Date Introduced: 7 May 1981
House: House of Representatives
Presented by: Hon. J.C. Moore, Minister for Business and Consumer Affairs

Short Digest of Bill

Purpose

The primary purpose of this Bill is to give effect to a number of recommendations of the Australian Royal Commission of Inquiry into Drugs.

A second purpose is to update the Customs Act 1901 by providing legislative backing for certain procedures, particularly relating to authorities to deliver goods, and by providing for Customs Tariff Notices to have up to six months retrospective effect.

A third purpose is to establish procedures for the disposal of seized goods whilst imposing conditions on their disposal, and safeguarding the rights of persons with interests in them.

A fourth purpose is to reduce the number of Customs Tariff Bills by extending the validity period of Customs Tariff Proposals from six to twelve months (a similar proposal in respect of Excise Tariff Proposals is contained in the Excise Amendment Bill 1981).

Background

In 1980, the report of the Australian Royal Commission of Inquiry into Drugs was published. This report contained numerous recommendations including some requiring implementation through the Customs Act 1901. The present Bill is designed, in part, to effect these recommendations. These and other objectives of the Bill are outlined in the Minister's second reading speech (House of Representatives Hansard, 7 May 1981, pp.2136-7), and the Explanatory Memorandum.

Provisions

Clause 1 contains the short title.
Clause 2 gives the dates of commencement of the various clauses.

Clause 3 defines terms used in the Bill.

Once imported, goods remain subjected to Customs control. Clause 4 provides that such control continues until the goods are physically delivered to the recipient.

Clause 5 provides:

- for a penalty for the unauthorised handling of goods subject to Customs control;
- that, where an employee was responsible for such unauthorised handling, the employee's principal is liable for the penalty;
- that the principal will not be liable if he took reasonable measures to prevent unauthorised handling; and
- that a director of the corporation is to be considered an employee for the purposes of these provisions.

Clauses 6 to 8: see below following clause 9.

Clause 9

The procedures for dealing with imported goods, including their passing for entry by means of endorsement of entry documents, were outlined in the second reading speech (House of Representative, Hansard, 7 May 1981, pp. 2136-7). Notification of the passing for entry is by means of a written authority enabling the goods to be delivered. Clause 9 repeals existing sections 39 and 40 of the Principal Act and replaces them with new sections 39 and 40.

Sub-section (1) of proposed section 39 provides for the passing of entry of imported goods to be by means of an authority to deliver, this authority to be prescribed by regulations. Sub-section (2) provides that such authority may be made conditional on adherence to Commonwealth Laws, in particular, the Quarantine Act 1908. Authority is deemed not to have been given unless and until these conditions are met. Sub-section (3) provides for the suspension of such authority until the goods are delivered in accordance with that authority. The reasons for this last provision are set out in the Explanatory Memorandum.
Proposed section 40 provides for a penalty to be imposed on the owner of goods who does not deal with them in accordance with the authority.

Clauses 6 to 8, 10, 11, 14 to 18, and 20 to 23 are all necessitated by the repeal of existing sections 39 and 40 and their replacement by new sections 39 and 40.

Clause 6 requires the holder of dutiable goods, in accordance with an authority issued by Customs, to provide for their safe-keeping.

Clause 10 provides that a Collector of Customs must not issue an authority if inadequate information has been furnished. Likewise, an authority must not be issued where the owner of goods has been required to furnish information and has failed to do so.

Clause 15 provides that where goods have been included in a sight entry, i.e., as having actually been seen, they must be designated as such.

Clauses 7, 8, 11, 14, 16 to 18, and 20 to 23 give effect to a variety of technical amendments necessitated by clause 9. In addition, clause 18 empowers Customs to sell unentered goods which are perishable or hazardous in nature. The net proceeds for such sales are to be held until it is determined who is entitled to receive them. When necessary action has not been taken within a prescribed time to enable authorities to be given under section 39 to deal with removed goods, the Collector may sell those goods [subsection (4) of new section 72].

Clause 12

Clause 12 repeals existing section 59 and replaces it with a new section 59 which provides for the surveillance of imports by Customs, by requiring that any Australian ship or aircraft, or any ship or aircraft within 12 nautical miles of the coast of Australia, obey signals, unless there is good reason not to, from ships and aircraft bearing Commonwealth insignia. These powers are to be exercised subject to international law and convention.

