

Chapter 3

Key issue

3.1 As noted in chapter 1, the committee received just one submission from the Australian Customs and Border Protection Service, which naturally enough did not raise any issues with the Bill. The committee is grateful for the submission as it clarified a number of matters.

3.2 Overall, the committee considers that the amendments made by the Bill are positive and allow for a streamlining and clarification of procedures under the Act.

3.3 During the course of the inquiry, however, the committee became aware of one ambiguity in the Bill that it considers worthy of clarification. The ambiguity relates to proposed section 186AA, which would allow goods carried on the domestic legs of international flights or voyages to be examined by a Customs officer. As noted in chapter 2, proposed subsection 186AA(2) is a power to examine goods that have not yet been loaded onto the ship or aircraft, while proposed subsection 186AA(3) gives a similar power in respect of goods that have already been unloaded.

3.4 Proposed subsections 186AA(2)(d) and 186AA(3)(d) both provide that 'the goods are subject to the control of the Customs while the goods are being so examined'. As explained in the previous chapter, goods that are subject to the control of the Customs may, in certain circumstances, be examined,¹ seized,² forfeited,³ or held pending the giving of security.⁴ At present, section 30 defines when goods that are being imported or exported are subject to the control of the Customs. It provides definite times at which such control commences and comes to an end.

3.5 It is reasonable to extend the concept of Customs control to goods being examined pursuant to proposed section 186AA so that such goods can be forfeited or held if and when the relevant circumstances exist. However, unlike goods subject to the control of Customs because of the operation of section 30, it appears that the periods of Customs control brought about by proposed subsections 186AA(2)(d) and 186AA(3)(d) may not have sufficiently precise start and end points. It is clear that the period of Customs control commences when the examination begins and comes to an end when the examination concludes, but nowhere is it made clear when exactly this is. This is likely to be less of a problem in the case of the commencement of the examination but, in the case of conclusion, issues may arise. For example, if a Customs officer were to stop examining goods so as to confer with a colleague, or to seek advice from his/her supervisor, or to make a report, would this mean that the

1 *Customs Act 1901*, section 186.

2 *Customs Act*, Part XIII, Division 1, Subdivision D.

3 *Customs Act*, sections 203T, 229.

4 *Customs Act*, section 42.

examination had concluded and the goods ceased to be within the control of the Customs?

3.6 Furthermore, the absence of a defined end point means that there is nothing preventing an examination from being extended for so long as to operate as a de facto temporary seizure that is not subject to any of the requirements imposed on other seized goods.⁵

3.7 This issue does not arise in relation to the general examination power in section 186 because that power to examine is confined to when the goods are subject to the control of the Customs, as defined in section 30. Put another way, section 186 defines when goods are able to be examined by reference to when they are subject to the control of the Customs, but proposed section 186AA defines when goods are subject to the control of the Customs by reference to when they are being examined.

3.8 For this reason, the start and end points of an examination under proposed section 186AA take on a relevance that they do not have in relation to an examination under section 186. In those circumstances, the committee considers that the start and end points of an examination under proposed section 186AA should be clarified. The committee would appreciate the Commonwealth government's comment on the committee's understanding of the provisions, to ensure that the Bill is in all respects as the government intended and without unintended omissions.

Recommendation 1

3.9 The committee recommends that the Commonwealth government clarify proposed section 186AA to specify when an examination under that section begins and ends.

3.10 As noted above, the committee endorses the remainder of the Bill and, subject to the above clarification, recommends that the Bill be passed.

Recommendation 2

3.11 Subject to the preceding recommendation, the committee recommends that the Bill be passed.

**Senator the Hon Ian Macdonald
Chair**

5 See, for example, *Customs Act*, Part XIII, Division 1, Subdivision G.