

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (No. 4) 1989

EXPLANATORY MEMORANDUM

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

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (NO. 4) 1989

Outline

This Bill is an omnibus Bill proposing a series of amendments to the Customs Act 1901 and the Excise Act 1901, in addition to effecting a series of repeals of unproclaimed sections of three former Customs and Excise Amendment Acts.

The main proposals contained in the Bill relate to:

- (i) the termination of manufacturing in bond, announced by the Government in the context of the 1988 May Economic Statement (Clauses 7 and 8);
- (ii) a new requirement that all potable spirits imported into Australia in bulk containers be repackaged in licenced premises prior to entry for home consumption (Clause 9), and that locally produced spirit be repackaged in non-bulk containers prior to entry for home consumption (Clause 37), as announced by the Government on 18 December 1988; and
- (iii) the amendments to the Commercial Tariff Concession System (Part XVA of the Customs Act 1901) announced by the Government on 14 September 1989. The main features of these amendments are:
 - . the deletion of the definitions of "particular goods", "goods serving similar functions" and "capable of being produced/repared in the normal course of business" and the substitution thereof of guidelines for their interpretation (Clauses 18 and 19);
 - . a provision to enable the Comptroller-General to make a Commercial Tariff Concession Order in respect of a class of goods which in the opinion of the Comptroller-General serve similar functions to the goods nominated in the application; (Clause 20);
 - . the vesting in the Minister rather than the Comptroller-General of the power to exercise the discretion to refuse commercial tariff concession orders in the national interest (Clause 22);
 - . the deletion of the provision for Notices of Intention, and the insertion instead of a provision that the date of effect for Commercial Tariff Concession Orders becomes 28 days immediately preceding the date of lodgement of the application (Subclause 24 and Clause 27, paragraph (c) new subsection (3));

- . the insertion of a provision to allow for concessions to be granted from and/or to a specified date within the processing time for a Commercial Tariff Concession Order (Clause 27, paragraph (c) new subsections (3A) and (3B));

In addition, the Bill proposes a series of minor policy and technical drafting changes, including

- (i) the provision of a statutory head of power to permit the making of regulations to impose a fee for services to offset the costs incurred in processing entries lodged under section 36 of the Customs Act 1901 (Clause 6);
- (ii) standardising the use of the terms "authorised officer" and "approved forms" throughout the Customs Act 1901 and Excise Act 1901 (Clauses 4, 5, 34 and 35);
- (iii) amending section 229 of the Customs Act 1901 to put beyond doubt that goods imported or exported in contravention of the Motor Vehicle Standards Act 1989 are not forfeited to the Crown under the Customs Act 1901 (Clause 15); and
- (iv) repealing pieces of unproclaimed legislation relating to the Customs Amendment Act 1981, Customs and Excise Amendment Act 1982 and Customs and Excise Legislation Amendment Act 1985 (Clause 41).

Financial Impact Statement

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

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Short title

Clause 1 provides for the citation of this Act as the Customs and Excise Legislation Amendment Act (No. 4) 1989.

Commencement

Clause 2 provides for the Act to commence on 1 January 1990 (subclause 4) with the exception of the following provisions:

- . Sections 1, 2, 3 and 33, which are machinery provisions relating to the short title, the commencement provision and the Principal Act citation provisions, which are to commence on the day on which the Act receives the Royal Assent (subclause 1);
- . Paragraph 4(1)(b), Section 16 and paragraphs 34 (1)(b) and (c) and section 41 (so far as it relates to the amendment of the Customs Administration Act 1985), which are to be taken to have commenced on 1 July 1989. This is the day the Customs and Excise Legislation Amendment Act 1989 came into operation. That Act inserted a new definition of "Officer of Customs" in both the Customs Act 1901 and the Excise Act 1901, and the amendments proposed in this Bill in paragraphs 4(1)(b), 34(1)(b) and (c) and section 41 (so far as it relates to the amendment of the Customs Administration Act 1985) are backdated to the time of that original amendment. Section 16 corrects a spelling error in section 243U of the Customs Act 1901 and this amendment is also backdated to 1 July 1989, as this is the day the Customs and Excise Legislation Amendment Act (No. 2) 1989 inserted the new section 243U (subclause 2);
- . Section 15, which provides that goods are not forfeited to the Crown under subsection 229(1) of the Customs Act 1901 merely because they are imported or exported in contravention of the Motor Vehicles Standards Act 1989, is taken to have commenced on 1 August 1989, the day the relevant provisions of the Motor Vehicles Standards Act 1989 came into operation (subclause 3).

