



Customs Amendment (Extension of Import Cut-Over Time) Bill 2005

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Law and Bills Digest Section

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Customs Amendment (Extension of Import Cut-Over Time) Bill 2005

Date Introduced: 10 August 2005

House: Senate

Portfolio: Justice and Customs

Commencement: Royal Assent

Purpose

To amend the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004* in order to:

- delay the implementation of the new Integrated Cargo System (ICS) until 12 October 2005, and
- provide for additional delays of up to 27 days to be made by legislative instrument.

Background

In 1997, the Australian Customs Service (Customs) began a process to replace its core information infrastructure.¹ The aim of the Cargo Management Re-engineering (CMR) project is to create an integrated system to replace the several computer platforms (the 'legacy systems') that handle exchanges of complex and varied documentation involved in routine imports and exports.² The Minister for Justice and Customs, Senator the Hon. Chris Ellison, is reported as describing the CMR project as the biggest overhaul of import and export processes since Federation.³ The ICS has to satisfy the legislative requirements of Customs while, at the same time, providing traders with a broader range of electronic reporting options, and facilitating the identification of high-risk goods.⁴

Parliament, through its committees and debates, has examined the ICS on several occasions since 2000. The massive IT program is reported to be at least \$100 million over budget and nearly three years behind schedule.⁵ The Government, for its part, has suggested that attention should be paid to the sophisticated functionality of the system and that it is designed to process the collection of \$6 billion annually.⁶ Press commentary, however, has focused on industry's concerns that rushing the implementation of the new computer systems may result in cargo being stranded at the docks.⁷

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Legislative framework

In 2001, Parliament passed a package of legislative measures, the purpose of which was to modernise the way in which Customs manages the movement of cargo into and out of Australia.⁸ Chief among this legislation is the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (ITM Act) which amends the *Customs Act 1901* to introduce new compliance measures for reporting and accounting for cargo movements. The provisions of the ITM Act commenced on 19 July 2005.⁹ The effect of the amendments relating to the importation of goods and the arrival of ships and aircraft in Australia, is to set a deadline for the implementation of Customs' new system.

The CMR project has been implemented in three stages. The first stage connected the ICS, which handles risk assessment and reporting of imported and exported cargo, to a small number of express carriers.¹⁰ The first stage was implemented successfully in April 2003.¹¹ The second stage involved implementing the ICS export functions across the industry. After some delays, implementation of the second stage was completed in October 2004.¹²

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.¹³ Imports traffic makes up 90 per cent of Customs' transactions and, as reported in the press, there are industry concerns that the new system could 'buckle under the load' when imports traffic goes online, especially in the run-up to Christmas.¹⁴ On 24 May 2005 the Minister for Justice and Customs announced that the Government had agreed to an extension to the transition phase of the ICS import system in response to industry's concerns that insufficient time was available for them to test their own software, adapt business practices and train staff. In extending the import cut-overtime until 12 October 2005, the Government states that it is honouring a commitment made to industry that there would be a transition period of approximately three months.¹⁵ The proposed amendments are the seventh made to the legislation for the CMR program.¹⁶

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 Customs. There are several systems specified. The international trade modernisation reforms, including those covered by 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 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 the 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

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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.

Main Provisions

Current regime

Section 4 of the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004* (Application Act) provides definitions that apply under the transitional mechanism for ITM. The ‘ITM import commencement date’ means the day on which the amendments¹⁷ relating to the importation of goods and the arrival of ships and aircraft in Australia commence, that is 19 July 2005. 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 (except for Customs’ internal use).¹⁸

Sections 5 and 6 of the Application Act authorise the CEO of Customs to gazette dates for the cut-over time and the turn-off time, respectively. The CEO of Customs must gazette the date of the cut-over time before the ‘ITM import commencement date’. Section 5 of the Application Act provides that the import cut-over time must be not more than 40 days (including Sundays and holidays) after the ITM import amendments commenced, that is, not later than 28 August 2005. The turn-off time is to be not more than 40 days (including Sundays and holidays) after the import cut-over time, that is, no later than 7 October 2005.

Proposed changes

Item 1 of Schedule 1 amends the definition of ‘import cut-over time’ to reflect new section 5 under which the import cut-off time may not necessarily be specified by the CEO of Customs.¹⁹ **Item 2** repeals sections 5 and 6 of the Application Act and substitutes new provisions. The Bill specifies both a new import cut-over time and a turn-off time and allows the provisions of the Application Act to be further modified by subordinate legislation.²⁰ **New subsection 5(1)** provides that the import cut-over time is 2am in the Australian Capital Territory on 12 October 2005, or a later time to be specified by the CEO by legislative instrument. Should the CEO specify a later time, then that must be done before 12 October 2005 (**new subsection 5(2)**). The later time must be before the end of 7 November 2005 (**new subsection 5(3)**).

