Customs Amendment Bill (No. 3) 1980

Date Introduced: 2 April 1980
House: House of Representatives

Purpose

To amend the Customs Act 1901 especially in relation to the procedures for dealing with persons who commit minor breaches of the Act when passing through Customs and the licensing and control of warehouses. A number of changes to improve the administration of the Act are also made.

Background and Provisions

1. Breaches of the Act by persons being cleared through Customs.

At present such breaches involve seizure of goods and court proceedings by way of either, or both, a prosecution by a Collector of Customs, or recovery action by a claimant owner. This procedure was considered unwieldy, wasteful of resources and unduly oppressive especially in the case of minor breaches. Clause 15 repeals and replaces s.209 to provide a simplified system. It applies in relation to passengers who commit offences by seeking to evade duty on goods being brought into Australia where the amount of duty sought to be evaded does not exceed $500 (sub s.209(3)). An officer is empowered to impound goods, in lieu of seizing them and serve a notice on the owner providing him with the option of paying within 21 days the duty plus a penalty equal to the duty. If the payment is made the goods cease to be forfeited and no proceedings may be brought in relation to the offence. If the option is not exercised, the normal seizure provisions apply.

2. Licensing and Control of Warehouses.

Deficiencies in the present provisions relating to licensed warehouses (in which dutiable goods are stored pending entry for home consumption or exportation) became evident last year as a result of a judgment of the Federal Court which held that a Collector of Customs acted beyond the powers available under the Customs Act, when he...
purported to revoke a warehouse licence for reasons other than default in payment of licence fees. As a consequence of this decision and a general need for updating, an overall revision of the sections has been made.

Clause 10 repeals and replaces Part V (new ss.78-102, formerly ss.78-110) of the Act. Proposed s.79 provides that the Comptroller may grant a warehouse licence to a person or partnership. The Comptroller must, however, be satisfied that the holder of the licence or any other person participating in the management of the warehouse is a fit and proper person (proposed s.81). Licences are granted annually but are renewable (proposed ss.83 and 84) and may be subject to certain conditions (proposed s.81). New powers to suspend or cancel licences are provided for in new sections 86 and 87. Under s.86 the Comptroller, where he has reasonable grounds for believing that a specified circumstance has occurred, may require the holder of a licence to show cause why the licence should not be cancelled and if appropriate he may suspend the licence. If suspension takes place the Comptroller must within 28 days either revoke the suspension or cancel the licence. New s.87 sets out the grounds for cancellation of a licence. An application for review of a decision to cancel is available to the Administrative Appeals Tribunal. Existing provisions relating to Kings or Queens Warehouses have been omitted from Part V.

3. The treatment of ships and aircraft.

Clauses 7,8,9 and 16 make a number of amendments to rectify what have been regarded as deficiencies in the treatment of ships and aircraft under the Customs Act. The Second Reading Speech sets out a number of reasons for these amendments. At present ships imported into Australia need the permission of the Minister for Transport which is part of the Government's policy relating to Australian shipping and ship-building. Temporary import permissions are, however, sometimes needed to meet shortfalls in the availability of local shipping. The Act is at present deficient in this area and there are also doubts as to whether there are powers to enforce the re-exportation of vessels, on the expiry of the temporary permit. Clauses 8 and 9 which amend sections 50 and 51 are aimed at correcting this problem. Clause 8 inserts a general authority to allow importation on a temporary basis of goods, including ships, boats and aircraft. Clause 9 provides that ships, boats and aircraft are prohibited imports only if imported in fact or deemed to be imported (e.g. under new s.49A).
Clause 7 inserts a new s.49A with the aim of resolving the legal status of refugee boats, which will assist most directly the Government of the Northern Territory. The new s.49A will deem a ship or aircraft to have been imported in certain circumstances. A ship or aircraft must within 30 days or a period specified by a Collector either depart or be entered for the purposes of the Customs Act.

Clause 16 amends s.229 to ensure the forfeiture of any ship, boat or aircraft if it is imported without permission or if granted temporary permission, it does not depart on expiry of the period of authorisation.

4. Administration

The Bill contains a number of amendments aimed at improving the administration of the legislation.

These include the following:

- the appointment of ports and airports may now be done by the Minister and wharves and boarding stations by the Comptroller. Previously the Governor-General had to appoint by Proclamation (cl.4 inserts a new s.15 in place of ss.15 and 16).

- the working days and hours may be prescribed by regulation in a more flexible way than at present (cl.6 inserts new s.28 in place of ss.28 and 29).

- the power of Customs officers to question any person on board a ship or aircraft is expanded to include questions relating to restrictions on goods under other Commonwealth Acts as well as the Customs Act (cl.12 repeals and replaces s.195).

- narcotic goods seized by the Australian Federal Police may be retained in their custody rather than delivered to the nearest Kings Warehouse or such other place of security as a Collector of Customs directs (cl.13 repeals and replaces s.204, which also substitutes for existing s.209).

- areas may be set aside for processing passengers at wharves or airports and signs erected prohibiting unauthorized entry (cl.18 and 19).
the powers of the Minister to settle disputes as set out in Part XV of the Act are repealed (cl.20). This practice was discontinued in 1974 when the view was taken that they purported to confer on the Minister and his delegates a power of determination more proper to exercise by the judiciary.

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