PART 2 - AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

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

Interpretation

Clause 4 amends section 4 of the Customs Act 1901 by:

subclause (1);

- . amending the definition of "approved form" to take account of the insertion of new section 4A (paragraph (1)(a)). (For further details see notes on Clause 5);
- . adding the words "under this Act" to paragraphs (b), (c) and (d) of the definition of "Officer of Customs". This amendment is designed to make it clear that when the Comptroller authorises a person to perform all of the functions of an Officer of Customs or just some of the powers or functions of an officer of Customs under the Customs Act 1901 or any other Commonwealth Act relating to Customs, the authorisation is made under the definition of "Officer of Customs" in Section 4 of the Customs Act 1901, and not any other provision. A similar consequential amendment is made to the Excise Act 1901 by Clause 34 of this Bill (paragraph (1)(b));
- . omitting from the definition of "Warehoused goods" in subsection (1) "manufactured" and substituting "blended or packaged". This amendment is consequential on the amendments proposed in Clause 8 (paragraph (1)(c));
- . inserting a definition of the term "authorised officer". At present, individual sections contain their own definition of this term. The purpose of the amendment is to standardise the use of the term throughout the Customs Act 1901 (paragraph (1)(d));
- . inserting a definition of the term "blending" which is consequential on the amendments contained in Clause 8 (paragraph (1)(e)).

Subclause (2) is a standard-form savings provision, which is consequential on the proposed new definition of "approved forms" in new section 4A (see Clause 5). The provision effectively saves

any forms approved by the Comptroller-General prior to 1 January 1990 (the commencement date for new section 4A).

Insertion of new section -

Approved forms

Clause 5 provides for a new section 4A to be inserted in the Customs Act 1901. This section provides that approved forms are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

- . this acquits an undertaking by the Government to the Senate Standing Committee on Regulations and Ordinances that forms approved for the purposes of compliance with various Customs legislative requirements would be made subject to parliamentary scrutiny via the tabling and disallowance procedures applicable to regulations under sections 48-50 of the Acts Interpretation Act 1901.
- . Forms approved prior to the commencement of this section (1 January 1990) (which are saved by virtue of subclause 4(2)) are not affected and so will not need to meet the tabling requirements of the Acts Interpretation Act 1901. However, all forms approved after that day will have to meet the tabling and disallowance requirements of section 46A of the Acts Interpretation Act 1901.

Entry of goods

Clause 6 amends Section 36 of the Customs Act 1901 by inserting two new subsections to provide a head of power for the making of regulations relating to the entry of goods.

new subsection 2A

The regulations which may be made pursuant to this head of power might;

- . require that entries lodged with the Australian Customs Service be able to be processed by a specified computer system used by the Customs for the purposes of handling such entries (paragraph (a)), and
- . require that the person making an entry pay a fee for services to

- offset the costs, if any, incurred in processing entries lodged otherwise than via the prescribed Customs computer system (subparagraph b(ii)), or,
- offset the costs incurred, if any, in respect of the provision of access to the prescribed Customs computer system for the lodgement of entries via that system (subparagraph b(i));

new subsection 2B

The regulations which may be made pursuant to this head of power enable the exemption of persons from liability to pay fees which might be imposed pursuant to new paragraph 2A(b) discussed above.

Warehouse licences

- Clause 7 amends section 79 of the Customs Act 1901 by omitting the term "manufacturing" from subsection (3) and substituting "blending or packaging". This amendment is consequential on the amendments contained in Clause 8.

