effect to Recommendation 34 of the ANAO's Report.

#### Diesel fuel rebate - payment of penalty in lieu of prosecution

Clause 30 amends Section 164AA of the Principal Act to include a reference to use, consequential to the amendments to section 164A effected by Clause 29.

#### Payments under Protest

Clause 31 amends Section 167 of the Principal Act by omitting subsection 167(3), which provides the procedure for disputing a Customs duty assessment by making a "payment under protest", and adding two new subsections; the first of which details the procedure for a documentary protest and the second of which details the procedure for a computer protest, as follows:

new subsection 167(3) provides that for a payment under protest to be made against a documentary import entry, the owner of the goods or the agent must:

- . write on the entry "paid under protest" (new paragraph 167(3)(a));
- . write on the entry a description of the goods to which the protest relates (where the protest does not apply to all the goods covered by the entry) and make a statement as to why the protest is made (new paragraph 167(3)(b)); and
- . sign the statement (new paragraph 167(3)(c));
  - this replicates the previous procedure contained in the omitted subsection 167(3); and

new subsection 167(3A) provides that for a payment under protest to be made against a computer import entry, the COMPILE user must:

- . transmit to Customs the entry number (new paragraph 167(3A)(a));
- . transmit to Customs the words 'paid under protest' (new paragraph 167(3A)(b));

- transmit to Customs a description of the goods to which the protest relates (where the protest does not apply to all the goods covered by the entry) and transmit to Customs a statement as to why the protest is made (new paragraph 167(3A)(c)).

Powers of officers to inspect commercial documents in certain circumstances

Clause 32 amends Section 214AA of the Principal Act, relating to the Customs post entry audit powers, to omit paragraph (a) and substitute a new paragraph (a), which inserts the new references to an import entry and an export entry authority to deal as a result of the repeal of Section 39 and the introduction of the Electronic Lodgement provisions.

Powers of officers for purposes of Section 164

Clause 33 provides for a minor technical amendment to subsection 214A(6) of the Principal Act by removing obsolete references to paragraphs 234(1)(e) and 234(1)(f).

- This amendment is consequential upon Act No. 24 of 1989 which amended Section 234 of the Principal Act by omitting paragraphs 234(1)(d), (e) and (f) and substituting a new paragraph 234(1)(d).

External Search

Clause 34 amends Section 219 of the Principal Act by defining an "authorised officer" as being an officer in a class of officers of Customs declared by the Comptroller to be authorised officers.

- Subsection 219R(1) of the Principal Act provides in part that where a detention officer (who is an officer of Customs of a specified class) or a police officer entertains a reasonable suspicion that a person is unlawfully carrying any prohibited goods, and the person does not consent to an external search, an officer of Customs or of police must as soon as practicable apply to an authorised officer, the Comptroller or a Justice of the Peace, for an order for the external search of the person. The authorised officer is required to be an officer of Customs who is of a more senior position than the detention officer.

- The amendment overcomes an unintended administrative difficulty which has

occurred because the Comptroller does not have power to authorise a class of officers for the purposes of this Section. The amendment removes the necessity of having to have individual authorisations for the purposes of Section 219R.

## Customs offences

Clause 35 amends section 234 of the Customs Act 1901 by inserting 3 new subsections after subsection (2) to cover statements transmitted electronically under the new COMPILE computer system for import entries.

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

New subsection (2A) is a minor technical amendment to the old subsection (2A) to ensure consistency between the provisions dealing with the new computer entry system for imports, and the existing system for exports (the EXIT computer system introduced by Act No. 111 of 1990).

New subsection (2B) provides that where a computer import entry is taken, under section 71L, 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 the Comptroller by the person with whose PIN number the relevant transmission was made. The new subsection (2B) also applies to withdrawals of computer import entries.

- . The cross-references to sections 71L and 119D(3) ensures that any evidence by the user to the contrary is taken into account in terms of the potential application of paragraphs (2A) and (2B).
- . It should be noted that a prosecution under Section 234 does not preclude the Comptroller from deregistering a user.

New subsection (2C) makes it clear that nothing in subsection (2A) or (2B) 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 user who is the agent of an owner of goods to be entered 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.

