

1923.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

## CUSTOMS BILL 1923.

MEMORANDUM SHOWING THE ALTERATIONS PROPOSED TO  
BE MADE IN THE PRINCIPAL ACT.*(Circulated by the Honorable Austin Chapman, Minister for  
Trade and Customs.)*

The words printed in erased type are words proposed to be omitted from the Principal Act.

The words printed in black type are words proposed to be inserted in the Principal Act.

## INTERPRETATION.

Section 4 of the Principal Act, as proposed to be amended by clause 4 of the Bill, will read as follows :—

4. In this Act except where otherwise clearly intended—

“ **Aerodrome** ” means any landing place for aircraft appointed for the purposes of this Act.

“ **Aerodrome owner** ” includes the occupier of any aerodrome.

“ **Aircraft** ” includes aeroplanes, seaplanes, airships, balloons or any other means of aerial locomotion.

“ **Answer questions** ” means that the person on whom the obligation of answering questions is cast shall to the best of his knowledge, information, and belief truly answer all questions on the subject mentioned that the Collector shall ask.

“ **Bank rate of exchange** ” means the rate of exchange on London at which commercial transactions are settled between two countries.

“ **By authority** ” means by the authority of the officer of Customs doing duty in the matter in relation to which the expression is used.

“ **Carriage** ” includes vehicles and conveyances of all kinds.

- "Collector" includes the Comptroller and any Collector of Customs for the State and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used.
- "Comptroller" means the Comptroller-General of Customs.
- "Customs Acts" includes this Act and all laws and regulations relating to Customs in force within the Commonwealth or any part of the Commonwealth.
- "Days" does not include Sundays or holidays.
- "Documents" includes books.
- "Drawback" includes bounty or allowance.
- "Dutiable goods" includes all goods in respect of which any duty of Customs is payable.
- "Gazette notice" means a notice signed by the Minister and published in the *Gazette*.
- "Goods" includes all kinds of movable personal property.
- "Goods under drawback" includes all goods in respect of which any claim for drawback has been made.
- "Justice" means any Justice of the Peace having jurisdiction in the place.
- "Master" means the person in charge or command of any ship except a pilot or Government officer.
- "~~Mint par rate of exchange~~" means the standard value of the coins of any country as compared with the pound sterling in gold coin.
- "Officer" includes all persons employed in the service of the Customs.
- "Owner" in respect of goods includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.
- "Owner" in respect of a ship or aircraft includes every person acting as agent for the owner or to receive freight or other charges payable in respect of the ship or aircraft.
- "Parts beyond the seas" means any country outside of Australia.
- "Package" includes every means by which goods for carriage may be cased covered enclosed contained or packed.
- "Pilot" means the person in charge or command of any aircraft.
- "Port" means any proclaimed port.
- "Prescribed" means prescribed by this Act.
- "Produce documents" means that the person on whom the obligation to produce documents is cast shall to the best of his power produce to the Collector all documents relating to the subject matter mentioned.
- "Ship" includes every description of vessel used in navigation not propelled by oars only.
- "Smuggling" means any importation or introduction or attempted importation or introduction of goods with intent to defraud the revenue.
- "The Board" means the Commonwealth Board of Trade.
- "The Customs" means the Department of Trade and Customs.
- "This Act" includes all regulations made thereunder.
- "Warehouse" means a warehouse licensed for the purposes of this Act.
- "Wharf" means a wharf appointed for the purposes of this Act.
- "Wharf owner" includes any owner or occupier of any wharf.

## POWERS AND FUNCTIONS OF THE PRINCIPAL OFFICER IN THE NORTHERN TERRITORY.

Section 8A, proposed to be inserted in the Principal Act by clause 5 of the Bill, will read as follows :—

**8A.** The principal officer of Customs doing duty in the Northern Territory shall, in relation to the Northern Territory, have such of the powers and functions of a Collector of Customs for a State as the Comptroller-General specifies by notice published in the Gazette.

## APPOINTMENT OF BOARDING STATIONS, ETC.

Section 15 of the Principal Act, as proposed to be amended by clause 6 of the Bill, will read as follows :—

**15.** The Governor-General may by proclamation—

- (a) Appoint boarding stations for the boarding of ships and aircraft by officers.
- (b) Establish ports and fix their limits.
- (c) Appoint wharfs within ports and fix their limits.
- (d) appoint aerodromes, whether within the limits of a proclaimed port or otherwise, and fix their limits.

