

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of
the Government

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

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1992

OUTLINE

The amendments proposed to this Bill are primarily technical drafting changes and clarifications to several sections of the Customs Act 1901 arising from the electronic lodgement proposals in Clauses 13 and 16 of the Bill. The need for the amendments has arisen in the course of settling the subsidiary legislation for some elements of the Bill, and from consultations with the Customs Brokers Council of Australia on 28 March 1992, after the Bill was debated in the House of Representatives on 5 March 1992.

The amendments include:

- . the omission and substitution of new references for sections which are to be repealed and remade as part of the substantial electronic lodgement redraft of the import entry provisions of the Act (Amendment Nos. 1,2,5,8,9,10 and 11 refer);
- . a correction to the definition of the "hours of business" for dealing with import entries, for the purposes of new section 70 (Amendment Nos. 3 and 4 refer);
- . the removal of an unintended discretion from the redraft of existing section 38B of the Customs Act 1901 in new section 71D (Amendment 6 refers);
- . an express repetition of the requirements of Section 181 of the Customs Act for the purposes of electronic lodgement, to effectively reflect the status quo which provides that Customs agents, and their employees who are acting as Customs agents, must be licensed pursuant to the provisions of Part XI of the Act (Amendment No. 7 refers);
- . a clarification of the proposed cancellation power in new subsection 77A(10) to restrict that power to the cancellation of a PIN number or numbers, and not a person's registration as an electronic Compile user (Amendment Nos. 7 and 12 refer); and
- . a minor alteration to the redraft of the section 214AA audit power of the Customs Act as a consequence of the electronic lodgement provisions (Clause 32 of the Bill refers), to ensure the current 5 year time limit on that power is maintained (Amendment No. 11 refers).

Financial Impact Statement

The proposed amendments have no direct financial implications and leave the estimates given in the outline to the Explanatory Memorandum unchanged.

Notes on Amendments

Amendment 1: New Clause 6A - Persons having possession of dutiable goods to keep them safely

The proposed amendment inserts a new Clause 6A in the Bill to effect various reference changes to section 35A of the Principal Act as a consequence of the electronic lodgement provisions. The amendment:

- . omits the reference in paragraph 35A(1A)(a) to section 39 (the authority to deal provision which is to be repealed by Clause 7 of this Bill) and substitutes a reference to the new authority to deal provision in proposed new section 71B; and
- . omits the references in paragraphs 35A(1A)(a) and 35A(1B)(a) to section 40AA (the permission to remove goods subject to Customs control provision which is to be repealed by Clause 7 of this Bill) and substitutes references to the new movement permission provision in proposed new section 71E.

Amendment 2: New Clause 7A - Right to require security

The proposed amendment inserts a new clause 7A in the Bill which omits the reference to section 39 in subsection 42(1) of the Principal Act and substitutes a reference to new section 71B for the same reasons as discussed at Amendment 1.

Amendments 3 and 4:

amendment to Clause 13 of the Bill - new section 70

The proposed amendments correct a technical drafting error in new paragraphs 70(9)(a) and (b), which define the hours of business for dealing with import entries. The paragraphs as drafted defined the hours of business as "... a time when, under regulations made for the purposes of section 28, the applicant would not be able to give a documentary import entry, or transmit a computer import entry to Customs." The proposed amendments omit the word "not", so as to correctly reflect the head of power which permits "hours of business" generally to be prescribed by regulation.

Amendment 5: amendment to Clause 13 of the Bill - new section 71

The proposed amendment inserts in subsection 71(2) a cross reference to existing section 196C of the Principal Act, which is altered in Amendment 10 to replace the existing reference to section 71A in that section, to its new replacement provision, new section 71. This reference amendment is again a

consequence of the electronic lodgement redraft of the import entry provisions.

Amendment 6: amendment to Clause 13 of the Bill - new section 71D.

The proposed amendment omits the words "to the satisfaction of an officer doing duty in relation to import entries" from new subsection 71D(7).

New section 71D remakes current section 38B of the Act, which is to be repealed by Clause 7 of the Bill, and relocated in the new part of the Act dealing with the importation of goods. Current subsection 38B(5), which provides the head of power for withholding an authority to deal with goods where the Customs request for further information and documents relating to an import entry has not been complied with, now appears as subsection 71D(7). With regard to the asking of a question, the ability to refuse an authority to deal unless the question has been answered was arguably expanded by the addition of words requiring the answer to be "to the satisfaction of an officer doing duty in relation to import entries".