Goods blended or packaged in warehouse

- Clause 8 amends section 98 of the Customs Act 1901 by omitting "manufacturing" and substituting "blending or packaging" (paragraph (a)); and omitting "manufactured" (wherever occurring) and substituting "blended or packaged" (paragraph (b)).

- section 98 of the Customs Act 1901 currently provides that goods may be manufactured in a warehouse where a warehouse licence so authorises. This amendment has the effect of terminating manufacture in a warehouse on and from 1 January 1990 as part of the Government's 1988 May Economic Statement measures.

The activities of blending and packaging however, will still be permitted in licensed warehouses.

Insertion of new Part

- Clause 9 inserts a new Part into the Customs Act 1901 relating to imported spirits in bulk containers. The new Part proposes a special control regime for such spirit, to address a possible risk both to Commonwealth revenue and public health from the practice of bottling or packaging spirit outside of bonded or licensed premises, increasing as a result the possibility of illicit spirit production.

PART VA - SPECIAL PROVISIONS RELATING TO SPIRITS

Interpretation

new section 103 provides definitions for the terms 'bulk container', 'container', and 'spirit' for the purposes of the new Part. This is consequential on the new regime contained in sections 104 and 105 of the Customs Act 1901 detailed below.

Spirit imported in bulk must be entered for warehousing or transshipment

new section 104 provides that all spirit imported into Australia in bulk containers, (that is, in containers having the capacity to have packaged in them more than 2 litres of spirit), must initially either be entered for warehousing under paragraph 68(1)(b) of the Customs Act 1901 or for transshipment under paragraph 68(1)(c) of that Act.

- . There is currently no restriction on bulk spirit being entered directly for home consumption. This section will now prevent the direct entry into home consumption of all bulk spirit imported into Australia, subject to the exception detailed in section 105 below.

Certain spirit not to be entered for home consumption in bulk containers without Comptroller's approval

new section 105 provides that spirit which has been imported into Australia in bulk containers and which has been entered for warehousing must not be entered for home consumption unless it has either been repackaged into a container which is not a bulk container (paragraph (1)(a)); or the Comptroller permits the entry for home consumption of the bulk container of spirit by notice in writing (paragraph (1)(b)). In determining whether or not to grant such a permission, the Comptroller is obliged to only have regard to the considerations listed in new subsection (2) viz.

- . the volume of the container (paragraph (a)), and
- . whether he or she is satisfied that the spirit will not be repackaged in any other container for retail sale (paragraph (b)).

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

- Clause 10 amends section 164 of the Customs Act 1901 by omitting the term "a Collector" and substituting "the Comptroller". This amendment makes this section consistent with the amendment made in the Customs and Excise Legislation Amendment Act (No. 3) 1989 to section 165, where the responsibility of issuing recovery notices was transferred from Collectors to the Comptroller.

Powers of officers to inspect commercial documents under a section 39 authorisation

- Clause 11 amends section 214AA of the Customs Act 1901 by removing the internal definition of the term "authorised officer", which is consequential on the new definition of this term inserted in section 4 of the Customs Act 1901 (Clause 4, paragraph (d) refers).

Powers of officers to inspect commercial documents in other circumstances

- Clause 12 amends section 214AB of the Customs Act 1901 by omitting subsection (8), which defined the term authorised officer for the purposes of this section, as a consequence of the new definition for this term inserted in section 4 of the Customs Act 1901 (Clause 4, paragraph (d) refers).

Powers of officers for purposes of section 164

- Clause 13 amends section 214A of the Customs Act 1901 by omitting subsection (10), which defined the term "authorized officer" for the purposes of this section, as a consequence of the new definition for this term inserted in section 4 of the Customs Act 1901 (Clause 4, paragraph (d) refers).

Powers of officers for purposes of Customs Tariff (Anti-Dumping) Act 1975

- Clause 14 amends section 214B of the Customs Act 1901 by omitting subsection (10), which defined the term "authorized officer" for the purposes of this section, as a consequence of the new definition for this term inserted in section 4 of the Customs Act 1901 (Clause 4, paragraph (d) refers).