## COLLECTOR TO PASS ENTRIES.

Section 39 of the Principal Act, as proposed to be amended by clause 7 of the Bill, will read as follows :—

**39.** Entries shall be passed by the Collector signing the entry placing on the entry the word "Passed" and adding his signature thereto, and on the passing of the entry the goods shall be deemed to be entered, and any entry so passed shall be warrant for dealing with the goods in accordance with the entry.

## EFFECT OF CUSTOMS SECURITY.

Section 48 of the Principal Act, as proposed to be amended by clause 8 of the Bill, will read as follows :—

**48.—(1.)** Whenever any such Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment for their stated liability against the persons appearing to have executed the same unless the defendants shall prove compliance with the condition or that the security was not executed by them or release or satisfaction.

**(2.)** If it appears to the Court that a non-compliance with a Customs security has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability by reason of—

- (a) an extension of time or other concession ;
- (b) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition ; or
- (c) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

## LIST OF COPYRIGHT WORKS TO BE EXPOSED AT PRINCIPAL PORTS.

Section 57 of the Principal Act, as proposed to be amended by clause 9 of the Bill, will read as follows :—

**57.** There shall be open to public inspection at the Customs House at the principal ports of Australia printed lists of all ~~books~~ **works** wherein the copyright shall be subsisting and as to which the proprietor of such copyright or his agent shall have given notice in writing pursuant to section fifty-two that such copyright exists stating in such notice when such copyright expires.

## HEADING TO DIVISION 2 OF PART IV. OF THE ACT.

Division 2, Part IV. of the Act, as proposed to be amended by clause 10 of the Bill, will read as follows :—

### *Division 2.—The Boarding of Ships and Aircraft.*

## SHIP TO BRING TO AND AIRCRAFT TO LAND ON BEING SIGNALLED.

Section 59 of the Principal Act, as proposed to be amended by clause 11 of the Bill, will read as follows :—

**59.—(1.)** The master of every ship arriving within one league of the coast shall bring his ship to for boarding on being approached by or hailed or signalled from any vessel in the service of the Customs having hoisted the Customs flag, or from any vessel in the service of His Majesty or of the Commonwealth having hoisted the proper ensign and pendant.

Penalty : One hundred pounds.

**(2.)** The pilot of every aircraft arriving within one league of the shore shall bring his aircraft to the nearest aerodrome for boarding on being approached by or signalled from any vessel or aircraft in the service of His Majesty or of the Commonwealth having hoisted the proper ensign or pendant or displayed the proper signal.

Penalty : One hundred pounds.

## SHIP TO BRING TO AT BOARDING STATION AND AIRCRAFT TO LAND AT AERODROME.

Section 60 of the Principal Act, as proposed to be amended by clause 12 of the Bill, will read as follows :—

**60.—(1.)** The master of every ship from parts beyond the seas bound to or calling at any port shall bring his ship to for boarding at the boarding station appointed for that port.

Penalty : Fifty pounds.

**(2.)** The pilot of every aircraft from parts beyond the seas bound to or calling at any place within the Commonwealth, shall bring his aircraft for boarding to the aerodrome nearest to the place at which he enters Australia.

Penalty : Fifty pounds.

## REPORT OF CARGO.

Section 64 of the Principal Act, proposed to be omitted by clause 13 of the Bill, is as follows :—

**64.** The master of every ship arriving from parts beyond the seas shall—

- (a) Within one day after arrival at any port make report of the ship and her cargo by delivering to the Collector an Inward Manifest in duplicate of goods for such port ;
- (b) Answer questions relating to the ship and her cargo crew passengers stores and voyage ;
- (c) Produce documents relating to the ship and her cargo.

Penalty : One hundred pounds.

The section proposed to be inserted in the Principal Act by clause 13 of the Bill, instead of section 64, is as follows :—

**64.** As to every ship or aircraft arriving from parts beyond the seas—

- (a) the master, owner or pilot shall, within one day after arrival at any port or aerodrome, make report of the ship or aircraft and her cargo by delivering to the Collector an Inward Manifest in duplicate of goods for that port or aerodrome ;
- (b) the master and owner of the ship or the pilot and owner of the aircraft shall severally answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage ; and
- (c) the master and owner or the pilot and owner shall severally produce documents relating to the ship or aircraft and her cargo.