The proposed amendment omits those words, as it was not intended to create a new discretion to withhold authorities to deal in the redrafting and relocation of the existing section 38B.

Amendment 7: amendment to Clause 16 of the Bill - new section 77A.

The proposed amendment omits new subsections 77A(10) and (11) and substitutes three proposed new subsections, 77A(9A), (10) and (11). The proposed amendment effectively repeats the requirements of Section 181 of the Act, relating to the licensing requirements for Customs agents, for the purposes of electronic lodgement (new subsection 9A), and clarifies the breadth of the proposed cancellation power (new subsection 10), as follows:

(1) Proposed new subsection 77A(9A)

New subsection 77A(9) provides for the allocation of PIN numbers to registered COMPILE users who have entered into a COMPILE user agreement and to employees of registered users. The subsection provides that where more than one PIN number is requested by the registered user, the nominees to whom further PIN numbers may be issued must be employees of the user nominated to Customs in accordance with the user agreement.

- . The current user agreement repeats the requirements of Section 181 of the Customs Act by requiring that such employees be

permanently employed by the user. In the case where the user is himself or herself a licensed Customs agent within the meaning of Part XI of the Customs Act, any employee nominated by the user for receipt of a PIN number must also be both a permanent employee and a licensed Customs agent under Part XI.

- . There is no requirement however in either the user agreement or Section 181 that a user who is entering goods on his or her own behalf as owner, or the permanent employees of that user/owner, also be licensed Customs agents.

Proposed new subsection 77A(9A) effectively repeats the requirements of Section 181 currently incorporated in Compile user agreements, by providing that for the purposes of electronic lodgement, Customs agents, and their employees who are acting as Customs agents, must be licensed pursuant to the provisions of Part XI of the Act. The new subsection does this by prohibiting the allocation of a PIN number (which is the mechanism by which one may transmit messages electronically) to an employee of a licensed Customs agent unless the employee is also licensed under Part XI of the Act.

(2) Proposed new subsections 77A(10) and (11)

The previous draft of subsection 77A(10) provided that where the Comptroller became satisfied that a registered COMPILE user had failed to comply with an obligation imposed under the Act or with a term of the COMPILE user agreement, the Comptroller could cancel the registration of the registered user. While this decision was appealable to the Administrative Appeals Tribunal (AAT), discussions on the section have revealed that this power might have a quite drastic effect on a Corporate COMPILE user with 50 PIN numbers, where the failure to comply with a term or obligation was only in respect of one or two of the PIN numbers issued to that Corporation.

The proposed amendment rewords subsection 77A(10) so that the Comptroller may only cancel the allocation of a particular PIN Number or PIN numbers, rather than cancelling the registration of the user, which would totally lock the user out of the electronic lodgement facility. The decision remains subject to AAT appeal.

The previous draft of subsection 77A(11), which provided that cancellation has effect from the day the relevant notice is signed, has also been amended slightly as a consequence of the change to subsection 77A(10), to now refer to the cancellation of the allocation of a PIN number or

PIN numbers, rather than to the cancellation of registration.

Amendment 8: New Clause 17A - Spirit imported in bulk must be entered for warehousing or transshipment

The proposed amendment inserts a new Clause 17A in the Bill which is a technical amendment to section 104 of the Principal Act to omit the references in that section to an entry for warehousing under paragraphs 68(1)(b) and to an entry for transshipment under paragraph 68(1)(c), and substitutes references to the new warehousing and transshipment entry provisions in new paragraphs 68(2)(b) and 68(2)(c) respectively (Clause 13 refers) as a consequence of the electronic lodgement redraft.

Amendment 9: New Clause 27A - Rate of import duty

The proposed amendment omits current subsection 132(3). Subsection 132(1) provides that the rate of any import duty payable on goods is the rate in force when the goods are entered for home consumption. Subsection 132(3) provides that subject to subsection 38(5), where an entry for home consumption is withdrawn under subsections 38(1) and (2) and the goods are subsequently entered for warehousing, the entry for home consumption shall be disregarded.

New subsection 71F(1) (Clause 13 refers) replaces both subsections 38(1) and (2), which are to be omitted (Clause 7 refers). There is no proposed remake of current subsection 38(5), which deemed goods to be entered for home consumption in certain circumstances. As a result the condition in subsection 132(3) has become redundant.

