

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**CUSTOMS, EXCISE AND BOUNTY LEGISLATION
AMENDMENT BILL 1995**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments to be moved on behalf of the Government)

(Circulated by authority of the Minister for Industry, Science and Technology,
Senator the Hon. Peter Cook)



CUSTOMS, EXCISE AND BOUNTY LEGISLATION
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OUTLINE

The schedule of amendments will complete the extension of the seizure and search power reforms in Schedule 2 of the principal Bill into the 3 principal Excise Acts (the *Excise Act 1901*, the *Distillation Act 1901* and the *Spirits Act 1906*), together with the *Coal Excise Act 1949* and the *Commerce (Trade Descriptions) Act 1905*.

In addition, some minor amendments to the Bill as introduced on 30 March 1995 are proposed. The need for these has arisen following the consideration of submissions on the Bill at the Senate's Legal and Constitutional Legislation Committee public hearing on 12 May 1995. The Committee's Report was tabled in the Senate on 1 June 1995.

The policy initiatives reflected in the amendments give effect to the following:

1) Completion of the extension of the search and seizure reforms into the 3 principal Excise Acts;

- Amendments 73 and 74 repeal the superseded search and seizure provisions of the *Distillation Act 1901* and the *Excise Act 1901*, and remake the existing *Excise Act 1901* power to stop and search vehicles (section 87) along the lines of the similarly remade *Customs Act 1901* power (section 197) on page 19 of the Bill.

In addition, the *Coal Excise Act 1949* and the *Commerce (Trade Descriptions) Act 1905*, which have seizure powers over forfeited goods similar to the *Customs Act 1901*, are proposed to be made the subject of the new search and seizure reforms in the same way as the extension of the reforms into the 3 principal Excise Acts has been accommodated.

- Amendments 2, 4, 5, 6, 8, 13 and 14 effect the *Coal Excise Act 1949* extension; and
- Amendments 3, 4, 5, 7, 8, 13 and 14 effect the *Commerce (Trade Descriptions) Act 1905* extension.

2) The seizure power in the two limited "without warrant" circumstances in the Bill (section 203B and section 203C) to also be vested in officers of police or members of the Defence Forces;

- Amendment 9 will effectively continue the status quo insofar as the 3 categories of persons vested with the seizure power under the Customs Act are concerned by adding officers of police and members of the Defence Forces to proposed sections 203B and 203C; and

- Amendments 19, 21-24, 26, 27, 29-32, 34-36, 40-43, 55, 56 and 71 effect consequential changes to the other provisions of the Bill as a result of that addition.
- 3) **Ordinary searches or frisk searches, when authorised as part of a search or seizure warrant, to be conducted, "if practicable", by a person of the same sex as the person being searched;**
- Amendment 37 adds these words to proposed section 203E on page 30 of the Bill.
- 4) **The execution of a warrant to be permitted with a true copy of the original;**
- Amendment 38 remakes subsection 203G(4) on page 31 of the Bill to expressly provide that a true copy of a warrant is sufficient to evidence the executing officer's authority to enter warrant premises.
- 5) **Condemnation of "special forfeited goods" (ie prohibited imports, and prohibited exports) to be permissible without the need to bring proceedings in respect of an offence;**
- Amendment 52 introduces the new route to condemnation in respect of special forfeited goods in proposed subsection 205D(2), paragraphs (d) and (e); and
 - Amendment 53 expands the definition of "special forfeited goods" for the purposes of this *section only*, to acknowledge that the forfeiture circumstances under the *Spirits Act 1901*, the *Distillation Act 1901* and the *Commerce (Trade Descriptions) Act 1905* are akin to the prohibited imports or prohibited exports class of Customs goods (making return of the goods inappropriate). If forfeited status can be established for this special class of goods, that will be sufficient to condemn the goods as forfeited to the Crown.
- 6) **A right of compensation for goods disposed of or destroyed will not exist where the goods are "special forfeited goods";**
- Amendments 57, 58, 62 and 63 add this requirement to the two disposal provisions (proposed sections 205F and 206 on pages 40 and 41 of the Bill) to ensure a right to compensation only exists if, amongst other things, the goods were not special forfeited goods.
- 7) **Immediate disposal of narcotic goods;**
- Amendment 64 introduces proposed 206A to deal with the immediate disposal of narcotic goods.

The other amendments contained in this schedule are of a technical drafting nature, and are explained in greater detail in the Notes on Amendments.