Security of identifying codes and PIN numbers

Clause 36 inserts a new offence provision into section 234AC of the Principal Act, similar to provisions in the EXIT scheme implemented by Act No. 111 of 1990, to provide a penalty in relation to unauthorised use of identifying codes as follows:

Section 234AC is amended to require a registered COMPILE user to take all reasonable steps to safeguard the security of the PIN number allocated to him or her (new paragraph (a)) and to notify Customs at the earliest available opportunity if that PIN number 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.

Insertion of new sections

Clause 37 inserts new sections 240A and 240B into the Principal Act as follows:

Rebate documents to be kept

new Section 240A requires applicants for diesel fuel rebate to keep relevant documents for 5 years, in terms and with penalties similar to the current Section 240 document retention obligation for importers and exporters. In particular:

- . Subsection (1) requires a person who applies for rebate in respect of diesel fuel to keep for 5 years from when the application is made all relevant rebate documents that came or come into the person's possession;
- . a relevant rebate document is one that is necessary to enable a Collector to ascertain the quantity of diesel fuel that was purchased by the applicant for use in an eligible manner, or the manner in which the applicant used the fuel (subsection (2));
- . Subsection (3) provides that where a relevant rebate document is required to be surrendered to another person by force of Commonwealth or State law, or in accordance with ordinary commercial practice, then it shall be sufficient compliance with the document retention obligation to retain a certified true copy in the manner prescribed



by subsection (4), for the period during which the document is required to be so surrendered,

- . failure to keep the relevant rebate documents in a manner that can be readily used by a Collector in the execution of the Collector's duties, or to inform the Collector as to the whereabouts of the documents, or the commission of any act which alters a document required to be kept, is an offence punishable by a fine not exceeding \$2,000 (subsection (6));
- . Subsection (7) ensures that the prohibition on alteration of documents does not prohibit the marking of documents in accordance with ordinary commercial practice; and
- . the new Section does not require the keeping of documents:
  - by a company that has gone into liquidation or has been dissolved;
  - by a prescribed class of persons to which the Section is expressed not to apply; or;
  - prescribed documents to which the Section does not apply (subsection (8)).

Person not subject to prosecution under Sections 240 and 240A

new Section 240B ensures that a person who fails to keep relevant documents cannot be prosecuted twice for the same offence by providing that proceedings may be brought against the person in respect of the failure to keep a document under either Section 240 or Section 240A, but not both.

Customs records of computer transmissions admissible in evidence

Clause 38 amends Section 241 of the Principal Act to require Customs to maintain a record of all transmissions made to or by it under the COMPILE and EXIT computer systems (subsection (1)), and further provides that that record is admissible as prima facie evidence that either the person by whom or with whose PIN number or 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)).

- . The amendments effectively add the Compile computer system for import entry

transmissions to the existing provision which was inserted by Act No. 111 of 1990 when the Exit computer system was introduced in respect of export entries.

#### Penalty for making false statements

#### Section 243T not to apply in certain cases

Clauses 39,40 effect amendments to Sections 243T and V of the Principal Act consequential upon the introduction of the Electronic Lodgement provisions for import entries. Clause 39 extends liability for an administrative penalty under section 243T to statements taken to have been made to the Comptroller via the COMPILE computer system. Similarly Clause 40 extends the protection of the 'amber line' facility in section 243V to registered COMPILE users who nominate information or omissions from statements made to Customs via the COMPILE computer system, thus avoiding any potential liability for administrative penalty in respect of that statement or omission.

#### Notices

Clause 41 effects minor drafting changes to subsections 273GAA(4) and 273GAA(9) of the Principal Act, to omit "the Minister" and substitute "the Comptroller" from these subsections. Both subsections refer to certain decisions made by the Minister; the relevant decisions are now made by the Comptroller-General.

#### Review of Decisions

Clause 42 amends Section 273GA of the Principal Act, relating to decisions under the Act which are reviewable by the Administrative Appeals Tribunal (AAT).

Paragraph (a) omits paragraph 273GA(1)(aaaa) which was introduced by Act No. 111 of 1990, consequential upon Clause 7 which repeals Section 39.

- . this review right is maintained by new paragraph 273GA(1)(aaq), which allows review by the AAT of a decision to cancel an authority to deal with goods.

