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No. 80 2003–04

Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Bill 2003

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No. 80 2003–04

Customs Legislation Amendment (Application of
International Trade Modernisation and Other Measures)
Bill 2003

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Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Bill 2003

Date Introduced: 4 December 2003

House: House of Representatives

Portfolio: Justice and Customs

Commencement: This is an omnibus Bill that amends several Acts and, apart from the date of Royal Assent, it has a range of other commencement dates for various legislative amendments (see the five page table in Clause 2 of the Bill).

Purpose

As noted above, this is an omnibus Bill and it has several purposes in terms of its legislative amendments to various Customs-related statutes. These purposes include:

- clarify aspects of the major reforms associated with new electronic communication arrangements aimed at implementing the program of Customs international trade modernisation
- enhance Customs border controls
- clarify cargo reporting requirements, and
- clarify calculation of Customs duties on alcoholic beverages.

The Bill is also scheduled for cognate debate with the Import Processing Charges (Amendment and Repeal) Amendment Bill 2003, the detail of which is discussed in the accompanying Bills Digest.

Warning:

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Background

This omnibus Bill has no central theme. There is, however, a significant part to the Bill that deals with the transitional arrangements that will occur during the on-going program of Customs international trade modernisation (ITM) and the transition between the current Australian Customs Service's electronic reporting systems and the new Integrated Cargo System (ICS). The overall aim is to create an integrated system to replace the several computer platforms now in use. This is referred to as the Cargo Management Re-Engineering project (CMR).

Parliament, through its committees and debates, has examined ITM and ICS on several occasions since 2000.¹ The mandatory electronic reporting requirements of cargo movements and the demands of the modern competitive trade environment have created a significant challenge in terms of the information technology (IT) systems required by Customs. The massive IT program is reported to be \$100 million over budget and over 12 months late.² The Government for its part has suggested that focus should also be made on the sophisticated functionality of the system and that it is designed to process the collection of \$6 billion annually.³

Press commentary, however, continues on industry's concerns that the new computer systems are not yet stable and that rushing the implementation may result in cargo being stranded at the docks.⁴

The Bills Digest (No. 40 of 2003-04)⁵ for the Customs Legislation Amendment Bill (No. 2) 2003 contained an outline of the stages involved in this major IT program. The CMR project is being implemented in three stages. The first stage connects the new computer system, the ICS which handles risk assessment and reporting of imported and exported cargo, to the small number of express carriers. This stage served as a pilot to test some electronic reporting functions because of the large volumes of cargo and the limited number of express carriers.⁶ The first stage was implemented successfully in April 2003.⁷

The second stage is to implement the ICS export functions across the industry. Release of the ICS export software was to be completed by 1 December 2003 but has been delayed to early 2004. Similarly, because industry testing of the components was delayed from May until August 2003,⁸ Customs will not cut over from its existing export system, known as EXIT, until later in 2004.⁹

The final stage of the CMR project is the implementation of ICS import functions. According to press reports, both industry and Customs agree that the import cargo declaration software is the most complex piece of the new system.¹⁰ This may be because there are many more categories of imports, they come from more sources than our exports, and there will be more users of the import software. Testing of the imports system by industry will commence in the first half of 2004.

The statutory cut-off date for the completion of CMR has recently been extended to July 2005.¹¹

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Main Provisions

Part 2—Transitional and application rules in relation to international trade modernisation

The *Customs Act 1901* currently sets out the computer systems that must be used to communicate with the Australian Customs Service. There are several systems specified. The ITM reforms, including those covered by the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (the ITM Act), will see these specific legislative references to computer systems replaced by notices in the Gazette.

The ITM Act also contains transitional provisions that need to be modified, including replacement provisions relating to the arrival of ships, and aircraft and cargo reporting. These transitional provisions need to take into account that there is a period when the 'unamended Customs Act' will apply and when new provisions dealing with imports in the Customs Act, as amended by the ITM Act, will commence. Broadly stated, there is an overlap during which both computer systems will have to be used leading up to the 'turn-off' time for the current computer systems. It is necessary to have provisions that identify which version of the legislation will apply. The complexity involved in accommodating arrival times for vessels in transit and/or who deliver imports to more than one Australian port of call in a voyage is noted.

Clause 4 provides definitions that will apply under the transitional mechanisms for ITM. The reference to 'import cut-over time' means the time when the notification of imports under the current electronic system actually cuts-over to the ITM system, and 'turn-off time' means that time at which the current computer systems are due to turn off (see the diagram which appears at page 11 of the *Explanatory Memorandum* issued with the Bill).

Clauses 5 and 6 authorise the CEO of the Australian Customs Service to gazette dates for the cut-over time and the turn-off time, respectively. The CEO of the Australia Customs Service must gazette these dates before the 'ITM import commencement date' (see paragraph 53 of the *Explanatory Memorandum*).