Forfeited Goods

- Clause 15 amends section 229 of the Customs Act 1901 by inserting a new paragraph (1A) which provides that goods imported or exported in contravention of the Motor Vehicles Standards Act 1989 are not forfeited

to the Crown under subsection (1) merely because of that fact.

- . the Motor Vehicles Standards Act 1989 itself provides whatever sanctions are to be imposed for unlawfully importing or exporting goods in contravention of that Act;
- contraventions of the Customs Act 1901 itself however, insofar as motor-vehicles are concerned, may still render goods covered by the Motor Vehicle Standards Act 1989 liable to sanctions (including forfeiture) under the Customs Act 1901.
- . this section is taken to have commenced on 1 August 1989, the day the relevant provisions of the Motor Vehicle Standards Act 1989 came into operation (subclause 2(3) refers).

Remission of Penalty

Clause 16 amends section 243U of the Customs Act 1901 to correct a spelling error in the reference to "Comptroller".

Institution of prosecutions

Clause 17 amends section 245 of the Customs Act 1901 by inserting the words "the office of" after "name of" in subsection (1). This amendment will allow all Customs prosecutions to be instituted in the name of the office of the Comptroller-General of Customs, regardless of whether, at the time the prosecution is instituted, the actual incumbent of the office or a person acting for that person is performing the duties of the position.

- . This amendment also makes it clear that the personal name of the incumbent of the office of Comptroller-General of Customs need not be used when instituting a prosecution, only the office itself need be used, that is the "Comptroller-General of Customs" (subclause (1));

A savings provision is inserted to ensure that any Customs prosecutions begun, but not completed, before this amendment takes effect, (1 January 1990) are to be treated as if this amendment had commenced, eg. the prosecutions are deemed to have been begun in the name of the Office of the Comptroller-General (subclause (2)).

Interpretation

Clause 18 amends section 269B of the Customs Act 1901 by omitting the definition of "particular goods" from subsection (1) and by omitting subsections (3), (4), (7) and (8). This amendment is consequential on Clause 20 (detailed below) relating to the granting of commercial tariff concession orders in Part XVA of the Customs Act 1901.

Insertion of new section - Minister may formulate guidelines in relation to powers and duties under this Part

Clause 19 inserts a new section 269BA into the Customs Act 1901.

The new section allows the Minister to formulate and give guidelines to the Comptroller as to how the Comptroller is to carry out his or her powers and duties under Part XVA of the Act, and the Comptroller must have regard to any guidelines so given (new subsection (1)).

These directions must deal with general principles relating to the relevant powers and duties and not with particular applications for a concession order (new subsection (2)), but may be given in relation to a range of matters (new subsection (3)) eg.

- . the determination of a class of goods (paragraph (a)); and
- . the determination of whether goods serve similar functions to other goods (paragraph (b)); and
- . matters relevant to decisions on national interest made under the new subsection 269E(1B) (Clause 22 below refers) (paragraph (c)).

The directions must in addition be advertised publicly in the Gazette and be tabled in Parliament (new subsection (4)), and may be disallowed by either House of Parliament (new subsection (5)).

Commercial Tariff Concession Orders

Clause 20 amends section 269C of the Customs Act 1901 by omitting subsections (1), (1A) and (1B) and substituting a new subsection (1) to require the Comptroller to determine a class of goods that consists of or includes some or all of the goods specified in an application for a Commercial Tariff Concession Order (new subsection (1)). Once a class of goods has been determined, the Comptroller is required to be satisfied that goods serving similar

functions to the goods comprising the class are not produced in Australia (new paragraph (1)(a)), and that goods serving similar functions to the goods comprising the class are not capable of being produced in Australia by any person in the normal course of business (new paragraph (1)(b)). If so satisfied the Comptroller must make a written Commercial Tariff Concession Order in respect of the class of goods determined.