Paragraph (b) inserts 9 new paragraphs which provide for review rights of decisions made in relation to the Electronic Lodgement regime for import entries inserted by Clauses 13 and 16, as follows:

- new paragraph 273GA(1)(aab) provides for review by the AAT of a decision by an officer to refuse to grant a permission to allow delivery of like customable goods into home consumption without entering them for that purpose (new Section 69(3) refers);
- new paragraph 273GA(1)(aac) provides for review by the AAT of a decision by an officer to revoke a permission to allow delivery of like customable goods into home consumption without entering them for that purpose (new Section 69(6) refers);
- new paragraph 273GA(1)(aad) provides for review by the AAT of a decision by an officer to refuse to grant a permission to allow delivery of special clearance goods into home consumption without entering them for that purpose (new Section 70(4) refers);
- new paragraph 273GA(1)(aae) provides for review by the AAT of a decision by an officer to revoke a permission to allow delivery of special clearance goods into home consumption without entering them for that purpose (new Section 70(8) refers);
- new paragraph 273GA(1)(aaf) provides for review by the AAT of a decision by an officer to refuse to authorise the delivery of goods (which are not required to be entered) into home consumption (new Section 71(2) refers);
- new paragraph 273GA(1)(aag) provides for review by the AAT of a decision by an officer to cancel an authority to deal with goods (new Section 71B(8) refers);
- new paragraph 273GA(1)(aah) provides for review by the AAT of a decision by an officer to refuse a permission to move goods which are subject to customs control (new Section 71E(3) refers);
- new paragraph 273GA(1)(aai) provides for review by the AAT of a decision by an officer to refuse to register a person as a registered COMPILE user (new Section 77A(5) refers);

- . new paragraph 273GA(1)(aa1) provides for review by the AAT of a decision by an officer to cancel a person's registration as a COMPILE user (new Section 77A(10) refers).

Paragraph (c) removes a superfluous right of review of decisions by the Collector under section 151A of the Principal Act.

- . Section 151A was omitted by Act No. 76 of 1987 and replaced with new subsections 151(3) and 151(4).

The review right that relates to these subsections is a review by the AAT of the Collector's decision that the intended destination of goods shipped from New Zealand or Canada was Australia, for the purposes of attaching a preferential tariff rate to those goods. This review right is superfluous, as review rights presently contained in subsection 273GA(2) and paragraph 273GA(1)(haaa) of the Principal Act completely cover an individual's right to have such a decision reviewed.

- . Section 273GA(2) provides that where the owner of goods has paid under protest the amount of duty demanded by the Collector, an application may be made to the Administrative Appeals Tribunal for review of the decision to make that demand and of any other decision forming part of the process of making, or leading up to the making of, the decision to make the demand of duty.
- . Paragraph 273GA(1)(haaa) provides that where a Collector makes a decision under Section 163 of the Principal Act in relation to an application for a refund, remission or rebate of duty, then application may be made to the AAT for review of such a decision.

### Transitional

#### Clause 43

provides for a standard transitional savings provision which preserves existing proceedings under Sections 64, 64AA, 64AB, 64AC and 130B of the Principal Act despite any amendments of these advance cargo reporting sections by Clauses 8,9,10,11 or 26.

PART 3 - AMENDMENTS TO THE EXCISE ACT 1901Principal Act

Clause 44 identifies the Excise Act 1901 as the Principal Act being amended by this Part.

Payment of Duty

Clause 45 repeals Section 59 of the Principal Act and substitutes a new Section 59 which will eliminate a practice whereby some excise manufacturers and owners of excisable goods are lodging entries for home consumption (which is when the duty rate applicable to goods currently fixes to those goods) and then allowing some considerable time to pass before the duty is paid and the goods are delivered into home consumption. This time lapse can result in these manufacturers and owners deliberately escaping the automatic indexation of rates of excise duty, which occurs in February and August each year.

- . It is considered that in order for the automatic indexation provisions to be effective, the duty rate payable should be the duty payable at the time the goods are delivered into home consumption under subsection 61C(2) (where there is a permission granted to deliver goods into home consumption without entry) (new paragraph 59(a)), or when payment is made (new paragraph 59(b)), whichever is earlier.

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

Clause 46 amends subsections 78A(4A) and (4B) of the Principal Act, similar to the changes made to the Customs Act by Clause 28. These changes are in response to a recommendation by the Australian National Audit Office ('ANAO') that invoices of diesel fuel sales, which are required to be submitted with a claim for diesel fuel rebate, be replaced by a Schedule of fuel purchases prepared by the claimant and verified by the seller.