Clauses 7 to 18 provide the rules to determine when the unamended Customs Act will apply and when the Customs Act amended by the ITM Act will apply, taking into account the timing of notification of imports and the arrival of the vessel at a port in Australia. Rules also apply to warehoused goods in Australia that are subject to the Customs Act and that are subsequently entered for home consumption (see **Clause 9**).

Sections 126D and 126DA of the ITM Act enable the CEO of the Australian Customs Service to establish, maintain and determine IT requirements applicable to communications with Customs. The *Customs Legislation Amendment Act (No. 2) 2003* provided a transitional amendment (Item 38) for delayed application of ITM Act

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amendments to *exports*. **Clause 19** clarifies that sections 126D and 126DA continue to apply according to their terms for *imports* from the ITM import commencement date.

Schedule 1—ITM import amendments

Section 68 of the *Customs Act 1901* imposes an obligation to enter for customs purposes, goods that are imported or intended to be imported that are on board a ship or aircraft that has commenced its journey to Australia (including, where applicable, the importation of the ship or aircraft itself). This requirement does not apply to personal items of the passengers or crew, containers, low value items or certain goods that are exempted by regulations. However, section 71 of the *Customs Act 1901* enables Customs to require the owner of such 'excluded' goods to provide information and, where necessary, Customs may refuse entry of the goods or alternatively authorise the entry, subject to any duty that is payable.

This procedure involves what is referred to as a self-assessed clearance declaration (SAC). **Items 2** and **3** refer to proposed definitional references to SAC to be inserted by this Bill. These references are linked to a comprehensive redraft of existing section 71 of the *Customs Act 1901* and the insertion of a range of additional new sections dealing with the requirement to give information and the authority to deal with goods specified in section 68 that do not have to be entered for customs purposes (see **Item 6**).

Within the range of 'excluded' goods, there are two categories, already mentioned above. They are:

- goods that are accompanied or unaccompanied personal or household effects of a passenger, or a member of a crew, of a ship or aircraft, and
- goods prescribed under regulations.

Proposed **new sections 71AAAA to 71AAAT**, inserted by **Item 6**, will classify the above two categories as *Subdivision AA goods*. There is a refinement to goods prescribed under regulations (see **proposed new section 71AAAE**) which will now include the wording 'persons who are not required to comply'. This new provision—to prescribe excluded goods (or persons) by way of regulations—is in addition to the existing regulation provision referred to in the current paragraph 68(1)(i) of the *Customs Act 1901*. The remaining exempt categories (other than containers) are to be classified as *specified low value goods* (see **proposed new section 71AAD**, which retains a reference to paragraph 68(1) (i)).

Where decisions are made by Customs under the **proposed new sections 71AAAC, 71AAAM** and **71AAAN**, inserted by **Item 6**, these decisions are reviewable by the Administrative Appeals Tribunal (see **Item 25**, which sets out the types of decisions that are reviewable).

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Section 71E of the *Customs Act 1901* enables an application to be made to Customs for permission to move goods to a place specified in the application. Subsection 71E (2A) specifies that a 'computer movement application' must be transmitted to Customs. **Items 12 and 13** vary the existing provisions to specify that subsection 71E (2A) continues to apply except when the **proposed new subsection 71E(2C)** applies (see **Item 13**). The effect of the amendments is to exempt from notification by a 'computer movement application', goods that are temporarily entered in accordance with an agreement between Australia and other countries that allows this type of temporary importation of goods without payment of duty.

Schedule 2—Other amendments

Items 1 and 3 amend existing provisions to broaden their application. The effect of **Item 1** is to specify that a vessel has 'arrived' when it is in port rather than being limited, at present, to when it is docked for unloading of passengers or cargo. **Item 3** corrects a legislative amendment made in 2002. The correction will include the non-movement of aircraft until the removal of cargo destined for that port of call has transpired.

Item 5 inserts significant new provisions in the *Customs Act 1901*. These sections are **proposed new sections 77EA to 77EF**. These sections will empower the Minister to order the detention of certain goods, which have not yet entered home consumption, where the Minister considers it is in the public interest to do. The 'public interest' is not defined. The *Explanatory Memorandum*, at paragraph 160, says the 'public interest' may change over time and that it is expected that the power will only be exercised in very limited circumstances. The example is given of the single importation of 'dangerous goods' where the Minister may act to ensure that the goods are delivered in batches over a period of time. The Senate Standing Committee for the Scrutiny of Bills has sought the Minister's advice on the discretionary aspect of **proposed new section 77EA** (see *Alert Digest* No. 1 of 2004).

Proposed **new subsection 77EA(3)** contains express wording that states that the Minister's order to detain goods 'has effect despite any provision of this Act to the contrary'. This is a very broad Ministerial power. It is noted, however, that a person whose goods have been detained for 12 months may seek compensation (see **proposed new subsection 77EF(5)**). It is assumed that the types of goods in question that are likely to be detained may include the now limited range of permissible firearms that can be sold in Australia.