Penalty : One hundred pounds.

## MASTER OR PILOT OF WRECKED SHIP OR AIRCRAFT TO REPORT.

Section 65 of the Principal Act, as proposed to be amended by clause 14 of the Bill, will read as follows :—

**65.—(1.)** When any ship is lost or wrecked upon the coast the master or owner shall without any unnecessary delay make report of the ship and cargo by delivering to the Collector a Manifest so far as it may be possible for him to do so at the Customs house nearest to the place where the ship was lost or wrecked or at the chief Customs house of the State where the ship was lost or wrecked.

Penalty : Twenty pounds.

**(2.)** When any aircraft is lost or wrecked at any place within the Commonwealth, the pilot or owner shall, without any unnecessary delay, make report of the aircraft and cargo by delivering to the Collector a Manifest, so far as it may be possible for him to do so, at the Customs House nearest to the place where the aircraft was lost or wrecked.

Penalty : Twenty pounds.

## WAREHOUSE FEES.

Section 80 of the Principal Act, proposed to be omitted by clause 15 of the Bill, is as follows :—

**80.** Fees for warehouses according to the scale in Schedule II. shall be paid by the licensee as to the annual fees by equal quarterly payments in advance on the first days of January April July and October in each year, and as to the fees for lockers' attendance by monthly payments.

The section proposed to be inserted in the Principal Act by clause 15 of the Bill, instead of section 80, is as follows :—

**80. The fees payable by licensees for warehouses shall be as prescribed, and shall be paid within such periods or at such times as are prescribed.**

#### CANCELLATION OF LICENCES.

Section 81 of the Principal Act, as proposed to be amended by clause 16 of the Bill, will read as follows :—

**81. In default of payment of any part of any licence-fee for thirty days after any quarter day the prescribed time for payment the Minister may by *Gazette* notice cancel the licence and thereupon the warehouse shall be closed and the goods therein shall be removed by the Collector to some other warehouse.**

#### TAKING ACCOUNT OF GOODS LANDED.

Section 83 of the Principal Act, as proposed to be amended by clause 17 of the Bill, will read as follows :—

**83. Upon the landing of any goods to be warehoused or so soon as practicable thereafter the officer shall take a particular account of the goods and shall enter such account in a book.**

Unless where otherwise provided such account shall be that upon which the duties shall be ascertained and paid :

**Provided that, where the Collector is satisfied that the account is incorrect, by reason of the existence of error or other cause, he may direct the amendment of the account, and in that event the account as so amended shall be that upon which the duties shall be ascertained and paid.**

#### REMOVAL OF GOODS TO WAREHOUSE.

Section 85 of the Principal Act, proposed to be repealed by clause 18 of the Bill, is as follows :—

~~85. If any goods entered to be warehoused are not warehoused accordingly by the owner the Collector may remove them to the warehouse.~~

~~The licensee of the warehouse shall pay all charges for the removal of goods removed by the Collector and shall have a lien on the goods for such charges.~~

The section proposed to be inserted in the Principal Act by clause 18 of the Bill, instead of section 85, is as follows :—

**85.—(1.) If any goods entered to be warehoused are not warehoused accordingly by the owner, the Collector may remove them to the warehouse named in the entry or to a King's warehouse.**

**(2.) Where the goods have been so removed, the licensee of the warehouse, or, in the case of removal to a King's warehouse, the Collector, shall pay all charges for the removal of the goods, and shall have a lien on the goods for those charges.**

### ENTRIES IN REGARD TO ARMS, EXPLOSIVES, ETC.

Section 114A proposed to be inserted in the Principal Act by clause 19 of the Bill, is as follows :—

**114A.—(1.)** The true character of any arms, explosives, or naval or military stores entered for export or transshipment shall be clearly shown in the entry made in relation to the goods.

**Penalty :** One hundred pounds.

**(2.)** This section shall not apply to arms, explosives, or naval or military stores the property of the Commonwealth or of the Imperial Government.

### REQUISITES FOR OBTAINING CLEARANCE.

Section 119 of the Principal Act, proposed to be omitted by clause 20 of the Bill, is as follows :—

**119.** Before any Certificate of Clearance shall be granted the master of the ship shall—

- (a) Deliver to the Collector an Outward Manifest in duplicate.
- (b) Answer questions relating to the ship and her cargo crew passengers stores and voyage.
- (c) Produce documents relating to the ship and her cargo.