New subsection 6(1) provides that the CEO must, by legislative instrument, specify a turn-off time that is not more than 40 days (including Sundays and holidays) after the import cut-over time. If the CEO specifies a later import cut-over time under **new paragraph 5(b)**, then the turn-off time must be within 40 days of that specified import cut-over time. The CEO may need to specify a second turn-off time if the import cut-over time is delayed. However, should the CEO need to change the turn-off time, then that must

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be done before the first turn-off time (that is, before 20 November 2005 at the latest), and the new time must not be more than 40 days (including Sundays and holidays) after the import cut-over time (**new subsection 6(2)**). This suggests that the latest possible turn-off time for the 'legacy systems' would be about 17 December 2005.

Consequences of failure to pass this Bill

Current legislation provides for a transition period of 40 days during which importers may continue to submit information to Customs using existing electronic reporting systems. The transition period expires at 2am on Sunday, 28 August 2005. If the amendments proposed by this Bill to extend the transition period are not assented to by that time, then there may be insufficient time for businesses to test that their computer systems are ready to comply with Customs' new Integrated Cargo System.

Concluding Comments

The *Import Processing Charges Act 2001* restructured the import processing charges levied by Customs for goods arriving by air, sea and post. In May 2005, the Government foreshadowed that increased charges will be levied on importers once the ITM Act commences.²¹ At that time the Government estimated that the new charges would collect an additional \$12.4 million in 2005-06.²² According to the *Explanatory Memorandum*, an extension of the transition period is expected to reduce revenue from cost recovery measures contained in the *Import Processing Charges Act 2001* by \$1.39 million this financial year.

Endnotes

- 1 Australian Customs Service, *Annual Report 1997-98*, p. 28–29.
- 2 Riley, James, 'Dockland's data deadline', *The Australian*, 2 September 2003, Computer section p. 1.
- 3 Cooper, Cameron, 'Customs' bid to get services shipshape', *The Australian*, 3 April 2003.
- 4 Senator the Hon Chris Ellison, 'Customs streamline business import/export controls', *Media Release*, E67/01, 9 April 2001.
- 5 For a discussion of the costs and delays see: Senate. Legal and Constitutional Legislation Committee, 'Australian Customs Service', *Estimates Committee Hansard*, 24 May 2005, p. 115; Riley, James, 'A long wait at the gate', *Australian*, 21 June 2005, IT Business section, p. 1; Senator Joe Ludwig, 'Cargo management saga continues...', *Press Release*, 6 May 2005; Woodhead, Ben, 'Customs sticks to cargo project target', *Australian Financial Review*, 14 April 2004, p. 21; Harrison, Murray, 'Rocky road for Customs outsourcing: the story they

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- didn't tell', *Australian*, 15 February 2005; Riley, James, 'Customs project's cost rises', *Weekend Australian*, 12 February 2005, p. 35.
- 6 Hon Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, 'Consideration in Detail: Customs Legislation Amendment Bill (No. 2), 2003', House of Representatives, *Debates*, 26 November 2003, p. 23053. According to the Minister for Justice and Customs, Senator the Hon Chris Ellison, the ICS is 'the most ambitious e-government project ever undertaken in this country' (*Media Release E082/05*, 5 July 2005).
 - 7 For example: Connors, Emma, 'Faulty Customs system delayed again', *Australian Financial Review*, 6 May 2005.
 - 8 The legislation which supports the policy and technical initiatives for CMR comprises three Acts – *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, *Import Processing Charges Act 2001* and *Customs Depart Licensing Charges Amendment Act 2001*. All three Acts received Royal Assent in July 2001.
 - 9 *Explanatory Memorandum*, Customs Amendment (Extension of Import Cut-Over Time) Bill 2005, paragraph 8.
 - 10 Australian Customs Service, *Annual Report 2001-02*, p. 17.
 - 11 *ibid.*, p. 16–18.
 - 12 The cut-over date was gazetted as 6 October 2004. *Government Notices Gazette GN37*, Wednesday 15 September 2004.
 - 13 Connors, Emma, 'Cost of Customs' software blows out', *Australian Financial Review*, 27 May 2003.
 - 14 Connors, Emma, 'Importers left in limbo again', *Australian Financial Review*, 24 May 2005, p. 36; Mitchell, Selina, 'Customs warned to declare system delay', *The Australian*, 12 April 2005, IT Today section, p. 33.
 - 15 Senator the Hon Chris Ellison, 'New era in cargo management from October 12', *Media Release E082/05*, 5 July 2005.
 - 16 Connors, Emma, 'Faulty Customs system delayed again', *Australian Financial Review*, 6 May 2005, p. 6.
 - 17 The amendments are contained in item 38 of Schedule 3 of the ITM Act.
 - 18 *Explanatory Memorandum*, *op. cit.*, paragraph 1.
 - 19 The import cut-over time was specified by the CEO of Customs in a legislative instrument made on 15 July 2005 and registered on 18 July 2005 (*CEO Specification No. 1 of 2005*). The legislative instrument was tabled in both houses of Parliament on 9 August 2005.
 - 20 Legislative instruments are subject to the scrutiny of Parliament under the provisions of the *Legislative Instruments Act 2003*.
 - 21 *Import Processing Charges Amendment Act 2005*.
 - 22 *Explanatory Memorandum*, Import Processing Charges Amendment Bill 2005, p. 2.

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