- . The ANAO performed an efficiency audit of the diesel fuel rebate scheme earlier this year and tabled its report (Audit Report No. 27 of 1990/91) in Parliament on 16 May 1991.
- . Under subsection 78A(4A) and regulation 57A of the Principal Act and Excise Regulations, a rebate is not payable unless the applicant gives to the Collector, together with the rebate application, an invoice or similar document (or certified copy of same)

prepared by the seller, containing particulars of the purchase of diesel fuel. Subsection 78A(4B) provides that a Collector may approve a claim notwithstanding the non-production of such a document where the applicant cannot produce the document due to circumstances beyond his or her control.

Paragraph (a) removes the limitation in paragraph 78A(4A)(d) as to what kinds of documentation may be prescribed to accompany an application for rebate before such rebate is payable.

- . It is considered there is no need to prescribe in the Principal Act the exact kind of documentation required to evidence or verify diesel-fuel purchases. This mechanical function is more appropriate for Regulations.
- . The removal of the limitation is broadly in accordance with the ANAO's Report (Recommendation 32). The verification of the seller however, has not been proceeded with, principally because it would impose an unreasonable burden on fuel distributors and agents, many of whom are proprietors of small businesses. It is also relevant to note that as the seller would be required to verify this element of a claim for rebate is not the beneficiary of a claim and is not eligible for rebate, he or she might have little incentive to do so.

Paragraphs (b) and (c) amend subsection 78A(4B) of the Act as a consequence of the amendments to subsection 78A(4A) effected by paragraph (a). The amendment effected by paragraph (c) removes the requirement in the current paragraph 78A(4B)(b) of the Act to give the Collector a statutory declaration verifying the matters set out in the relevant document. This is in light of the less stringent documentary requirements which are provided for in subsection (4A).

#### Diesel fuel rebate - notification of sale etc.

Clause 47 amends section 78AA of the Principal Act (similar to Clause 29) to extend the notification obligation in that section to use of the fuel by an applicant for rebate for a purpose other than the purpose for which the fuel was purchased.

- . Section 78AA requires an applicant for rebate to notify the Collector within 21 days of the sale or disposal of the fuel to which the application relates; and on prosecution, provides for a penalty for

failing to do so of between 2 and 5 times the rebate applied for. The notification obligation now extends to the situation where a diesel-fuel rebate claimant uses the diesel fuel for a purpose other than the purpose for which he or she purchased the fuel.

- . This amendment gives effect to Recommendation 34 of the ANAO's Report.

#### Diesel fuel rebate - payment of penalty in lieu of prosecution

Clause 48 amends Section 78AB of the Principal Act to include a reference to use, consequential to the amendments to Section 78A effected by Clause 47.

#### Powers of officers for purposes of Section 78A

Clause 49 provides for a minor technical amendment to subsection 99A(6) of the Principal Act by removing obsolete references to paragraphs 120(1)(vii) and 120(1)(viii).

- . This amendment is consequential upon Act No. 24 of 1989 which amended Section 120 of the Principal Act by omitting paragraphs 120(1)(vii) and 120(1)(viii) and substituting a new paragraph 120(1)(vi).

#### Insertion of new Section

Clause 50 inserts a new section 128A into the Principal Act as follows:

#### Rebate documents to be kept

new Section 128A requires applicants for diesel fuel rebate to keep relevant documents for 5 years, in terms and with penalties similar to the current Section 240 of the Customs Act. In particular:

- . Subsection (1) requires a person who applies for rebate in respect of diesel fuel to keep all relevant rebate documents that come into the person's possession before or after the application is made for 5 years after the application is made;
- . a relevant rebate document is one that is necessary to enable a Collector to ascertain the quantity of diesel fuel that was purchased by the applicant for use in an eligible manner, or the manner in which the applicant used the fuel (subsection (2)),