The section proposed to be inserted in the Principal Act by clause 20 of the Bill, instead of section 119, is as follows :—

**119.—(1.)** Before any Certificate of Clearance is granted to a ship or aircraft—

- (a) the master owner or pilot shall deliver to the Collector an Outward Manifest in duplicate ;
- (b) the master and owner of the ship or the pilot and owner of the aircraft shall severally answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage ; and
- (c) the master and owner or the pilot and owner shall severally produce documents relating to the ship or aircraft and her cargo.

**(2.)** If, within a period of twenty-four hours after the provisions of sub-section (1.) of this section have been complied with, the master or pilot has not received from the Collector an Outward Manifest and Certificate of Clearance, he may, at any time within fourteen days after the expiration of that period, apply to the Minister for a Certificate of Clearance, and the decision of the Minister upon the application shall be final and conclusive.

**(3.)** No action or other proceeding shall lie against the Commonwealth, or any officer of the Commonwealth, by reason of the non-granting of any Certificate of Clearance, or of any delay in the granting of a Certificate of Clearance.

### SHIP TO BRING TO AND AIRCRAFT TO LAND AT PROPER STATIONS.

Section 123 of the Principal Act, as proposed to be amended by clause 21 of the Bill, will read as follows :—

**123.—(1.)** The master of every ship departing from any port shall bring his ship to at the boarding station appointed for the port and by all reasonable means facilitate boarding by the officer, and shall not depart with his ship from any port with any officer on board such ship in the discharge of his duty without the consent of such officer.

**Penalty :** One hundred pounds.

(2.) The pilot of every aircraft departing from any aerodrome shall bring his aircraft to the boarding station appointed for the port or aerodrome, and by all reasonable means facilitate boarding by the officer, and shall not depart with his aircraft from any port or aerodrome with any officer on board such aircraft without the consent of such officer.

Penalty : One hundred pounds.

#### HEADING TO PART VII.

The Heading to Part VII., as proposed to be amended by clause 22 of the Bill, will be as follows :—

#### PART VII.—SHIPS' AND AIRCRAFTS' STORES.

##### SHIPS' STORES.

Section 129 of the Principal Act, as proposed to be amended by clause 23 of the Bill, will read as follows :—

**129.—(1.)** The prescribed allowance of ships' stores for the use of the passengers and crew and for the service of the ship may be shipped free of duty on board any ship of not less than fifty tons gross registered tonnage entered outwards for parts beyond the seas.

(2.) The prescribed allowance of aircraft's stores for the use of the passengers and crew and for the service of the aircraft may be shipped free of duty on board any aircraft entered outwards for parts beyond the seas.

##### EXEMPTION.

Section 131 of the Principal Act, as proposed to be amended by clause 24 of the Bill, will read as follows :—

**131.—(1.)** No goods the property of the Commonwealth shall be liable to any duty of Customs.

(2.) This section shall not apply to goods intended for purposes of trade, or goods intended for consumption in Australia waters on trading vessels, or intended for consumption within the Commonwealth on trading aircraft, owned or managed by the Commonwealth.

#### SECTIONS 157A—157F OF THE PRINCIPAL ACT, WHICH ARE PROPOSED TO BE OMITTED BY CLAUSE 3 OF THE BILL, ARE AS FOLLOWS :—

**157A.** (1.) When the bank rate of exchange of any country is more than ten per centum above or below the mint par rate of exchange, the Minister shall refer to the Board the question whether the bank rate of exchange should be used as the basis of the computation of the value for duty of goods imported from that country.

(2.) Upon receipt of a reference made in pursuance of the last preceding sub-section the Board may recommend to the Minister that the bank rate of exchange be used as the basis of the computation of the value for duty of goods imported from the country specified in the reference :



Provided that the Board shall not make a recommendation under this subsection which, if adopted, would, in its opinion, be prejudicial to—

- (a) the manufacture of goods in Australia or the sale in Australia of those goods; or
- (b) any preference given to goods imported from the United Kingdom.

157B. Upon the receipt by the Minister of a recommendation made in pursuance of the last preceding section the Minister shall direct that the bank rate of exchange shall be used as the basis of computation of the value for duty of all goods imported from the country in respect of which the recommendation is made, and thereupon, notwithstanding anything contained in this Act, the value for duty of those goods shall be so computed accordingly.