FINANCIAL IMPACT STATEMENT

The amendments proposed herein have no direct financial implications.

CUSTOMS, EXCISE AND BOUNTY LEGISLATION
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NOTES ON AMENDMENTS

Amendment 1

1. This amendment omits subclause 2(5) of the Bill and substitutes new subclause 2(5) which provides that Schedule 1A and Schedule 1B also commence on 1 July 1995, the day on which the substantive amendments to the Customs search and seizure powers commence.
2. Proposed Schedules 1A and 1B (inserted by Amendments 6 and 7) extend the Customs seizure and search power reforms to the *Coal Excise Act 1949* and the *Commerce (Trade Descriptions) Act 1905*.

Amendment 2

3. This amendment inserts new clause 3A to provide for the amendment of the *Coal Excise Act 1949* as set out in proposed Schedule 1A. Proposed Schedule 1A amends section 25 and omits subsection 26(2) of the *Coal Excise Act 1949* to extend Customs seizure and search power reforms to that Act.

Amendment 3

4. This amendment inserts new clause 3B to provide for the amendment of the *Commerce (Trade Descriptions) Act 1905* as set out in proposed Schedule 1B. Proposed Schedule 1B amends sections 5, 7, 10, 11, 13 and 15 of the *Commerce (Trade Descriptions) Act 1905* to extend Customs' seizure and search power reforms to that Act.

Amendments 4 and 5

5. These amendments insert references to the *Coal Excise Act 1949* and the *Commerce (Trade Descriptions) Act 1905* into clause 18 to provide that despite amendments to those Acts by virtue of this schedule of amendments, those Acts will continue to have effect on and after the day on which the Customs, Excise and Bounty Legislation Amendment Bill 1995 receives Royal Assent in relation to any goods seized before that day for the purposes of any of those Acts as if the relevant amendments of those Acts, and of the *Administrative Decisions (Judicial Review) Act 1977*, had not been made.

Amendment 6

6. This amendment inserts proposed Schedule 1A into the Bill which proposes amendments to the *Coal Excise Act 1949* to extend the reforms to Customs search and seizure powers over forfeited goods to that Act, which is also administered by the Australian Customs Service (ACS).

PROPOSED SCHEDULE 1A

AMENDMENTS OF THE COAL EXCISE ACT 1949

Item 1 - Section 25

7. This item inserts 2 new subsections into section 25 of the Act, which refer to the giving of directions by the CEO under subsection 4(4) of the *Customs Administration Act 1985* concerning the exercise of the power of seizure under section 25. Proposed subsection 25(2) provides that, without limiting the generality of the power to give such directions, the CEO may give directions concerning the circumstances in which seizure power in section 25 may be exercised, the officers of Customs who are entitled to exercise those powers and the manner and frequency of reporting to the CEO concerning the exercise of those powers.

8. Proposed subsection 25(3) provides that a direction given for the purposes of proposed subsection 25(2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 2 - Subsection 26(2)

9. This item repeals subsection 26(2) of the Act which deals with the power to enter and search premises and to seize forfeited goods. These powers will be covered by the new search and seizure regime in proposed Division 1 of Part XII of the *Customs Act 1901* as amended by Schedule 2 to the Bill.

Amendment 7

10. This amendment inserts proposed Schedule 1B into the Bill which proposes amendments to the *Commerce (Trade Descriptions) Act 1905* to extend the reforms to Customs search and seizure powers over forfeited goods to that Act, which is also administered by the ACS.

PROPOSED SCHEDULE 1B

AMENDMENTS OF THE COMMERCE (TRADE DESCRIPTIONS) ACT 1905

Item 1 - Section 5

11. This item inserts 2 proposed subsections (4) and (5) into section 5 of the Act, which provides for the giving of directions by the CEO under subsection 4(4) of the *Customs Administration Act 1985* concerning the exercise of the power of seizure under section 5. Proposed subsection 5(4) provides that, without limiting the generality of the power to give such directions, the CEO may give directions concerning the circumstances in which the seizure power in section 5 may be exercised, the officers of Customs who are entitled to exercise those powers and the

manner and frequency of reporting to the CEO concerning the exercise of those powers.

12. Proposed subsection 5(5) provides that a direction given for the purposes of proposed subsection 5(4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 2 - Subsections 7(2) and (3)

13. This item repeals the existing subsections, and introduces 2 new ones, to ensure consistency in the treatment of forfeited goods under this Act, and the new provisions of the *Customs Act 1901*.