Clause 19 and 24 are consequential on clause 12.

It is an offence to remove cargo from a ship's holds within territorial waters. Clause 19 extends the distance to 12 nautical miles.

Clause 24 provides that, where ships and aircraft fail to obey the signals referred to in clause 12, measures
may be taken to pursue and capture them (new section 184). New section 185 enables Customs officers to board ships and aircraft, search them, obtain information, make arrests and take other measures necessary for generally enforcing customs and other laws.

Clause 13 requires the masters, pilots, or owners as the case may be, of arriving ships and aircraft, to make a report to the Customs of their ships or aircraft and their cargoes, within prescribed times.

Clause 25 empowers Customs officers to request certain information from persons wishing to enter goods, and to take designated measures against them should they fail to comply with such a request. The objective of this clause was noted in the second reading speech (House of Representatives, Hansard, 7 May 1981, p.2136).

Clause 26

New section 203 defines an 'authorised person' and enables that person to seize on land or sea, goods he reasonably believes to be forfeited.

New section 204 specifies the ways in which seized goods are to be dealt with, particularly with respect to their security and the handling of narcotics.

With respect to the security of seized goods, sub-section (2) of new section 205 provides that when goods have been seized, a notice to that effect must be served on the owner of the goods or the person responsible for their custody or control. However, where a 'responsible person' (a Customs officer or a member of the Australian Federal Police as defined in sub-section (1) of new section 205), does not have sufficient information to serve a notice, he is not required to do so (sub-section (4) of new section 205). Where a notice has not been served and a person, who claims to be entitled to be served with a notice, provides sufficient information for a notice to be served, the 'appropriate person' (as defined in sub-section (1) of new section 205), must convey that information to the responsible person (sub-section (5) of new section 205). On the other hand, where insufficient information is provided, the goods are forfeited (sub-section (7)). Where a notice has been served, the seized goods are forfeited unless the owner (or person who had possession, custody or control), claims them (sub-section (6)).

New section 206 provides for the destruction of seized animals or goods of a perishable or hazardous nature.
As mentioned in the second reading speech (House of Representatives, Hansard, 7 May 1981, p.2137), clause 26 provides for, amongst other things, the disposal of unseaworthy vessels that have entered Australia illegally. New section 207 defines the circumstances under which an unseaworthy ship can be disposed of by sale or destruction.

New section 208 provides that seized goods other than narcotics may be delivered to a person claiming them, on the condition that that person gives security to pay for them, should they be forfeited to the Crown.

Where a notice has been served under section 203, new section 208A empowers Customs and the Australian Federal Police to retain possession of seized goods and to require the person serving the notice to take proceedings to recover the goods (or security given under section 206). Failure to institute proceedings results in their forfeiture.

New section 208B provides that a person with an interest in seized goods subsequently sold or destroyed, may institute proceedings to recover the proceeds if sold or their market value if destroyed.

New section 208C is interpretative.

New section 208D designates under whose direction disposal of forfeited goods is to be carried out.

New section 208E states that ships or aircraft may be disposed of under certain conditions, namely, that they be exported or broken up.

Clause 27 makes technical amendments relating to the power of the Collector of customs to require further proof of proper entry of goods.

Clause 28 is designed to reduce the number of Customs Tariff Bills by extending the validity period of Customs Tariff Proposals from six to twelve months.

Clause 29 makes provisions regarding the forfeiture of ships and aircraft failing to obey signals or found to have been altered for the purpose of concealing goods.

Clause 30 provides for the forfeiture of goods where the conditions of disposal, set under section 208E (see clause 26), have not been met.

Clause 31 makes formal drafting changes.
Clauses 32, 33 and 34 are explained in the Explanatory Memorandum.

Clause 35 provides for Customs Tariff Notices to have up to six months retrospective effect, except when the effect of retrospectivity would be to increase duty payable.

Clause 36 is explained in the Explanatory Memorandum.

Clause 37 makes the formal amendments set out in Schedule 2.

Clause 38 provides that goods seized before the operation of this new Act, will be subject to sections 204 to 208 of the existing Act.

For further information, if required, contact:

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13 May 1981

References: Australian Royal Commission of Inquiry into Drugs, AGPS, Canberra, 1980.

Digest of Excise Amendment Bill 1981.