157C. If at any time the Board is of opinion that goods of any class or description, produced or manufactured in any country in respect of which a recommendation has been made under section one hundred and fifty-seven A of this Act, are being imported into or are being sold or offered for sale in Australia, in substantial quantities, at prices below the fair market value for home consumption at the date of shipment of similar goods in the United Kingdom or Australia, and that the production or manufacture of similar goods in Australia or the United Kingdom is, or is likely to be, thereby adversely affected, the Board may recommend to the Minister that the value for duty of such goods be computed on the mint par rate of exchange, and, upon the receipt by the Minister of such recommendation, he shall direct that the value for duty of such goods shall be computed on the mint par rate of exchange.

157D.—(1.) Where the Board has made a recommendation in pursuance of section one hundred and fifty-seven A of this Act, the Minister may at any time, refer to the Board for report the question whether the value for duty of the goods, or of any class or description of goods, imported from the country in respect of which the recommendation was made, should continue to be computed on the basis of the bank rate of exchange.

(2.) Upon the receipt by the Minister of a report made by the Board under this section that the value for duty of the goods, or of any class or description of goods, should not continue to be computed on the basis of the bank rate of exchange, the Minister shall direct that the value for duty of those goods, or that class or description of goods, shall be computed as if no direction had been given in pursuance of section one hundred and fifty-seven B of this Act.

157E. For the purposes of the last four preceding sections, the Board shall have all the powers conferred, by the "Royal Commissions Act 1902-1912", upon a Royal Commission, and the provisions of that Act shall apply in like manner as if the Board were a Royal Commission and the president of the Board were the chairman of a Royal Commission.

157F. Any direction issued by the Minister in pursuance of section one hundred and fifty-seven B, one hundred and fifty-seven C, or one hundred and fifty-seven D of this Act shall—

- (a) be published in the "Gazette";

- (b) take effect from the date of publication or from a date specified in the direction; and
  - (c) be laid before both Houses of the Parliament within seven days after the date of publication or, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament;
- but if either House of the Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days after the direction has been laid before that House, disallowing the direction, the direction shall thereupon cease to have effect.

#### REFUND OF DUTY.

Section 163 of the Principal Act, as proposed to be amended by clause 25 of the Bill, will read as follows:—

**163.**—(1.) Whenever goods—

- (a) Have received damage or have been pillaged during the voyage; or
- (b) Have whilst under Customs control been damaged pillaged lost or destroyed; or

(2.) Whenever duty has been paid through manifest error of fact or patent misconception of the law—  
a refund rebate or remission of the duty as the case may require shall be made in manner prescribed on application being made to the Collector within twelve months from the date of payment of the duty.‡

#### MANNER OF MAKING PROTEST.

Section 167 of the Principal Act, as proposed to be amended by clause 26 of the Bill, will read as follows:—

**167.**—(1.) If any dispute arises as to the amount or rate of duty payable in respect of any goods, or as to the liability of any goods to duty, under any Customs Tariff, or under any proposed Tariff or Tariff alteration, the owner of the goods may pay under protest the sum demanded by the Collector as the duty payable in respect of the goods and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined in an action brought in pursuance of this section.

(2.) The owner may, within the times limited in this section, bring an action against the Collector, in any Commonwealth or State Court of competent jurisdiction, for the recovery of the whole or any part of the sum so paid.

(3.) A protest in pursuance of this section shall be made by writing on the entry of the goods the words "Paid under protest" and adding a statement of the grounds upon which the protest is made, and, if the entry relates to more than one description of goods, the goods to which the protest applies, followed by the signature of the owner of the goods or his agent.

(4.) No action shall lie for the recovery of any sum paid to the Customs as the duty payable in respect of any goods, unless the payment is made under protest in pursuance of this section and the action is commenced within the following times:—

- (a) In case the sum is paid as the duty payable under any Customs Tariff, within six months after the date of the payment; or

(b) In case the sum is paid as the duty payable under a proposed Tariff or Tariff alteration, within six months after the Act, by which the proposed Tariff or Tariff alteration is made law, is assented to.

(5.) Nothing in this section shall affect any rights or powers under section one hundred and sixty-three of this Act.

(6.) In this section—

“proposed Tariff” means any Customs Tariff proposed in the Parliament; and  
“Tariff alteration” means any alteration of a proposed Tariff.