14. Proposed subsection 7(2) repeats the existing subsection insofar as forfeiture is concerned (ie. importation in contravention of the regulations concerning prescribed trade descriptions to be applied to some imported goods will attach forfeit status to the goods), but such goods will no longer be able to be seized without a warrant. Rather, they will become subject to the seizure provisions under the *Customs Act 1901* (Amendment 13 refers), which will require the new seizure warrant under proposed section 203 of that Act.

15. Proposed subsection 7(3) repeats the facility in existing subsection (3), which allows the goods to be "corrected" within a time certain, or re-exported, to avoid the forfeit status in proposed subsection (2) applying to them.

Item 3 - Subsection 7(4)

16. This is a minor technical drafting change.

Item 4 - Section 10

17. This item repeals the existing section 10 concerning the controls over the importation of goods with false trade descriptions, (for instance, made in Australia labels, when something in fact is not), and introduces a proposed section 10, to ensure consistency in the treatment of forfeited goods under this Act and the new provisions of the *Customs Act 1901*. This is similar to the item 2 changes.

New section 10 - Forfeiture of falsely marked goods

18. This proposed section remakes the existing section 10, in the same way as item 2 remakes subsections 7(2) and (3).

Item 5 - Subsection 11(2) and (3)

19. This item repeals the existing subsections and introduces 2 new ones, to ensure consistency in the treatment of forfeited goods under this Act, and the new provisions of the *Customs Act 1901*. These subsections are in exactly the same terms as the sister provisions in subsections 7(2) and 7(3) (item 2 above refers), dealing now, however,

with the controls over the exportation of goods to which a prescribed trade description has not been applied.

Item 6 - Section 13

20. This item repeals the existing section, and introduces proposed section 13, to ensure consistency in the treatment of forfeited goods under this Act, and the new provisions of the *Customs Act 1901*. This section is in exactly the same terms as the sister provision in section 10 (item 4 above refers), dealing now however with the controls over the exportation of goods with false trade descriptions.

Item 7 - Section 15

21. This item effects a technical drafting amendment to existing section 15.

Amendment 8

22. This amendment inserts into the definition of "authorised person" in proposed section 183UA references to proposed paragraphs (aa) and (ab) of the definition of "forfeited goods" (inserted into the definition of "forfeited goods" by Amendment 13, below). This will enable an officer of Customs to apply for or execute a seizure warrant in respect of the goods identified in paragraphs (aa) or (ab) of the definition of "forfeited goods".

Amendment 9

23. This amendment inserts proposed paragraph (d) into the definition of 'authorised person' in proposed section 183UA. Paragraph (d) provides that in relation to the exercise of powers under proposed sections 203B or 203C, (the 2 limited circumstances where prohibited imports, prohibited exports and narcotic goods may be seized without a warrant) 'authorised person' means an officer of Customs, an officer of police or a member of the Defence Force.

24. This amendment corrects an oversight in the Bill which unintentionally excluded police and Defence Force members from these seizure powers, which they are currently vested with under existing section 203 of the *Customs Act 1901*.

Amendment 10

25. This amendment inserts "railway rolling stock" into the definition of 'conveyance' in proposed section 183UA. The amendment makes it clear that the proposed search and seizure powers extend to all types of conveyances which frequent Customs places, and not only to air, sea and road vehicles.

Amendments 11 and 12

26. These amendments relate to the definition of a 'Customs place' in relation to international mail centres. Amendment 11 omits paragraph (f) of the definition of a 'Customs place' in proposed section 183UA, which provides that an international mail

centre for the examination of overseas mail was a Customs place. Proposed paragraph (f) provides for the CEO to approve, by instrument in writing, places for the examination of international mail. This change will allow some flexibility in the means by which mail centres can become "Customs places" and will allow new "express mail" centres, (2 of which are currently operating and others being established) to also come within the definition of a Customs place.

27. Amendment 12 inserts proposed subsection (2) into proposed section 183UA which provides that an instrument of approval of a place as a place for the examination of mail is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*, thereby making each approval subject to parliamentary scrutiny.

Amendment 13

28. This amendment inserts proposed paragraphs (aa) and (ab) into the definition of "forfeited goods" in proposed section 183UA to effectively extend the Customs seizure reforms to the *Coal Excise Act 1949* and the *Commerce (Trade Descriptions) Act 1905*. The power to seize such forfeited goods will be dependent on a suspicion on reasonable grounds that the goods are forfeited goods under section 26 of the *Coal Excise Act 1949* or sections 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*. The necessity for the seizure will also have to be demonstrated to the satisfaction of a judicial officer (proposed section 203 on page 26 of the bill refers).