- . The regime currently contained in section 269C has been given a restrictive interpretation by the Federal Court in decisions such as Corinthian Industries (Syd) Pty Ltd v Comptroller-General of Customs v Others, which have limited the scope of tariff concession orders to goods specified in an application. It was intended when the concession scheme was introduced in 1983 that the Comptroller have the power where necessary to make concession orders in terms wider or narrower than the terms specified in an application, and this clause makes the necessary amendments to the Customs Act 1901 to give effect to that original intent.

New subsection (1A) imposes the same requirements in respect of the repair of goods. Consequential amendments to subsections (1C), (2) and (3) of section 269C omit the word "particular" (wherever occurring) (paragraph (c)); omit the reference to "(1A) or (1B)" and substitutes "or (1A)" (paragraph (b)), and omit subsection (3)(paragraph (d)).

- . Terms such as "similar function" and "normal course of business" which were previously defined in section 269B of the Customs Act 1901 are no longer defined under the new regime (see Clause 18). This is a corollary to the intention to provide greater flexibility in the making of Commercial Tariff Concession Orders. Such terms and concepts will now be the subject of Ministerial guidelines as discussed in respect of Clause 19.

Sub-clause 20(2) is a savings provision intended to validate any existing tariff concession orders which may be in doubt as a result of the Federal Court decision in Corinthian Industries (Syd) Pty Ltd v Comptroller-General of Customs and Others. The subclause treats such orders as if they were made under subsection 269C(1) as amended by this Act.

Concession order not to apply to prescribed goods

Clause 21 amends section 269D of the Customs Act 1901 by substituting the term "goods" for any reference to "particular goods" in subsection (1)(paragraph (a)), and by omitting from subsection (2) the reference to item, sub-item, paragraph or subparagraph and substituting "heading or subheading".

- . The amendment to subsection (2) reflects a change to the tariff nomenclature introduced by the Customs Tariff Act 1987.

Comptroller may refuse to make certain concession orders

Clause 22 amends section 269E of the Customs Act 1901 by omitting subsections (1) and (1A) and recasting those subsections, without however altering the existing discretion possessed by the Comptroller to refuse orders having a substantially adverse effect on an Australian market (new subsections (1) and (1A)).

- . the purpose of the recasting is to reflect the fact that the discretion to refuse orders on national interest grounds is now to be vested in the Minister, as opposed to the Comptroller;

New subsection (1B) requires the Comptroller to refer any application for a concession order which he or she considers may not be in the national interest, to the Minister for determination. Where the Minister determines that the making of such an order is not in the national interest, he or she must inform the Comptroller in writing of that determination and the reasons therefor, and on being so informed, the Comptroller must refuse to make that order (new subsection (1C)).

The Clause also makes minor amendments to subsection (2) to remove references to "paragraph (1)(b) or (1A)(b)" and substituting "subsection (1B)" (paragraph (b)) and to remove the phrase "(other than paragraph (g))" which no longer exists in the Industries Assistance Commission Act 1973. (paragraph (c)); and to subsection (3) as a consequence of the substantive amendments contained in this clause and Clause 20. (paragraphs (d), (e) and (f)).

Applications for concession orders

Clause 23 amends section 269G of the Customs Act 1901 by removing any reference to "particular" in that section. This is consequential on the amendments

contained in Clause 20 and is intended to allow flexibility in the making of tariff concession orders.

Repeal of section 269H

Clause 24 repeals section 269H of the Customs Act 1901

- . Section 269H, which allows a person to give the Comptroller a notice in writing that he or she proposes to make an application for a concession order, is now no longer necessary because of amendments contained in Clause 27 (detailed below).

Applications taken to be made in certain circumstances

Clause 25 makes minor technical amendments to section 269J of the Customs Act 1901 similar to those contained in Clause 23 above, to reflect the new regime introduced by Clause 20.

Orders not to be made without notice of application etc.

Clause 26 effects consequential amendments to section 269L of the Customs Act 1901 as a result of the amendments proposed in Clause 20. Paragraph (b) omits "for the order" from subparagraph (a)(i), whilst paragraph (c) substitutes a new sub-paragraph (a)(ii) for the former subparagraph (a)(ii). These amendments reflect the fact that the Comptroller is now required to make concession orders in respect of a class of goods rather than in relation to particular goods specified in an application.

