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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF AMENDMENT BILL (NO. 4) 1997

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Customs and Consumer Affairs,
Senator the Hon Christopher Ellison)

CUSTOMS TARIFF AMENDMENT BILL (NO. 4) 1997

OUTLINE

The purpose of the Customs Tariff Amendment Bill (No. 4) is to amend Schedule 3 to the *Customs Tariff Act 1995* to maintain the increases in the rates of Customs duty on tobacco, certain tobacco products and certain petroleum products imposed by the *Customs Tariff Amendment Act (No.3) 1997*.

The *Customs Tariff Amendment Act (No.3) 1997* was introduced to address the 5 August 1997 decision of the High Court in the cases of *Ngo Ngo Ha v State of New South Wales* and *Walter Hammond and Associates P/L v State of New South Wales*. The decision invalidated the New South Wales tobacco business franchise fees and cast considerable doubt upon the constitutional validity of all other State and Territory business franchise fees on tobacco, alcohol and some petroleum products. Due to the serious budgetary implications this decision had on States and Territories, the Commonwealth agreed to a safety net to protect State and Territory revenues.

The *Customs Tariff Amendment Act (No.3) 1997* introduced this safety net by increasing the equivalent customs duties in the *Customs Tariff Act 1995* (at the same time, complementary amendments were made to the *Excise Tariff Act 1921*). While this timely measure successfully maintained the budgetary equilibrium which existed prior to the High Court decision, it was not possible to take account of other amendments to those rates of duty which were introduced into the Parliament during the winter sittings, namely the Government's Fuel substitution package. Specifically, the *Customs Tariff (Fuel Rates Amendment) Bill 1997* will, when enacted, revise many of the descriptions of fuel presently contained in the Act to prominently relate those descriptions to fuel containing a chemical marker. If enacted in its present form, (ie without the further amendments contained in the *Customs Tariff Amendment Bill (No.4) 1997*) it would displace the recently introduced safety net provisions, undoing its purpose.

The *Customs Tariff Amendment Bill (No.4) 1997* will amend the revised rates contained in the the *Customs Tariff (Fuel Rates Amendment) Bill 1997*, to incorporate the safety net into the new chemical-marker-oriented descriptions immediately after that legislation is enacted.

FINANCIAL IMPACT STATEMENT

These amendments merely maintain the existing rates of duty imposed as a safety net measure by the *Customs Tariff Amendment Act (No.3) 1997*.

Therefore, the financial impact on the Commonwealth Budget is neutral.

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NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the Bill to be cited as the "*Customs Tariff Amendment Act (No. 4) 1997*".

Clause 2 - Commencement

This clause provides that the Bill is to commence immediately after the commencement of the *Customs Tariff (Fuel Rates Amendments) Act 1997*.

The purpose of the Bill is to preserve the new safety net measures introduced by the *Customs Tariff Amendment Act (No.3) 1997*. To this end, this provision will allow those safety net rates to be briefly supplanted upon the enactment of the *Customs Tariff (Fuel Rates Amendment) Act 1997*, and will immediately replace them with new rates which will maintain the safety net.

Clause 3 - Schedule(s)

This clause is the formal enabling provision for the Schedule to the Bill, providing that each Act specified in the Schedule (in this case the Customs Tariff Act only) is amended in accordance with the applicable items of the Schedule. The clause also provides that the other items of the Schedules have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation.

Schedule 1 - Amendment of the *Customs Tariff Act 1995*

Item 1 - The rates of duty in column 3 of the subheadings in Schedule 3 that are specified in the table at the end of this item

This item increases the rate of customs duty applicable to goods which fall to the subheadings listed in the table in this item, from \$0.34697/L to \$0.42797/L. This safety net increase was already implemented by the *Customs Tariff Amendment Act (No.3) 1997*, but would otherwise have been undone by the passage of the *Customs Tariff (Fuel Rates Amendment) Act 1997*. The effect of this revenue-neutral amendment is therefore to simply prevent those safety net measures from being displaced.

Item 2 - The rates of duty in column 3 of the subheadings in Schedule 3 that are specified in the table at the end of this item

This item increases the rate of customs duty applicable to goods which fall to the subheadings listed in the table in this item, from \$0.36872/L to \$0.44972/L. This safety net increase was already implemented by the *Customs Tariff Amendment Act (No.3) 1997*, but would otherwise have been undone by the passage of the *Customs Tariff (Fuel Rates Amendment) Act 1997*. The effect of this revenue-neutral amendment is therefore to simply prevent those safety net measures from being displaced.

Item 3 - Application

This item provides for the increased rates of duty proposed in this Bill to apply to goods entered for home consumption on or after the commencement of the Bill.

