

customs law

There's threesome reels, there's foursome
reels,
There's hornpipes and strathspeys, man,
But the ae best dance e'er cam to the Land
Was, the devil's awa wi' th'Exciseman.

Robert Burns, *The Devil's
away with the Exciseman.*

In November 1987, the Australian Law Reform Commission (ALRC) was given a reference to examine the Customs Act, the Excise Act and related legislation and to make recommendations for modernising and rationalising the legislation. The ALRC has released a Research Paper and a Discussion Paper setting out draft legislation on the law relating to the obligations of ships and aircraft arriving in Australia from overseas and the powers of Customs officers in the offshore area.

function of offshore legislation. The traditional function of Customs is to collect revenue on dutiable goods. It also has a responsibility, which has assumed increasing importance, to protect the community from harm resulting from the export and, more particularly, the import, of certain goods. Customs is particularly concerned to prevent the entry of prohibited imports such as weapons and narcotics. Narcotics presents the greatest enforcement problems. Prohibited exports include cultural objects, fauna and flora. So that Customs can carry out its functions, ships coming to Australia must go to Customs ports and aircraft to Customs airports. This brings the ships and aircraft to the Customs 'barrier' where Customs has the facilities to carry out its functions.

international obligations. Since the Customs Act was passed in 1901, Australia has entered into several international treaties relating to the powers a

country can exercise in the sea adjacent to its coast. The most important of these is the Convention on the Territorial Sea and Contiguous Zone. This Convention governs the powers which a country may exercise in accordance with international law in the territorial sea, which extends to 3 nautical miles from a baseline around the coast, and the contiguous zone, which extends to 12 nautical miles from the baseline. The offshore legislation drafted by the ALRC takes account of these international obligations.

reporting requirements. Ships and aircraft entering Australia must report to Customs details of the ship or aircraft, the voyage or flight number and the estimated time of arrival at the Customs port or airport. These reporting requirements are backed up by investigatory powers for Customs officers.

penalties. The existing penalties for failing to come to a Customs port or airport are not always effective. The master of a ship or the pilot of an aircraft is liable to a penalty, but the owner has no liability. The ALRC proposes that a court should be able to order the forfeiture of a vessel or aircraft which fails to come to a Customs port or airport or unauthorized hovering or stopping by a ship. This will particularly assist in the enforcement of the law against foreign fishing vessels found illegally fishing in Australian waters.

cruising permits. The Customs Act does not deal adequately with cruising yachts and planes. When a ship or aircraft from overseas wishes to cruise around Australia, it must do so on the basis of permissions issued under Customs Act s 58. Both Customs and the cruisers argue that s 58 is not sufficiently flexible in this area. The ALRC proposes a special class of authorities (cruising permits) which would enable Customs to exercise supervision as necessary over a cruising vehicle.

hovering. The ALRC proposes that in most circumstances ships should be prohibited from hovering or stopping in the offshore area to avoid contact with Customs.

installations. The Discussion Paper proposes that the offshore provisions should apply to installations while they are floating. Accordingly, a 'ship' is defined as a 'floating vessel or structure, whether or not it is used in navigation by water or whether or not it is propelled'. Where an installation achieves some permanence, an additional regime, not included in the Discussion Paper, will also apply.

investigatory powers. The ALRC proposes that investigatory powers for Customs officers should be based upon a Customs officer's suspecting on reasonable grounds that the relevant ship or aircraft, or a person on board, is or is about to be involved in a barrier offence. A barrier offence is a contravention of the Customs Act or regulations or some other law of the Commonwealth involving the entry of a person into or departure of a person from Australia; or bringing anything into Australia, or taking anything out of Australia, including ships and aircraft. Powers are provided to allow Customs officers

- to question and require documents to be produced
- to search for and to examine, secure and seize goods
- to detain ships and aircraft for purposes of search
- to board
- to chase and use reasonable force if ships and aircraft fail to stop for boarding or land when asked.

In addition, Customs officers may arrest persons on board ships or aircraft, if they believe on reasonable grounds that the

person has committed a barrier offence. Belief is a higher standard than suspicion.

use of force. The proposals put forward by the ALRC include a power to use reasonable force. In the case of a ship, reasonable force includes firing upon the ship if a gun has been fired first as a warning. In the case of an aircraft, reasonable force includes firing a gun as a warning provided that the lives of persons on board and the safety of the aircraft are not endangered. A Commonwealth ship or aircraft may chase a ship or aircraft which does not stop or land as requested. The right of 'hot pursuit' of ships may be continued into the high seas.

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passenger processing

new discussion paper. The ALRC is shortly to release a discussion paper containing draft provisions concerned with Customs clearance of passengers, crew and their goods arriving from and departing for overseas.

passenger clearance. Very few provisions in the Customs Act deal specifically with the clearance of passengers, crew and their goods. For the most part Customs officers rely on general provisions in the Act and administrative guidelines. More than 8 million persons crossed the Australian Customs barrier in 1988. The ALRC considers that passenger and crew clearance procedures should be specifically and adequately addressed in the Customs legislation and has dedicated a Chapter of the new Customs and Excise Bill to this. The proposed legislation has the features outlined in the following paragraphs.

clearance on arrival and departure. All persons and goods must go through the