In addition to the amendments outlined above, Clause 26 removes any reference to the "Temporary Assistance Authority" from section 269L (paragraph (a)), since that Authority no longer exists.

Application of concession orders

Clause 27 amends section 269N of the Customs Act 1901 by omitting subsection (3) and substituting new subsections which stipulate the time from which tariff concession orders will apply. New subsection (3) provides that the date of effect for concession orders is a day occurring 28 days before the day on which the relevant application is made. In addition, New subsections (3A) and (3B) provide the Comptroller with a mechanism for granting specified period tariff concession orders. It currently takes on average 28 weeks to process an application for a tariff concession order because of the need to consult with local industry. During this time local production of goods determined to be of a class consisting of or including some or all of those

goods the subject of a tariff concession application may have commenced or ceased. It is not currently possible to grant a tariff concession order for this 'consideration' period, even where there is no local industry to protect. New subsections (3A) and (3B) overcome this problem by granting the Comptroller the power to make relevant concession orders from the day on which local production ceases even though this may be a day after an application for a tariff concession order has been lodged (new subsection (3A)) or from the day on which such application was lodged up until the day on which local production commences. (new subsection (3B)).

In addition to the substantive amendment contained in paragraph (c) of Clause 27, paragraphs (a) and (b) of that clause effect technical amendments to section 269N to accord with changes in drafting style (paragraph (a)) and to reflect the new regime contained in Clause 20.

Revocation of concession orders

Clause 28 amends section 269P of the Customs Act 1901 by omitting from relevant subsections any references to "particular goods". This amendment is consistent with other similar amendments made to the Act to reflect the amendments contained in Clause 20.

Interpretation

Clause 29 amends section 269T of the Customs Act 1901 by omitting the definition of "approved form", as a consequence of the definition of the term in section 4 of the Customs Act 1901 and new section 4A (Clauses 4 and 5 refer).

Commissioned ships and aircrafts to be reported

Clause 30 amends section 274 of the Customs Act 1901 so that in future it is only the Comptroller and officers authorised by him or her who may exercise the powers and perform the functions of this section.

- . this section relies on the general definition of "authorised officer" inserted in section 4 of the Customs Act 1901 by this Act.

Commissioned ships and aircraft may be searched

Clause 31 amends section 275 consequentially upon the amendment of section 274 (Clause 30 above) by providing that it is the Comptroller or an officer authorised by him or her who may exercise the powers and perform the functions of this section.

- . this section relies on the general definition of "authorised officer" inserted in section 4 of the Customs Act 1901 by this Act.

Transitional

Clause 32 is a transitional provision which is designed to preserve the the validity of authorisations in force immediately before the amendment of section 214AA, 214AB, 274 and 275 by this Act (Clauses 11, 12, 30 and 31 refer).

PART 3 - AMENDMENT OF THE EXCISE ACT 1901

Principal Act

Clause 33 identifies the Excise Act 1901 as the Principal Act being amended by this Part.

Interpretation

Clause 34 amends section 4 of the Excise Act 1901 by:

- . amending the definition of "approved form" to take account of the insertion of new section 4AA (paragraph (1)(a)). For further details see notes on Clause 35; subclause (2) expressly saves forms approved prior to the amendment of section 4 and the insertion of new section 4AA (eg. prior to 1 January 1990);
- . amending the definition of Officer of Customs in the Excise Act 1901 to maintain the link between persons who are given a general authorisation under the Customs Act 1901 and the Excise Act 1901 (paragraph (1)(b));
 - a person who is given a general authorisation under the Customs Act 1901 is treated as an Officer of Customs for the purposes of the Excise Act 1901.