Amendment 14

29. This amendment inserts proposed paragraphs (aa) and (ab) into the definition of "offence" in proposed section 183UA to extend Customs search reforms to the *Coal Excise Act 1949* and the *Commerce (Trade Descriptions) Act 1905*. The search and seizure of evidential material in relation to an offence under the *Coal Excise Act 1949* or the *Commerce (Trade Descriptions) Act 1905* will be subject to judicial control and scrutiny via the need to obtain a search warrant from a 'judicial officer', defined as a magistrate or a justice of the peace authorised to issue search warrants (proposed section 198 on page 20 of the Bill refers).

Amendment 15

30. This amendment omits proposed subsection 197(1) and substitutes proposed subsection (1) which provides that if a conveyance is about to leave a Customs place an officer of Customs may require that conveyance to stop and may check to establish that there is appropriate documentation to authorise the movement from the Customs place of any goods in or on the conveyance.

31. Proposed subsection 197(1) is not to be dependent on any belief that the conveyance is carrying goods of a particular type. The change recognises that the power to stop conveyances about to leave a Customs place is a regulatory barrier power which arises because the conveyance is in a Customs place where goods subject to Customs control may be examined and from which such goods are not to be moved,

altered or interfered with except as authorised by the Act (section 33 of the *Customs Act 1901* refers).

Amendment 16

32. This is a technical amendment to proposed subsection 197(2) to ensure that an officer may ask questions in relation to goods "in" a conveyance (eg. in the boot of a car), and also in relation to goods "on" a conveyance (eg. on a flat-bed truck).

Amendment 17

33. This amendment effects a technical change to proposed subsection 197(3) to correctly refer to the power to check to establish appropriate documentation in proposed subsection 197(1), which now appears in paragraph (b) as a consequence of the change to subsection (1) effected by Amendment 15.

Amendment 18

34. This is a technical drafting change to proposed section 203 to omit "things" and substitute "goods". This change is intended to clearly differentiate between the "seizure of goods" (being forfeited goods) under this section and the "seizure of things" (being evidential material) under section 198.

Amendment 19

35. This amendment omits "officer of Customs" from proposed subsection 203B(1) and substitutes "authorised person" in order to extend the power in section 203B to police officers and Defence Force members. This change is consequential upon the amendment to the definition of "authorised person", effected by Amendment 9, to extend to police officers and Defence Force members the power of seizure without warrant at Customs places.

Amendment 20

36. This is a technical amendment to proposed paragraph 203B(1)(b) to ensure that the power to seize special forfeited goods without warrant at a Customs place relates not only to goods "in" a conveyance (eg. in the boot of a car), but also relates to goods "on" a conveyance (eg. on a flat-bed truck).

Amendments 21, 22, 23 and 24

37. These are technical amendments to proposed section 203B, deleting "officer" or "officer of Customs" (wherever occurring) and substituting "authorised person". These changes are consequential upon the amendment to the definition of "authorised person", effected by Amendment 9, to extend to police officers and Defence Force members the power of seizure without warrant at Customs places.

Amendment 25

38. This is a technical amendment to proposed subsection 203B(4) to ensure that an authorised person may ask questions not only in relation to goods or things "in" a conveyance (eg. in the boot of a car) but also in relation to goods or things "on" a conveyance (eg. on a flat-bed truck).

Amendments 26 and 27

39. These are technical amendments to proposed subsections 203B(5) and 203C(1), deleting "officer" or "officer of Customs" and substituting "authorised person". These changes are consequential upon the amendment to the definition of "authorised person", effected by Amendment 9, which extends to police officers and Defence Force members the power of seizure without warrant over prohibited imports and exports and narcotic goods in the limited circumstances of proposed sections 203B and 203C.

Amendment 28

40. This is a technical amendment to proposed subparagraph 203C(1)(a)(ii) to ensure that the power of seizure without warrant over narcotic goods in a place other than a Customs place relates not only to such goods "in" a conveyance (eg. in the boot of a car) but also relates to such goods "on" a conveyance (eg. on a flat-bed truck).

Amendments 29, 30, 31 and 32

41. These are technical amendments to proposed section 203C, deleting "officer" or "officer of Customs" (wherever occurring) and substituting "authorised person". These changes are consequential upon the amendment to the definition of "authorised person", effected by Amendment 9, which extends to police officers and Defence Force officers the power of seizure without warrant over prohibited imports and exports and narcotic goods in the limited circumstances of proposed sections 203B and 203C.