#### PROVISION IN CASE WESTERN AUSTRALIA CONTINUES INTER-STATE DUTIES.

Section 169 of the Principal Act, proposed to be omitted by clause 27 of the Bill, is as follows:—

169. If the Parliament of the State of Western Australia in exercise of the power conferred by the Constitution imposes duties of Customs on goods passing into that State then whilst such duties are so imposed drawback may be allowed in the State in which import duty has been paid in respect of any such goods as if exported.

#### POWER TO BOARD AND SEARCH SHIPS.

Section 187 of the Principal Act, as proposed to be amended by clause 28 of the Bill, will read as follows:—

187. Any officer may—

- (1) Board any ship boat or aircraft.
- (2) Search any ship boat or aircraft.
- (3) Secure any goods on any ship boat or aircraft.

#### SEARCHING.

Section 189 of the Principal Act, as proposed to be amended by clause 29 of the Bill, will read as follows:—

189. The power of an officer to search shall extend to every part of any ship boat or aircraft, and shall authorize the opening of any package, locker, or place and the examination of all goods.

#### POWER TO SEARCH.

Section 200 of the Principal Act as proposed to be amended by clause 30 of the Bill, will read as follows:—

200. Any officer having with him a Writ of Assistance or a Customs Warrant in the form of Schedule IV. hereto, or any officer of police having with him any such Warrant, may at any time in the day or night enter into and search any house premises or place and may break open the same and search any chests trunks or packages in which goods may be or are supposed to be.

#### POWER TO TAKE ASSISTANTS.

Section 201 of the Principal Act, as proposed to be amended by clause 31 of the Bill, will read as follows:—

201. Any officer acting under a Writ of Assistance or Customs Warrant in the form of Schedule IV. hereto may take with him and have the assistance of any police officer and such assistants as he may think necessary.

## POWER TO ENTER AND SEIZE DOCUMENTS, ETC.

Section 214 of the Principal Act, as proposed to be amended by clause 32 of the Bill, will read as follows :—

**214.—(1.)** Whenever information in writing has been given on oath to the Collector that goods have been unlawfully imported undervalued or entered or illegally dealt with, or that it is intended to unlawfully import undervalue enter or illegally deal with any goods, or whenever any goods have been seized or detained, the owner shall immediately upon being required so to do by the Collector produce and hand over to him all books and documents relating to the goods so imported entered seized or detained undervalued or illegally dealt with, or intended to be unlawfully imported undervalued entered or illegally dealt with, and of all other goods imported by him at any time within the period of five years immediately preceding such request seizure or detention, and shall also produce for the inspection of the Collector or such other officer as he may authorize for that purpose and allow such Collector or officer to make copies of or extracts from all books or documents of any kind whatsoever wherein any entry or memorandum appears in any way relating to any such goods.

Penalty : One hundred pounds.

**(2.)** For the purposes of this section the Collector may issue to any officer a Customs Warrant in the form of Schedule V. hereto under the Customs Seal, and such warrant shall remain in force for one month from the date thereof.

**(3.)** If any person fails to comply with a requirement by the Collector under this section, an officer, having with him a Customs Warrant in the form of Schedule V. hereto, may, at any time of the day or night, break open and enter into any house, premises or place in which any books or documents relating to the goods are or are supposed to be, and search—

- (a) the house, premises or place ;
- (b) any person therein or thereon ; and
- (c) any chests, trunks or packages therein or thereon,

and take possession of, remove, and impound any of those books and documents which are found.

## FORFEITED SHIPS AND AIRCRAFT.

Section 228 of the Principal Act, proposed to be omitted by clause 33 of the Bill, is as follows :—

**228.** The following ships or boats not exceeding two hundred and fifty tons registered tonnage shall be forfeited to His Majesty :—

- (1) Any ship or boat used in smuggling, or knowingly used in the unlawful importation, exportation, or conveyance of any prohibited imports or prohibited exports.
- (2) Any ship or boat found within one league of the coast failing to bring to for boarding upon being lawfully required to do so.
- (3) Any ship or boat hovering within one league of the coast and not departing within twelve hours after being required to depart by an officer.

- (4) Any ship or boat from which any goods are thrown overboard staved or destroyed to prevent seizure by the Customs.
- (5) Any ship or boat found within any port with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master of which is unable to lawfully account for the difference.
- (6) Any ship or boat within one league of the coast having false bulk heads false bow sides or bottoms or any secret or disguised place adapted for the purpose of concealing goods or having any hole pipe or other device adapted for the purpose of running goods.