This amendment is backdated to 1 July 1989, the day the Customs and Excise Legislation Amendment Act 1989 inserted the new definitions of Officer of Customs into the Excise Act 1901;

- . amending paragraphs (c) and (d) of the definition of Officer of Customs consequentially upon the amendment of paragraph (b)(see paragraph (1)(b) above) (paragraph (1)(c));
 - a person who is given a specific authorisation under a particular section

of the Excise Act 1901 is only considered to be an Officer of Customs for the purposes of that particular section of the Excise Act 1901;

- . inserting a definition of the term "authorised officer". At present, individual sections contain their own definition of this term. The purpose of this amendment is to standardise the use of the term throughout the Excise Act 1901 (paragraph (1)(d));
- . inserting in subsection (1), definitions of the terms 'bulk container', 'container', and 'spirit'. This is consequential to the new subsections added to section 58 of the Excise Act 1901 by Clause 37. (detailed below). paragraph (1)(e)).

Insertion of new section -

Approved forms

Clause 35 provides for a new section 4AA to be inserted in the Excise Act 1901. This section provides that approved forms are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

- . this acquits an undertaking given by the Government to the Senate Standing Committee on Regulations and Ordinances that forms approved for the purposes of compliance with various Customs legislative requirements would be made subject to parliamentary scrutiny via the tabling and disallowance procedures applicable to regulations under sections 48-50 of the Acts Interpretation Act 1901.
- . Forms approved prior to the commencement of this section (1 January 1990)(which are saved by virtue of subclause 4(2)) are not affected and so will not need to meet the tabling requirements of the Acts Interpretation Act 1901. However, all forms approved after that day will have to meet the tabling and disallowance requirements of section 46A of the Acts Interpretation Act 1901.

Delegation by Minister

Clause 36 amends section 8 of the Excise Act 1901 by restricting the persons to whom delegations may be given under the Excise Act 1901 to Officers of Customs, a term defined in section 4 of the Excise Act 1901.

- . this amendment is similar to section 14 of the Customs Administration Act 1985, inserted by the Customs and Excise Legislation Act (No. 3) 1989, and section 9 of the Customs Act 1901, inserted by the Customs and Excise Legislation Amendment Act (No. 2) 1989.

Entry for home consumption etc.

Clause 37 amends section 58 of the Excise Act 1901 by:

- . adding a reference to "subsection (4)" to reflect the addition of that new subsection by paragraph (c) of this Clause. (paragraph (1)(a)).
- . inserting a reference to the term "approved form" in paragraph 58(1A)(a) to link this section with the definition of "approved form" in section 4 of the Excise Act 1901 and thereby ensure that whenever this form is approved after 1 January 1990, it is subject to the tabling and disallowance provisions of the Acts Interpretation Act 1901 by virtue of the operation of new section 4AA (subclause (1)(b));
- . adding new subsections which regulate the entry into home consumption of excisable goods that are spirits. New subsection (4) provides that such spirit must not be entered for home consumption unless it has been repackaged in non-bulk containers (new paragraph (4)(a)), or it is to be entered for a purpose for which a free rate of duty applies (new paragraph (4)(b)), or the Comptroller permits the entry into home consumption of bulk containers of spirit by notice in writing (new paragraph (4)(c)).

The Comptroller must not grant a permission referred to in new paragraph (4)(c) unless the containers have a capacity of not more than 20 litres or such other volume as may be prescribed (new paragraph (5)(a)); or he or she is satisfied that such spirit will not be repackaged in any other container for retail sale (new paragraph (5)(b)).

- . The regime introduced by the new subsections 58(4) and 58(5) accords with that introduced into the Customs Act 1901 by Clause 9 and provides the same protection against illicit spirit production in Australia under the excise regime as that accorded to imported spirit under the new Part VA of the Customs Act 1901.

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

Clause 38 amends section 78A of the Excise Act 1901 by replacing the reference to "a Collector" in paragraph (2)(d) with a reference to "the Comptroller". Thus, as from 1 January 1990 the Comptroller, or delegates of the Comptroller, are the only persons who may demand the payment of money to the Commonwealth under this section.

- this amendment is similar to the amendment made to section 164 of the Customs Act 1901 by Clause 10.