Amendment 33

42. This is a technical amendment to proposed subsection 203C(4) to ensure that an authorised person may ask questions not only in relation to goods or things "in" a conveyance (eg. in the boot of a car), but also in relation to goods or things "on" a conveyance (eg. on a flat-bed truck).

Amendments 34, 35 and 36

43. These are technical amendments to proposed sections 203C and 203D, deleting "officer" or "officer of Customs" (wherever occurring) and substituting "authorised person". These changes are consequential upon the amendment to the definition of "authorised person", effected by Amendment 9, which extends to police officers and Defence Force officers the power of seizure without warrant over prohibited imports

and exports and narcotic goods in the limited circumstances of proposed sections 203B and 203C.

Amendment 37

44. This amendment affects to proposed section 203E which relates to an ordinary search or a frisk search of a person. Where, as part of a search or seizure warrant, the warrant permits an ordinary or frisk search, this proposed section requires the search to be conducted by a person of the same sex as the person being searched. This amendment inserts the phrase "if practicable" into this requirement, as there may be cases where the power is exercised in remote places (eg. a section 203C narcotics raid) where investigative teams may not always have both sexes represented.

45. This change is consistent with the precedent in section 3ZR of the *Crimes Act 1914* as amended by the *Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994*.

Amendment 38

46. This amendment omits proposed subsection 203G(4), which might be interpreted as requiring an officer to have in his or her possession the original warrant to evidence that person's authority to enter premises, and substitutes new subsection 203G(4) which specifically provides that the executing officer need not have the original warrant, but must have a copy of the warrant which includes the signature of the issuing judicial officer as well as the seal of the relevant court.

47. This change recognises that in proposed sections 198 and 203 judicial officers in a particular State or Territory may issue a warrant in respect of the search of premises, or the seizure of goods at premises, in another State or Territory. These provisions recognise the national nature of the Customs function and are intended to facilitate the issuing of warrants in respect of national investigations.

48. This amendment further facilitates that national function by allowing, for example, an officer in Darwin to execute a warrant issued by a judicial officer in Melbourne provided that the officer has in his or her possession a copy of the warrant.

Amendment 39

49. This is a technical amendment to the heading to proposed Subdivision F to omit the reference to things seized as evidential material under "section 203B or 203C" and substitute a reference to evidential material seized under "subsection 203B(3) or 203C(3)". This change is necessary to more clearly distinguish between this power and the seizure power over forfeited goods in proposed subsections 203B(2) and 203C(2).

Amendments 40, 41, 42 and 43

50. These are technical amendments to proposed section 203S, to include references to things seized as evidential material under proposed sections 203B and

203C by "authorised officers" as well as by Customs officers. These changes are consequential upon the amendment to the definition of "authorised person", effected by Amendment 9, which extends to police officers and Defence Force members the power of seizure without warrant over prohibited imports and exports and narcotic goods in the limited circumstances of proposed sections 203B and 203C.

Amendment 44

51. This is a technical drafting amendment to the heading to proposed Subdivision G to omit the references to forfeited goods seized under "section 203B or 203C" and substitute references to forfeited goods seized under "subsection 203B(2) or 203C(2)". This change is necessary to more clearly distinguish between this power and the power of seizure over evidential material in proposed subsections 203B(3) and 203C(3).

New item 30 - Section 204

Amendment 45

52. This amendment omits item 30 of Schedule 2 to the Bill and substitutes a new item 30 to remake existing section 204, which deals with the obligation of the officer to safely secure goods which have been seized.

New Section 204 - Seized goods to be retained

53. Proposed subsection 204(4) specifically requires both "narcotic goods" which might have been seized under proposed section 203C and "narcotic related goods" which might have been seized under a seizure warrant under proposed section 203 or without warrant under proposed section 203B, to be delivered into the custody of a member of the Australian Federal Police.

54. Subsections (1), (2), (3) and (5) of proposed section 204 are rewrites of the existing subsection which modernise the language used but do not change their effect.

Amendment 46

55. This is a technical drafting amendment to proposed subsection 205(1), which relates to seizure notices, to omit the reference to forfeited goods seized under "section 203B or 203C" and substitute a reference to forfeited goods seized under "subsection 203B(2) or 203C(2)". This change is necessary to more clearly distinguish between this power and the power of seizure over evidential material in proposed subsections 203B(3) and 203C(3).

