

CUSTOMS AMENDMENT BILL (NO. 3) 1980NOTES ON CLAUSES

- Clause 1 : Citation of the Amendment Act and identification of the Customs Act 1901 as the Principal Act.
- Clause 2 : Commencement date to be the day on which the Act receives the Royal Assent.
- Clause 3 : Defines a number of words and expressions for the purposes of the amending legislation, and, in particular, defines "goods" to include ships, boats and aircraft.
- Clause 4 : Removes the requirement for places that are to be ports, airports, boarding stations and wharves for purposes of the Customs Act to be so appointed by the Governor-General by Proclamation, and provides instead for appointment to be by Gazette Notice, by the Minister in the case of ports and airports and by the Comptroller-General of Customs in the case of boarding stations and wharves.
- Clause 5 : Repeals a redundant transitional provision.
- Clause 6 : Replaces present provisions for prescribing working days and hours of the Customs and overtime rates with provisions allowing greater flexibility in prescribing worktimes, in order that the spread of air operations and the varying needs of different sectors may be taken into consideration. Provision is made for the Minister to determine the fees to be paid by merchants for "out of hours" services, so obviating the need, consequent upon National Wage Case decisions, for frequent amendment of the regulations.

- Clause 7 : Provides that in circumstances where there are doubts as to the owner/operator's intentions, a ship or aircraft shall be deemed to have been imported after non-compliance with a notice served by a Collector requiring, within 30 days (or such further period as may be allowed) that the ship or aircraft either depart or be entered for the purposes of the Customs Act.
- Clause 8 : Provides general authority for granting permission to import goods, including ships, boats and aircraft, on a temporary basis.
- Clause 9 : Provides that ships, boats and aircraft shall be subject to treatment as prohibited imports only if they are imported in fact or are deemed to be imported.
- Clause 10 : Replaces Part V of the principal Act by a revised code providing for the licensing of warehouses, in which dutiable goods may be stored, pending entry for home consumption or exportation, most importantly as follows:
- . Sections 78 to 80
define terms, provide for the grant of licences (including those to partnerships), which may be limited by reference to goods, and provide requirements for applications for licences;
 - . Section 81
provides that the Comptroller shall not grant a licence unless he is satisfied that the holder of the licence or any other person participating in the management of the warehouse is a fit and proper person. The section also indicates some matters relevant to that consideration;

• Section 82

provides for the grant of a licence to be subject to specified conditions, and to such other conditions as are prescribed by the Regulations, or imposed in a licence by the Comptroller;

• Sections 83 and 84

specify that a licence is annual but renewable, at which time the Comptroller may vary conditions of that licence or refuse to renew if he is satisfied that there are grounds for cancellation;

• Section 85

provides for fees to be charged;

• Section 86

provides authority for the Comptroller, where he has reasonable grounds to believe that a specified circumstance has occurred, to require the holder of a warehouse licence to show cause why the licence should not be cancelled and, if he thinks it appropriate so to do, to suspend the licence in the meantime; in circumstances where the licence has been suspended, the Comptroller is required, within 28 days of the suspension, to either revoke the suspension or cancel the licence;

• Section 87

provides authority for the Comptroller, where he is satisfied that a specified circumstance has occurred, to cancel the relative warehouse licence, and requires him:

- to give notice to the licence holder informing him of the grounds on which the licence has been cancelled and of his right to have the decision reviewed by

the Administrative Appeals Tribunal;

- to give public notification of the cancellation and that unless goods contained in the warehouse are cleared or removed they are liable to be sold.

- Sections 88 and 89

- are formal only;

- Sections 90 to 100 inclusive

repeat with some minor modifications sections 87 to 92, 97 to 102, 104 and 105 of the Principal Act as now in force; and

- Sections 101 and 102

provide for the documentation of movement of goods;

Transitional provision is made for the continuation of existing licences (sub-clause 10(2)).

Clause 11 : Makes an amendment consequential to the abolition, by Clause 10, of formal appointment and designation of places as King's (Queen's) warehouses.

Clause 12 : Replaces the existing authority for officers to question embarking/disembarking persons, concerning goods subject to restrictions under the Customs Act, by an authority extending to questions relating to restrictions on goods under other Commonwealth Laws (e.g. the Quarantine Act and the Banking Act).

Clause 13 : Provides for the security of seized goods by substituting for the present provisions in sections 204 and 209 of the Act, the requirements that:

- goods seized by an Officer of Customs be

taken to a place of such security as a Collector directs;

- a person, other than an Officer of Customs, who seized goods deliver them to the nearest Customs House for delivery to a place of security, such procedures not to apply in relation to narcotic goods seized under this Act by a member of the Australian Federal Police.

Clause 14 : Ensures the application of section 207 of the Act to ships, boats and aircraft.

Clause 15 : Provides, as an alternative to the usual seizure and prosecution procedures, for a simplified system for dealing with goods forfeited as a result of offences committed by passengers arriving in Australia where the amount of duty sought to be evaded does not exceed \$500: the Collector may impound such goods and serve a notice on the owner providing him with the option of paying, within twenty-one days, the duty and an amount equal to that duty to obtain release of the goods: Taking such option prevents the bringing of proceedings for any offence against the Act in relation to the importation: Where the option is exercised, no further action may be taken by the Department or the person in respect of the offence: Where the owner does not exercise the option within the time limit allowed, the normal seizure provisions apply in relation to goods and owner may be prosecuted.

Clause 16 : Ensures forfeiture of any ship, boat or aircraft if it is imported without permission or, if granted temporary import permission, it does not depart on expiry of the period of authorisation.

- Clause 17 : Formal amendment only.
- Clause 18 : Provides for the placing of signs prohibiting entry by unauthorised persons into passenger processing and holding areas at wharf and airport arrival and departure terminals.
- Clause 19 : Prohibits unauthorised persons from entering any of the areas referred to in Clause 18.
- Clause 20 : Repeals Part XV of the Principal Act entitled "Settlement of cases by the Minister". The administrative use of these provisions was discontinued in 1974 when the view was taken that they purported to confer upon the Minister and his delegates a power of determination more proper to exercise by the judiciary.
- Clause 21 : Transfers from the Schedule to the Administrative Appeals Tribunal Act 1975 to the Customs Act, the full list of decisions or other actions taken under the Customs Act or the Customs Tariff Act (which is incorporated and read as one with the Customs Act) in respect of which applications may be made to the Administrative Appeals Tribunal for review; makes provision also for review of decisions taken under new Part V introduced by Clause 10.
- Clause 22 : Amends section 275 of the Act consequential on the abolition, by Clause 10, of formal appointment and designation of place as King's (Queen's) warehouses.
- Clause 23 : Amends Schedules III and IV to the Act consequential on the abolition, by Clause 10, of formal appointment and designation of place as King's (Queen's) warehouses.

Clause 24 : Savings provisions for existing regulations relating to working days and hours, warehouse licence fees and regulatory procedures in respect of operations in warehouses.