- . Subsection (3) provides that where a relevant rebate document is required to be surrendered to another person by force of Commonwealth or State law, or in accordance with ordinary commercial practice, then it shall be sufficient compliance with the document retention obligation to retain a certified true copy in the manner prescribed by subsection (4), for the period during which the document is required to be so surrendered;
- . failure to keep the relevant rebate documents in a manner that can be readily used by a Collector in the execution of the Collector's duties, or to inform the Collector as to the whereabouts of the documents, or the commission of any act which alters a document required to be kept, is an offence punishable by a fine not exceeding \$2,000 (subsection (6));
- . Subsection (7) ensures that the prohibition on alteration of documents does not prohibit the marking of documents in accordance with ordinary commercial practice;
- . the new Section does not require the keeping of documents:
  - by a company that has gone into liquidation or has been dissolved;
  - by a prescribed class of persons to which the Section is expressed not to apply; or;
  - prescribed documents to which the Section does not apply (subsection (8)).

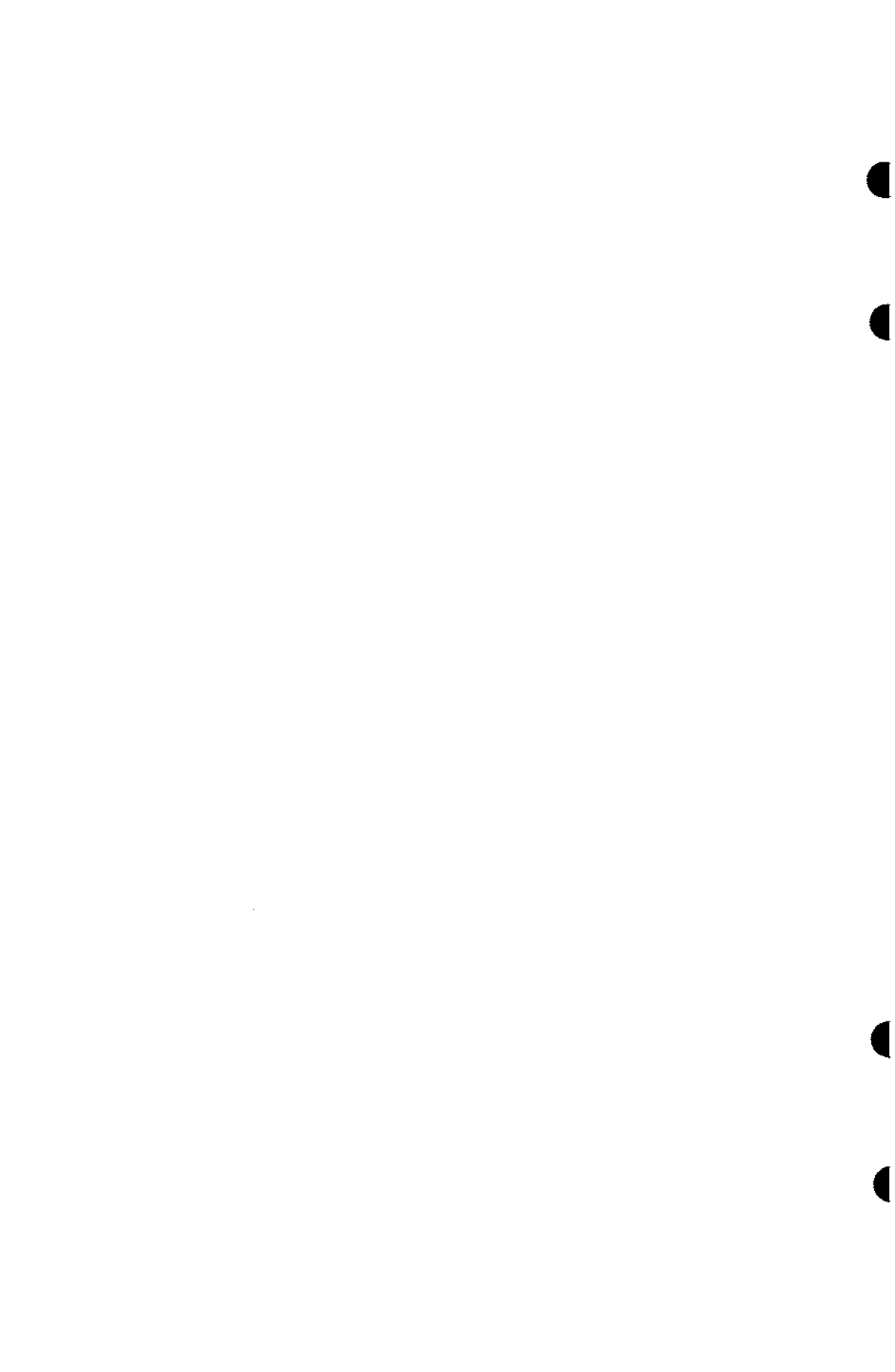


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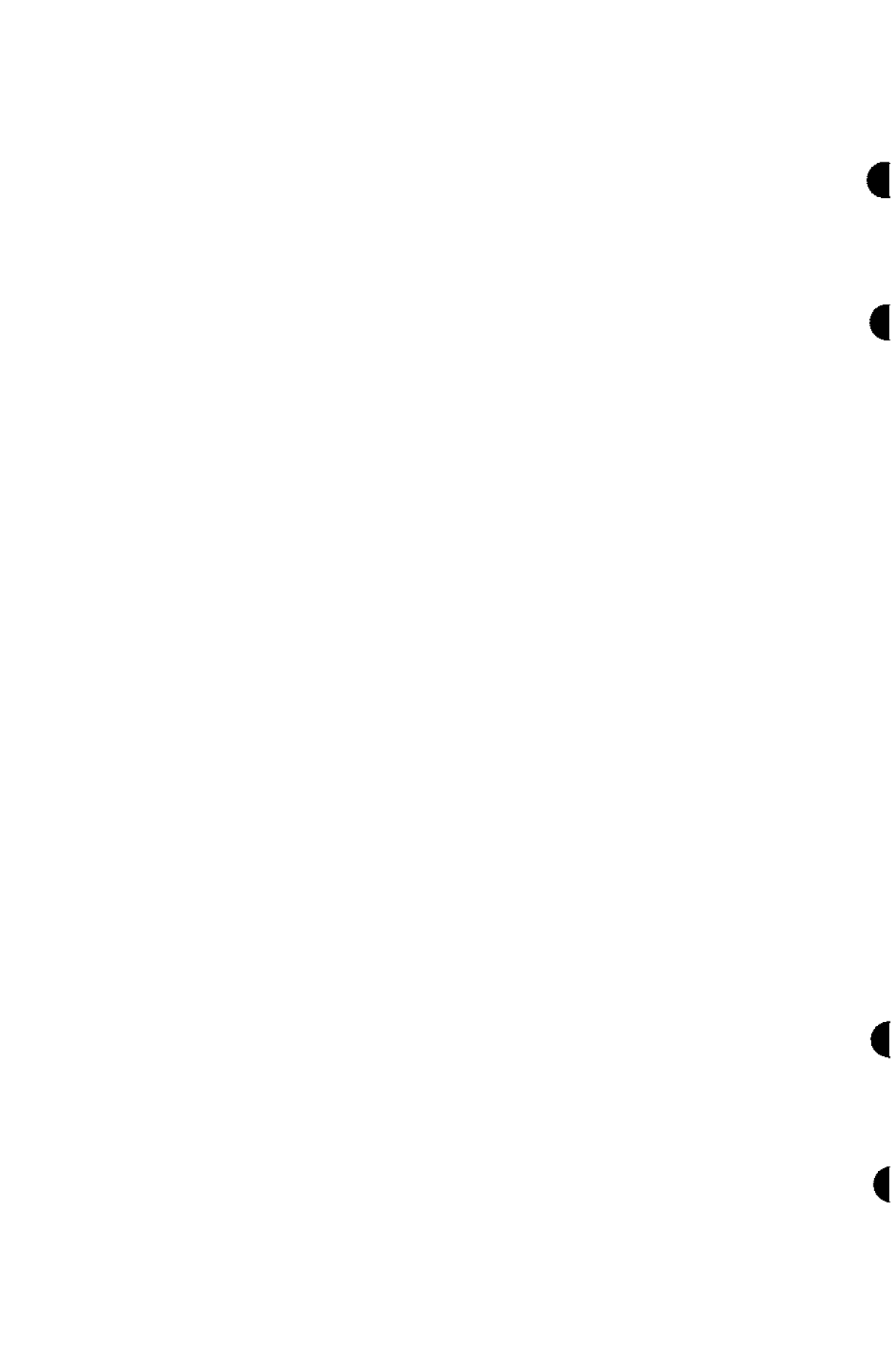


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