



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 18 2002–03

Import Processing Charges (Amendment and Repeal) Bill 2002

ISSN 1328-8091

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Published by the Department of the Parliamentary Library, 2002

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Import Processing Charges (Amendment and Repeal) Bill
2002

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14 August 2002

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Import Processing Charges (Amendment and Repeal) Bill 2002

Date Introduced: 19 June 2002

House: House of Representatives

Portfolio: Justice and Customs

Commencement: The formal provisions of the Bill commence on Royal Assent. Other provisions have various commencement dates which will be described in the Main Provisions section of this Digest.

Purpose

To ensure that the import processing charges imposed by the *Import Processing Charges Act 1997* will continue to apply after that Act is repealed.

Background

This Bill contains a number of proposals that are made as a consequence of amendments included in the Customs Legislation Amendment Bill (No. 1) 2002.

The *Import Processing Charges Act 1997* (the 1997 Charges Act) imposes three charges:

- a cargo report processing charge
- an entry processing charge, and
- a screening charge.

These charges are imposed in accordance with various sections of the *Customs Act 1901* (Customs Act).

In 2001 Parliament passed a package of three legislative measures, the purpose of which is to modernise the way in which the Australian Customs Service ('Customs') manages the movement of cargo into and out of Australia. The three acts in this modernisation package are the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (the Trade Modernisation Act), the *Customs Depot Licensing Charges*

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Amendment Act 2001 and the *Import Processing Charges Act 2001*. Among many other changes, the legislation repeals the charges imposed by the 1997 Charges Act and introduces new compliance measures in relation to the reporting and accounting of imported cargo.

It was intended that the 1997 Charges Act would be repealed at the same time as the Trade Modernisation Act made substantial changes to import reporting and entry processes. The date for the start of the new processes, and the repeal of the old, was to be fixed by Proclamation. If a date was not proclaimed, then the changes were to commence automatically on the first day, two years after the Trade Modernisation Act received Royal Assent. The Trade Modernisation Act received Royal Assent on 20 July 2001 so all the provisions must commence by 21 July 2003.

An Extension of Time

Many of the provisions of the Trade Modernisation Act depend directly or indirectly on the introduction of Customs' new integrated cargo management system. The two year proclamation period was intended to allow sufficient time for Customs to introduce and test its new computer system, and for the trading community to be ready for the procedural changes. However, according to the Government, it has recently become apparent that the trading community may not be ready to use the integrated cargo system by July 2003.¹ As a result, the Government proposes, by means of the Customs Legislation Amendment Bill (No.1) 2002, to extend the time that those provisions can be proclaimed from two years to three, that is, until 21 July 2004.

The report of the Senate Legal and Constitutional References Committee's inquiry into the outsourcing of Customs' information technology² stated that importers and exporters had expressed concern that they might be penalised if Customs failed to meet the July 2003 deadline for implementing its new system.³ This is because Schedule 3 of the Trade Modernisation Act contains a number of offences that apply if a person fails to electronically communicate information required by Customs. Many of these offences attract penalties of 60 penalty units (\$6,600), and many of them attract strict liability. The Committee found that it would be unacceptable for businesses to be exposed to penalties if Customs failed to meet the deadline, and recommended that businesses be allowed to use other methods of communication in the event of a failure.⁴

The Government also proposes amendments to the Trade Modernisation Act in order to allow the new reporting and processing requirements to be phased in.⁵ According to press reports, about 5,500 businesses are expected to use Customs' new integrated cargo system which will replace various older computer systems by July 2003.⁶ If this legislation is passed, Customs' existing export systems will continue to run until November 2003, and importers will not switch to the new system until March 2004.⁷ The extension of time has been welcomed by a spokesperson for importers and exporters.⁸ Customs is reported as saying that the extension has been sought to give industry more time to comply with the

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new cargo systems, and not because of fears that Customs' system development would not be finished in time.⁹

This Bill includes consequential provisions designed to ensure that the 1997 Charges Act will continue to apply to import reports and entry processing made under the old systems until importers and exporters can comply with the new processes and computer systems. According to the Explanatory Memorandum, charges for importers are higher under the 1997 Charges Act, reflecting the higher costs to Customs of continuing to operate its older systems.¹⁰

The Moratorium Period

The 1997 Charges Act provides that a cargo processing charge is imposed and sets out the amount of that charge. That charge is only payable in respect of documentary cargo reports (section 64ABB of the Customs Act). Under amendments inserted by the Trade Modernisation Act, people reporting cargo will be required to make electronic cargo reports (new section 64AB of the Customs Act). The Trade Modernisation Act also introduces a moratorium period during which documentary reports may continue to be made. The general moratorium period is for six months. A further period of up to an additional 18 months, may be granted by the CEO of Customs.