Amendment 47

56. This amendment effects a technical drafting amendment to proposed subsection 205A(e) so as to refer only to "proceedings" and not "criminal proceeding". This change has the effect that if a seizure notice is to be served on a person in a foreign country and that person is to make a claim for return of the goods, that person must

have first appointed, in writing, an agent in Australia with authority to accept service of process in any civil or criminal proceedings arising out of the matter.

Amendment 48

57. This is a technical drafting amendment to proposed subsection 205(B)1, which relates to claims for the return of seized goods, to omit the reference to forfeited goods seized under "section 203B or 203C" and substitute references to forfeited goods seized under "subsection 203B(2) or 203C(2)". This change is necessary to more clearly distinguish between this power and the power of seizure over evidential material in proposed subsections 203B(3) and 203C(3).

Amendment 49

58. This amendment effects a technical drafting amendment to proposed subparagraph 205B(2)(i) so as to refer only to "proceedings" and not "criminal proceeding". This change has the effect that if a person who does not reside or have a place of business in Australia makes a claim under proposed section 205B for the return of goods seized, that person must appoint an agent in Australia with authority to accept service of documents, including process in any civil or criminal proceedings, arising out of the matter.

Amendments 50 and 51

59. These are technical drafting amendments to proposed paragraphs 205C(a) and 205D(1)(a) to omit the references to forfeited goods seized under "section 203B and 203C" and substitute references to forfeited goods seized under "subsection 203B(2) or 203C(2)". This change is necessary to more clearly distinguish between this power and the power of seizure over evidential material in proposed subsection 203B(3) and 203C(3).

Amendment 52

60. This amendment remakes proposed section 205D which governs the treatment of seized goods when a claim for their return has been made. The remade provision acknowledges that there should be an ability to achieve condemnation of special forfeited goods (ie. prohibited imports and prohibited exports) without having to resort to prosecution (proposed paragraphs (2)(d) and (e) and subsections (3A) and (3B) refer). The fact that the goods are prohibited imports or prohibited exports makes nonsensical the return of the goods in the event no prosecution is initiated, given that possession of such goods is prohibited.

61. Proposed paragraphs 205D(2)(d) and (e) therefore provide a mechanism for a court to make an order for the condemnation of the goods as forfeited to the Crown on the basis that they are in fact special forfeited goods, without any requirement for the commencement or completion of proceedings for an offence.

Amendment 53

62. This amendment inserts proposed subsection 205D(5) into the Act to expand the definition of special forfeited goods only for the purpose of proposed section 205D, to acknowledge that the forfeiture circumstances under the *Distillation Act 1901*, the *Spirits Act 1901* and the *Commerce (Trade Descriptions) Act 1905* are akin to that of the prohibited imports or prohibited exports class of Customs goods (making their return inappropriate). If forfeited status can be established for this special class of goods that will be sufficient for a court to declare that the goods are condemned as forfeited to the Crown.

Amendment 54

63. This is a technical amendment to proposed subsection 205E(1) to omit the reference to goods seized under "section 203B or 203C" and substitute a reference to goods seized under "subsection 203B(2) or 203C(2)". This change is necessary to more clearly distinguish between this power and the power of seizure over evidential material in proposed subsections 203B(3) and 203C(3).

Amendments 55 and 56

64. These are technical amendments to proposed section 205E omitting "officer of Customs" (wherever occurring) and substituting "authorised person". These changes are consequential upon the amendment to the definition of "authorised person", effected by Amendment 9, which extends to police officers and Defence Force members the power of seizure without warrant over prohibited imports and exports and narcotic goods in the limited circumstances of proposed sections 203B and 203C.

Amendments 57 and 58

65. Amendment 57 omits proposed subsection 205F(2) and substitutes proposed subsection 205F(2) to ensure that a person will not receive compensation for that which he or she was prohibited from having in the first place, ie special forfeited goods.

66. Amendment 58 amends proposed subsection 205F(3) to ensure consistency with proposed subsection 205F(2), ie that a right to compensation exists if certain conditions are established to the satisfaction of the court, and not that the person himself or herself must establish a right to compensation.

67. These amendments follow from Amendments 52 and 53, above, in that a right to compensation for goods which have been disposed of or destroyed should not extend to special forfeited goods.