Division 2 of Part VI of the *Customs Act 1901* deals with the notification and clearance of goods for exports. At present, the provisions allow certain bulk wharves used for bulk-loading (e.g. for the export of grain) to be exempted from the more detailed notification requirements. Some of these bulk-loading wharves are now expanding their operations to handle non-bulk exports. **Item 14** will allow the exemption to be more specific e.g. on the basis of the nature of the goods exported (e.g. bulk grain) rather than the bulk loading facility itself.

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Division 1 of Part VIII of the *Customs Act 1901* deals with the computation of duties. Division 1A deals with rules of origin of goods in respect of which a preference applies. **Item 17** will insert a **new Division 1AA** after existing Division 1 to remedy a technical problem in calculating duty by reference to the percentage alcoholic content of the import. The problem arose when some cans of alcoholic beverage were imported and labelled as containing 5% alcohol by volume but the technical measure of the fluid in the can turned out to be 4.8%. The *Explanatory Memorandum* provides a reasonably detailed explanation of the particular case that triggered the technical problem (see paragraphs 195 to 199). **Proposed new sections 153AA to 153AD** provide rules on how to calculate the rate of duty that should apply.

Border Protection (Validation and Enforcement Powers) Act 2001: Migration Act 1958: Customs Act 1901

Under the *Border Protection (Validation and Enforcement Powers) Act 2001*, amendments were made to Customs legislation to the effect that a 'commander' of a vessel in the service of the Commonwealth was defined to include a commissioned officer of the Australian Defence Force. This definition is being expanded by **Items 18 and 19** to include 'the most senior officer of Customs'. This recognises that Customs officers may also be on a State water police vessel or on a chartered civilian vessel rather than on official Defence vessels or Australian Customs vessels and the Customs officer may need to make a request to board or, if necessary, chase another vessel. **Item 35** makes the same type of amendment in relation to the *Migration Act 1958*.

Item 20 and **Item 36** in relation to the *Migration Act 1958*) clarifies that moving a detained ship may require travel by that ship across the high seas to an Australian port for the purposes of an inquiry before a competent authority. The *Explanatory Memorandum* states that these provisions are consistent with paragraph 7 of Article 111 of the United Nations Convention on the Law of the Sea (see paragraph 221 of the *Explanatory Memorandum*).

Concluding Comments

The Press commentary on industry concerns over the delays and the significant blow-out of costs incurred by Customs with the scheduled introduction of the new ITM computer systems is noted.

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Endnotes

- 1 See for example the two reports of the Senate Legal and Constitutional Legislation Committee, *Inquiry into the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001, Import Processing Charges Bill 2000, and the Customs Depot Licensing Charges Amendment Bill 2000* (May 2001) and *Inquiry into the Outsourcing of the Australian Customs Service's Information Technology* (May 2002). See also the Senate Estimates Committee (Senate Legal and Constitutional Legislation Committee) transcript of 3 November 2003 at page 153 on ParlInfo at: http://parlinfoweb.parl.net/parlinfo/view_document.aspx?id=82407&table=ESTIMATE. A more recent summary is in Senator Mark Bishop's Second Reading speech on the Customs Legislation Amendment Bill (No. 2) 2003, Senate, *Debates*, 4 December 2003, p. 19181.
- 2 Chris Jenkins, 'Customs busted in \$100m overrun', *Australian*, 11 November 2003, p. 25 and Emma Connors, 'Customs rollout delayed again', *Australian Financial Review*, 2 December 2003, p. 31. Also, Senator Mark Bishop, Shadow Minister for Customs, 'Customs Let Crew Jump Ship - More Evidence', *Media Release*, 15 January 2004.
- 3 The Hon Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, Consideration in Detail of the Customs Legislation Amendment Bill (No. 2) 2003, House of Representatives, *Debates*, 26 November 2003, p. 23053.
- 4 Emma Connors, 'Customs warned cargo could be left stranded', *Australian Financial Review*, 27 January 2004, p. 3; Emma Connors, 'Customs close to meltdown', *Australian Financial Review*, 10 February 2004, p. 53.
- 5 Rosemary Bell and Sudip Sen, Bills Digest for the Customs Legislation Amendment Bill (No. 2) 2003, No. 40 of 2003-04, Department of the Parliamentary Library, at: <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd040.pdf>.
- 6 Australian Customs Service, *Annual Report 2001-02*, p. 1.
- 7 Riley, James, 'Dockland's data deadline', *Australian*, 2 September 2003; also Connors, Emma, 'Customs faces tech calamity', *Australian Financial Review*, 19 August 2003; Australian Customs Service, *Annual Report 2001-02*, p. 16-18.
- 8 Connors, Emma, 'Customs faces tech calamity', Australian Customs Service, 'New dates for Cargo Management Re-engineering rollout', *Customs Media Release*, 15 August 2003.
- 9 Australian Customs, *Media Release*, 'Cargo Management Re-engineering (CMR) update', 10 December 2003.
- 10 Connors, Emma, 'Cost of Customs' software blows out', *Australian Financial Review*, 27 May 2003.
- 11 *Customs Legislation Amendment Act (No. 2) 2003* (see Part 5A of Schedule 1).

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