Powers of officers for purposes of section 78A

Clause 39 amends section 99A of the Excise Act 1901 by omitting subsection (10), which defined the term "authorized officer" for the purposes of this section, as a consequence of the new definition for this term inserted in section 4 of the Excise Act 1901 (Clause 34 refers).

Institution of prosecutions

Clause 40 amends section 134 of the Excise Act 1901 by inserting the words "the office of" after "name of" in subsection (1). This amendment will allow all Excise prosecutions to be instituted in the name of the office of the Comptroller-General of Customs, regardless of whether, at the time the prosecution is instituted, the actual incumbent of the office or a person acting for that person is performing the duties of the position.

- . This amendment also makes it clear that the personal name of the incumbent of the office of Comptroller-General of Customs need not be used when instituting a prosecution, only the office itself need be used, that is the "Comptroller-General of Customs" (subclause (1));

A savings provision is inserted to ensure that any Excise prosecutions begun, but not completed, before this amendment takes effect, (1 January 1990) are to be treated as if this amendment had commenced, eg. the prosecutions are deemed to have been begun in the name of the Office of the Comptroller-General (subclause (2)).

PART 4 - MISCELLANEOUS

Amendments of other Acts

Clause 41 amends the Customs Administration Act 1985, the Customs Amendment Act 1981, the Customs and Excise Amendment Act 1982 and the Customs and Excise Legislation Amendment Act 1985 as set out in the Schedule by:

- . inserting a new subsection (5) in the Customs Administration Act 1985 which provides that delegations of the Comptroller-General's functions and powers under section 14 of the Customs Administration Act 1985 may be given to an "Officer of Customs", which means a person who is an officer of Customs for the purposes of the Customs Act 1901 (ie. a person employed in the Customs, or authorised in writing by the Comptroller to perform all of the functions of an officer of Customs, or a person who is authorised to perform a particular function or exercise a particular power) or an Officer of Customs for the purposes of the Excise Act 1901 under paragraph (c) or (d) of the definition of "Officer of Customs" in the Excise Act 1901.
- it is only necessary to refer to paragraphs (c) and (d) of the Excise Act 1901 definition, as persons who come within paragraphs (a) and (b) of the Excise Act 1901 definition are already covered by the Customs Act 1901 definition.
- this subsection is taken to have commenced on 1 July 1989, the same day clauses 4 and 34 retrospectively amend the respective definitions of Officer of Customs in the Customs Act 1901 and Excise Act 1901. A savings provision for delegations appears in Clause 42 (see below).
- . repealing unproclaimed sections 13 and 14 of the Customs Amendment Act 1981 which relate to the unshipment of cargo, and were superseded by the amendments to section 64 of the Customs Act 1901 made by sections 9, 10 and 14 of the Customs and Excise Amendment Act 1982;
- . repealing unproclaimed sections 5,7,9,10,12,14,15,25,54 and 66 of the Customs and Excise Amendment Act 1982;

.. The unproclaimed sections of the Customs and Excise Amendment Act 1982 dealt with three subject areas:

1. Sections 5, 15, and 25 concerned the licensing of depots (places where imported containerised goods are held or examined, or where a quantity of goods are consolidated for containerised export);
2. Sections 9, 10 and 14 concerned the unshipment of cargo;
3. Sections 7 and 12 contained provisions permitting the movement of goods that are subject to the control of Customs without the need to enter the goods for home consumption.

(Sections 54 and 66 contained offence and review provisions relating to the above.)

- . repealing unproclaimed sections 4, 7, 9, 10, 11, 12, 34, 36 and 44 of the Customs and Excise Legislation Amendment Act 1985, which generally established a control regime over ship's and aircraft stores.

Saving of delegations

Clause 42 is a standard-form savings provision which expressly provides that the validity of any delegations of the Comptroller-General's functions and powers made under section 14 of the Customs Administration Act 1985 is not affected by the amendment of the definition of "Officer of Customs" under the Customs Act 1901 and section 14 of the Customs Administration Act 1985 in this Act.