Since documentary cargo reports can only be made for a maximum of 2 years after the commencement of the new section 64AB of the Customs Act, the Trade Modernisation Act also repeals section 64ABB. The effect of this amendment will be that the cargo reporting processing charge will not be payable by people lodging documentary cargo reports during the general and further moratorium periods. An item in the Customs Legislation Amendment Bill (No. 1) 2002 (Item 67 of Schedule 3) provides that the cargo report processing charge will still be payable during those moratorium periods. This Bill makes consequential amendments so that the 1997 Charges Act continues to apply during those moratorium periods.

Main Provisions

The effect of **Clause 5** of this Bill is to continue the operation of the 1997 Charges Act beyond the date on which it is repealed by the Trade Modernisation Act. The continuation will be triggered if not all the import reporting/entry processes detailed in Parts 2 and 6 of Schedule 3 of the Trade Modernisation Act have commenced and will continue until all the import reporting/entry process amendments have commenced.

Commencement: Immediately after the commencement of item 62 of Schedule 3 of the Customs Legislation Amendment Bill (No. 1) 2002. If the amendment proposed by the Customs Legislation Amendment Bill (No. 1) 2002 is passed, then the commencement dates for Schedule 4 (which repeals the 1997 Charges Act) and Part 2 of Schedule 3 of the Trade Modernisation Act (dealing with the importation of goods) can be different.

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Clause 6 has the effect of continuing the operation of the 1997 Charges Act for the purposes of charging the cargo report processing charge during the moratorium periods of up to two years after the new integrated cargo system is implemented. During this time cargo reporters may continue to submit documentary cargo reports.

Commencement: At the same time as the commencement of item 1 of Schedule 4 to the Trade Modernisation Act, that is, when the 1997 Charges Act is repealed.

Clause 7 imposes charges for the purposes of **Clauses 5 and 6** of this Bill.

Commencement: On the earlier of:

- the commencement of Clause 5, and
- the commencement of Clause 6.

Amendment to the *Import Processing Charges Act 2001*

Item 1 of Schedule 1 clarifies that for the purposes of a ‘rolled-up’ charge in respect of 21 or more reportable documents, each reportable document requires its own self-assessed clearance declaration.

Commencement: The later of:

- immediately after the *Import Processing Charges Act 2001* commences (that is, on a day fixed by Proclamation or if not proclaimed, then two years after the International Trade Modernisation Act receives Royal Assent, ie. 21 July 2003), and
- the day on which this Act receives Royal Assent.

Endnotes

- 1 Hon Peter Slipper, Parliamentary Secretary to the Minister for Finance and Administration, ‘Second Reading Speech’, Customs Legislation Amendment Bill (No. 1) 2002, House of Representatives, *Hansard*, 19 June 2002, p. 3777.
- 2 Senate Legal and Constitutional References Committee, *Inquiry into the Outsourcing of the Australian Customs Service’s Information Technology*, May 2002. Available online at http://www.aph.gov.au/Senate/committee/legcon_ctte/reports/index.htm
- 3 *ibid.*, p. 31.
- 4 *ibid.*, p. 32, Recommendation 2.
- 5 These proposed amendments are included in the Customs Legislation Amendment Bill (No.1) 2002.

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- 6 Emma Connors, 'New Customs system delayed', *Australian Financial Review*, 20 April 2002.
- 7 *ibid*; Eugene Clark, 'Customs a leader in bringing e-government to full fruition', *Canberra Times*, 8 July 2002.
- 8 Mr Paul Zalai of the Customs Brokers Council of Australia, is quoted as saying that 'the extension provides Customs and industry with a more realistic ability to adequately develop, test and implement the software and communication changes associated with the cargo management re-engineering initiatives'. Emma Connors, 'New Customs system delayed', *Australian Financial Review*, 20 April 2002.
- 9 Emma Connors, 'New Customs system delayed', *Australian Financial Review*, 20 April 2002.
- 10 *Explanatory Memorandum*, Import Processing Charges (Amendment and Repeal) Bill 2002, p. 2.

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