CUSTOMS AMENDMENT BILL 1979

Date Introduced: 8 March 1979
House: House of Representatives

Short Digest of Bill

Purpose

To expand the investigatory powers of Customs officers, and to generally broaden and increase the penalties associated with drug trafficking; in particular, to introduce a system of pecuniary penalties based on the benefits derived from such activities.

Background

The Bill represents an attack on what the government sees as the major problem of drug abuse and that is the organisational and distributive aspects of the drug trade. For this purpose, the Bill seeks to give extended powers of detection to Customs officers in the form of listening devices and creates a novel system of pecuniary penalties, designed to recover the profits made by drug traffickers.

Main Provisions

Clause 3 defines "commercial quantity" and "prescribed narcotic substance" for the purpose of the revised penalties set out in Clause 12. Clause 6 introduces a new section 196A which provides that a search of a person's body cavities may only be carried out by a medical practitioner. Clause 7 makes new provision for the powers of arrest without warrant in relation to the new narcotics offences introduced in the Bill.

Listening Devices

Clause 8 introduces a new Division 1 of Part XII providing for the use of listening devices in relation to narcotics offences. The provisions of this Division are essentially the same as those introduced in the Australian Security Intelligence Organisation Bill 1979 and include similar procedures for the approved use of listening devices by Customs officers in certain specified circumstances as apply to their use by ASIO officers.
Offences and Penalties

Clause 11 amends section 233B to clarify the offence of attempting to obtain possession of narcotics and to create an offence of conspiracy to import or export narcotics.

Clause 12 increases the penalty for offences involving specified narcotics to a maximum of life imprisonment where:

(a) the narcotics quantity involved is not less than the commercial quantity (see Clause 15), or

(b) the narcotics quantity involved is not less than the trafficable quantity and the person concerned has been convicted by a court previously for an offence relating to not less than a trafficable quantity of narcotics.

However, where a court is satisfied that the quantity involved in an offence was between the trafficable and the commercial quantity and the offence was not committed for commercial purposes, then the penalty is the same as applying to offences involving less than the trafficable quantity i.e., a fine up to $2000 or imprisonment up to 2 years.

Pecuniary Penalties

Clause 13 inserts a new Division 3 into Part XIII to provide for the recovery of pecuniary penalties for illegal dealings in narcotics. The Minister or the Comptroller-General of Customs may institute proceedings in a court for an order that a person pay a pecuniary penalty in respect of:

(a) a particular prescribed narcotics dealing engaged in by him; or

(b) prescribed narcotics dealings engaged in by him during a particular period.

Where the court is satisfied that the person has so engaged, it is to assess, in accordance with new section 243C, the value of the benefits derived by the person and order him to pay a pecuniary penalty to the Commonwealth equal to the value of the benefit derived.

The court may order the payment of the pecuniary penalty in relation to a particular prescribed narcotics dealing(s) whether or not:
(a) the person has been convicted of an offence;
(b) proceedings have been instituted in respect of any
goode or offence; or
(c) moneys or other goods have been seized under
in respect of the same dealing(s).

In addition is it provided that:
(a) the amount payable is a debt due to the
(b) proceedings are to be commenced within 6 years of
(c) the section applies to assets derived by, or
benefits provided to, a person either within or
outside Australia; and
(d) proceedings may only be commenced in relation to
dealings engaged in after the commencement of the

New section 243C provides the matters to be taken
into account by a court:
(a) moneys, property or benefit that comes into the
hands of the defendant or another person at the
request of the defendant;
(b) the market value of similar narcotics at the time
of the dealing;
(c) the amount ordinarily paid for any act relevant to
the dealing, other than selling or otherwise
dealing in narcotics; and
(d) the value of the defendant's property before and
after he engaged in a dealing.

In relation to (d) immediately above, it is further provided
that, in a recovery proceeding, if the evidence shows that
the value of the defendant's property after he engaged in a
narcotics dealing exceeded the value before the dealing,
then the value of the benefit shall be the equivalent of
that excess or that part that is attributable to the
narcotics dealing.
New section 243E provides that the standard of proof in these proceedings shall be the normal standard in civil proceedings i.e., on the balance of probabilities. New section 243F enables a Court in certain circumstances to make an order directing an official receiver to take control of the property of a person against whom recovery proceedings have been instituted. New section 243G grants the Court power to make further specified orders in respect of the person's property.

New section 243H provides for the court to direct the official receiver, who controls the property of a person against whom an order for a pecuniary penalty has been made, to pay to the Commonwealth the penalty owing. Any excess of moneys realised by the official receiver above the penalty shall be paid to the person concerned. New section 243J provides for the revocation of an order made under s.243F where the pecuniary penalty is paid, or is not imposed upon determination of a recovery proceeding or where the court is satisfied that it is proper to do so. New section 243K creates a charge on all the person's property to secure payment of a pecuniary penalty and provides for the conditions of cancellation of this charge.

New section 243L creates an offence of selling or otherwise disposing of any property subject to a charge under s.243K without the consent of the court or the official. New section 243M provides that the normal bankruptcy procedures will apply where the court has made an order directing the official receiver to pay an amount to the Commonwealth in relation to a person who is liable to pay a pecuniary penalty and subsequently becomes a bankrupt. New section 243N prevents an official receiver from taking any action until any creditor's petition against the person concerned is withdrawn, dismissed or lapses. New section 243P controls the personal liability of an official receiver appointed under this Act. New section 243R obliges the official receiver to give or publish notice of an order made under s.243F or G as required by the regulations or as the court may direct. New section 243T confers jurisdiction to hear applications under this Division on the Federal Court of Australia.

Clause 15 inserts a new schedule the minimum quantity of each specified narcotic that is to be regarded as a "commercial" quantity. Among other things, Clause 16 provides that the increased penalties in clause 12 do not apply to offences committed before the commencement of this Bill.