Amendments 59, 60 and 61

68. These are technical amendments to proposed section 206, which deals with the immediate disposal of certain goods, to omit references to goods seized under "section 203B or 203C" and substitute references to forfeited goods seized under "subsection

203B(2) or 203C(2)". This change is necessary to more clearly distinguish between this power and the power of seizure over evidential material in proposed subsections 203B(3) and 203C(3).

Amendments 62 and 63

69. These amendments amend proposed subsection 206(6) and insert proposed subsection 206(7) with the effect that if goods are dealt with in accordance with subsection 206(1) or (2), but the goods are special forfeited goods, or were used in the commission of an offence, or the owner of the goods cannot establish to the satisfaction of the Court that circumstances did not exist which warranted the manner in which the goods were dealt with, the owner does not have a right to recover the market value of the goods.

70. These amendments follow from Amendments 52, 53, 57 and 58, above, that a person should not receive compensation for that which he or she was prohibited from having in the first place.

Amendment 64

71. This amendment inserts proposed section 206A which provides for the immediate disposal of narcotic goods. This provision is considered necessary so that, for security reasons, narcotic goods can be destroyed as soon as possible after drawing samples, etc for evidential purposes.

New section 206A - Immediate disposal of narcotic goods

72. Proposed subsection 206A(1) empowers the Commissioner of Police or a Deputy Commission of Police to cause goods he or she reasonably believes to be special forfeited goods that are narcotic goods, to be dealt with in such a manner as considered appropriate. This power expressly includes the destruction of the goods.

73. Proposed section 206A also includes a right to compensation if the goods are destroyed in error, ie., if they were not in fact special forfeited goods.

Amendments 65 and 66

74. These amendments to proposed section 207 provide the court considering an application for release of goods on security a discretion to determine a security amount "up to" the market value of the goods, rather than "the amount" of the market value. It is considered that this discretion might be necessary in a situation where the duty which might be in issue is considerably less than the market value of the goods.

Amendment 67

75. This is a technical drafting amendment to existing section 208C to pick up in a cross reference the new seizure notice provision in proposed section 205 and the disposal of goods notice provision in proposed section 206.

Amendments 68 and 69

76. These are technical drafting amendments to existing sections 208D and 208DA to omit references to goods seized under "section 203B or 203C" and substitute reference to forfeited goods seized under "subsection 203B(2) or 203C(2)". This change is necessary to more clearly distinguish between this power and the power of seizure over evidential material in proposed subsections 203B(3) and 203C(3).

Amendment 70

77. This is a technical amendment to proposed paragraph 209(7)(a) to make it clear that the intended effect of subsection 209(7) is to deem the seizure to have occurred on the 21st day after the impoundment notice has been served.

Amendment 71

78. This is a technical amendment to proposed section 209A to delete the reference to an "officer of Customs" and substitute a reference to an "authorised person". This change is consequential upon the amendment to the definition of "authorised person", effected by Amendment 9, which extends to police officers and Defence Force members the power of seizure without warrant over prohibited imports and exports and narcotic goods in the limited circumstances of proposed sections 203B and 203C.

Amendment 72

79. This is a technical drafting amendment to existing subparagraph 219A(2)(c)(i) to omit references to goods seized under "section 203B or 203C" and substitute references to forfeited goods seized under "subsection 203B(2) or 203C(2)". This change is necessary to more clearly distinguish between this power and the power of seizure over evidential material in proposed subsections 203B(3) and 203C(3).

Amendment 73

80. The Bill as introduced effectively extended the search and seizure reforms into the *Excise Act 1901* (the Excise Act), the *Distillation Act 1901* and the *Spirits Act 1906* by defining "forfeited goods" (ie. the goods which can be seized under a seizure warrant) as goods forfeited to the Crown under the *Customs Act 1901* (the Customs Act) and the other 3 Acts (item 26 on page 18 of the Bill refers) and by defining "offence" (in respect of which evidential material may be obtained under a search warrant) as an offence against the Customs Act and the other 3 Acts (item 26 on page 18 of the Bill refers).

81. This amendment completes that extension with the consequential repeal of the superseded search and seizure provisions of the *Distillation Act 1901* (Schedule 4 of the Bill refers), as follows:

New items 1A and 1B - Sections 61, 64, 65, 66, 67 and 68

82. These items repeal these 5 sections of the *Distillation Act 1901*, as the power to enter and search premises (sections 61 and 64), the old writs of assistance/Customs warrant power (section 65), the power to stop people (section 66), the power to search vehicles (section 67), and the power of seizure (section 68) are now all subject to the new search and seizure provisions of the *Customs Act 1901*, inserted by Schedule 2 of the Bill.