New Clause 27B - Declared permit quotas - effect on rates of import duty

The proposed amendment effects 5 technical drafting changes to section 132B of the Principal Act to omit references to sections which are to be repealed by Clauses 7 and 13 of the Bill and, where appropriate, to substitute references to proposed new provisions, as follows:

- (a) Subsection 132B(3) is expressed to be subject to current subsection 71B(6). Subsection 71B(6) provides that for the purposes of subsection 71B(5) (which provides that a permission to deliver goods into home consumption does not authorise delivery of goods in respect of which a quota order under subsection 132B(3) is in force) a quota order shall be deemed not to be in force unless it

has been served on the person to whom the quota order applies. Subsections 71B(5) and (6) are to be omitted by Clause 13 of the Bill and there are no proposed new equivalent provisions. Proposed new paragraph 27B(a) omits the reference to subsection 71B(6) in subsection 132B(3).

- (b) Subsection 132B(4) refers to an authority to deal with goods given under section 39. Proposed new paragraph 27B(b) omits the reference to section 39 and substitutes a reference to proposed new section 71B for the same reasons as discussed at Amendment 1.
- (c) Subsection 132B(4) is also expressed to be subject to subsection 71B(6). Proposed new paragraph 27B(c) omits the words "subject to subsection 71B(6) and", for the same reasons as discussed at paragraph (a) above.
- (d) Subsection 132B(8) also refers to an authority to deal with goods given under section 39. Proposed new paragraph 27B(d) omits the reference to section 39 and substitutes a reference to proposed new section 71B for the same reasons as discussed at Amendment 1.
- (e) Subsection 132B(9) provides that for the purposes of the section a person shall be deemed to have entered goods for home consumption if the person is deemed to have entered the goods for home consumption by virtue of subsection 37(1B) or (1C) or subsection 71B(2):
 - Subsection 37(1B) and (1C) were repealed by Act No. 81 of 1982
 - Subsection 71B(2) (which is to be omitted by Clause 13) provides that goods delivered into home consumption by authority of a permission under subsection 71B(1) to so deliver them notwithstanding that the goods had not been so entered under the Act, are deemed to have been entered on the day on which they are so delivered.

There is no equivalent deeming provision in the new special clearance goods provision (proposed new section 70). The deeming provision in subsection 132B(9) has therefore become redundant. Proposed new paragraph 27B(e) omits subsection 132B(9).

New Clause 27C - Refunds etc. of duty

The proposed amendment effects a technical drafting change to section 163 of the Principal Act by omitting the reference to goods entered under sections 36 or 37 and substituting a reference to goods entered under proposed new section 68 and proposed new subsection 71A(7).

Current sections 36 and 37 (which are to be omitted by Clause 7 of the Bill) deal with the entry of goods for home consumption, warehousing or transshipment and advance entries respectively. Proposed new section 68 and new subsection 71A (Clause 13 refers) will provide for the circumstances currently provided for in sections 36 and 37.

Amendment 10: New Clause 31A - Power to question persons claiming packages

The proposed amendment to section 196C of the Principal Act effects a minor redraft to the preamble of subsection 196C(1), replacing the current reference to section 71A (the delivery without entry provision which is to be repealed by Clause 13) with a reference to the new delivery without entry provision in proposed new section 71, for the same reasons as discussed at Amendment 1.

Amendment 11: Clause 32 - Powers of officers to inspect commercial documents in certain circumstances

The proposed amendment omits Clause 32 of the Bill, which amended section 214AA of the Principal Act to effect a reference change as a consequence of the electronic lodgement amendments, and remakes the same amendment to the section in paragraph (a) of new Clause 32, but adds a new paragraph (b), to ensure the current 5 year time limit on the 214AA audit power is maintained, as follows:

new paragraph (a) inserts in paragraphs 214AA(1)(a) and (b) the new import entry and authority to deal provisions as a result of section 39 being omitted and replaced with the new electronic lodgement provisions (new sections 71A and 71B refer), and

new paragraph (b) inserts in paragraph 214AA(1)(c) the 5 year time-limit on this audit power, which currently applies by reason of the cross-reference between the current 214AA audit power and the current authority to deal provision, in particular subsection 39(1A).

- . With the repeal of section 39 by Clause 7 of this Bill, it is now necessary to provide for the 5 year time limit on the 214AA audit

power by an express amendment to that section itself.

Amendment 12: Clause 42 - Review of decisions

The proposed amendment omits proposed new paragraph 273GA(1)(aa j), which made reviewable by the Administrative Appeals Tribunal the decision to cancel a person's Compile User registration, and substitutes a new paragraph (aa j), which now makes reviewable a decision of the Comptroller under new section 77A(10) to cancel an allocation to a registered COMPILE user of a particular PIN number or PIN numbers.

This amendment is consequential on the change to new section 77A discussed at Amendment 7.

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