Amendment 74

83. Similar to Amendment 73, this amendment completes the extension of the search and seizure reforms into the *Excise Act 1901* with the consequential repeal of the superseded search and seizure provisions of the *Excise Act 1901* (schedule 5 of the Bill refers), and the remaking of the existing Excise Act power to stop and search vehicles (section 87) along the lines of the similarly remade *Customs Act 1901* power (proposed section 197) on page 19 of the Bill, as follows:

New item 6A - Sections 87, 88, 89 and 90

84. This item repeals these 4 sections of the *Excise Act 1901*, as the power to stop and search vehicles (section 87) is remade, and the old "writs of assistance/Customs Warrant power (section 88), the power to take assistants (section 89), and the power to search vehicles (section 90) are now all subject to the new search and seizure provisions of the *Customs Act 1901*, inserted by Schedule 2 of the Bill.

New section 87 - Power to stop conveyances about to leave an Excise place

85. Proposed section 87 has been modelled along the lines of the similarly remade *Customs Act 1901* power in proposed section 197 on page 19 of the Bill. It preserves the right of Customs to stop conveyances leaving excise places.

The terms "conveyance" and "Excise place" are defined in proposed subsection (6) to mean the various kinds of "vehicles" which frequent the factories or approved places at which excisable goods are produced.

86. Proposed subsection (1) provides an officer of Customs with a power to stop conveyances about to leave the Excise place.

87. The power in proposed subsection (1) is a tally or checking power, ie its purpose is for checking the conveyance to establish that there is appropriate documentation to authorise the movement of any goods on the conveyance, which are subject to the control of Customs, from the Excise place.

The 'control of Customs' over goods is dealt with in section 61 of the Act and essentially covers all excisable goods (ie. locally produced goods which are subject to excise duty) from the time of their production until their entry for home consumption or their exportation from Australia.

88. Proposed subsections (2) and (3) provide that in the exercise of the power conferred under proposed subsection (1), an officer of Customs might question the 'driver' of the conveyance concerning any goods which may be in, or on the conveyance, or in a container on the conveyance. As a result of any check conducted against the documentation pertaining to those goods, if any, the officer might direct that the goods be unloaded from the conveyance, or moved to a particular place in the Excise place for further examination.

89. Proposed subsection (4) provides the power to do what is necessary to give effect to the directions in proposed subsection (3), if they are in fact not complied with.

90. Proposed subsection (5) highlights the audit nature of the power conferred in proposed subsection (1) by expressly providing that the detention of the conveyance is to be for only as long as is necessary and reasonable to conduct the check of the documents pertaining to the goods.

New item 6B - Sections 93, 94, 95, 96, 97, 98 and 99

91. This item repeals these 7 sections of the Excise Act, as the power of seizure (section 93), the power to take assistants while effecting a seizure (section 94), the obligation to secure goods which have been seized (section 95), the notice provisions for seized goods (section 96), the return of seized goods on security (section 97), the return of goods via detainee proceedings provisions (section 98), and the disposal of forfeited goods provision (section 99), are now all subject to the new search and seizure provisions of the *Customs Act 1901*, inserted by Schedule 2 of the Bill.

Amendment 75

92. This amendment effects a technical drafting change to the *Agricultural and Veterinary Chemicals Act 1994*, which was made necessary as a result of a reference in the Act to being a prohibited import in the *Customs Act 1901*.

New item 2A - Subsection 69B(4)

93. This new item in Schedule 8 of the Bill effects a minor amendment to subsection 69B(4) of the *Agricultural and Veterinary Chemicals Act 1994*, to ensure that the desired consequence of being a prohibited import under the *Customs Act 1901* (which is making the goods forfeited goods, and thus subject to seizure) is still maintained following the amendments to the search and seizure provisions of the *Customs Act 1901*.

Amendment 76

94. This amendment is similar to Amendment 75, and makes a similar reference change to the *Therapeutic Goods Act 1989*, as follows:

New items 4 and 5 - Subsections 14(4) and 20(3)

95. These new items in Schedule 8 of the Bill effect amendments to subsection 14(4) and 20(3) of the *Therapeutic Goods Act 1989* to ensure that the desired consequence of being a prohibited import under the *Customs Act 1901* (which is making the goods forfeited goods, and thus subject to seizure) is still maintained following the amendments to the search and seizure provisions of the *Customs Act 1901*.