The owner of a ship exceeding two hundred and fifty tons registered tonnage which would be forfeited if the ship were less than two hundred and fifty tons registered tonnage shall be liable to a penalty of not exceeding One thousand pounds, and the ship may be detained until the penalty is paid or until security is given for its payment.

The section proposed to be inserted in the Principal Act by clause 33 of the Bill, instead of section 228, is as follows :—

**228.** The following ships or boats not exceeding two hundred and fifty tons registered tonnage and the following aircraft shall be forfeited to His Majesty :—

- (1) Any ship boat or aircraft used in smuggling, or knowingly used in the unlawful importation, exportation, or conveyance of any prohibited imports or prohibited exports.
- (2) Any ship boat or aircraft found within one league of the coast or of land failing to bring to, or failing to land at an aerodrome, for boarding upon being lawfully required to do so.
- (3) Any ship boat or aircraft hovering within one league of the coast or of land and not departing within twelve hours after being required to depart by an officer.
- (4) Any ship boat or aircraft from which goods are thrown overboard staved or destroyed to prevent seizure by the Customs.
- (5) Any ship boat or aircraft found within any port or aerodrome with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master or pilot of which is unable to lawfully account for the difference.
- (6) Any ship boat or aircraft within one league of the coast or land having false bulk heads false bows sides or bottoms or any secret or disguised place adapted for the purpose of concealing goods or having any hole pipe or other device adapted for the purpose of running goods.

The owner of a ship exceeding two hundred and fifty tons registered tonnage which would be forfeited if the ship were less than two hundred and fifty tons registered tonnage shall be liable to a penalty not exceeding One thousand pounds, and the ship may be detained until the penalty is paid or until security is given for its payment.

#### CUSTOMS OFFENCES.

Section 234 of the Principal Act, as proposed to be amended by clause 34 of the Bill, will read as follows :—

**234.** No person shall—

- (a) Evade payment of any duty which is payable ;
- (b) Obtain any drawback, refund, rebate or remission which is not payable ;

- (c) Prepare pass or present any document purporting to be a genuine invoice which is not in fact a genuine invoice;
- (d) Make any entry which is false in any particular;
- (e) Make in any declaration or document produced to any officer any statement which is untrue in any particular or produce or deliver to any officer any declaration or document containing any such statement;
- (f) Mislead any officer in any particular likely to affect the discharge of his duty;
- (g) Refuse or fail to answer questions or to produce documents;
- (h) Sell or offer for sale any goods upon the pretence that such goods are prohibited imports or smuggled goods.

Penalty: One hundred pounds.

#### MAXIMUM PENALTY IN CASE OF INTENT TO DEFRAUD.

Section 241 of the Principal Act, as proposed to be amended by clause 35 of the Bill, will read as follows:—

**241.—(1.)** Any person may at the same time be charged with an offence against this Act and with an intent to defraud the revenue and if in addition to such offence he is convicted of such intent the maximum penalty shall be double that otherwise provided.

**(2.)** A body <sup>(a)</sup> corporate shall be deemed to be guilty of an intent to defraud the revenue if a servant or agent of the body corporate, acting or purporting to act for or on behalf of the body corporate, commits or attempts to commit an offence against this Act for the benefit of the body corporate with an intent to defraud the revenue.

#### STATE COURT PRACTICE.

Section 248 of the Principal Act, as proposed to be amended by clause 36 of the Bill, will read as follows:—

**248.** Subject to the provisions of this Act the provisions of the law relating to summary proceedings before Justices in force in the State where the proceedings are instituted shall apply to all Customs prosecutions before a Court of summary jurisdiction in such State, and an appeal shall lie from any conviction order for condemnation or order of dismissal to the Court and in the manner provided by the law of the State where such conviction or order is made for appeals from convictions or orders of dismissal, and notwithstanding anything to the contrary in the law of the State, an appeal shall lie from an order of dismissal to any court to which and in the manner in which an appeal lies from a conviction.

#### AVERMENT OF PROSECUTOR SUFFICIENT.

Section 255 of the Principal Act, proposed to be omitted by clause 37 of the Bill, is as follows:—

**255.** In every Customs prosecution the averment of the prosecutor or plaintiff contained in the information declaration or claim shall be deemed to be proved in the absence of proof to the contrary but so that—

- (a) When an intent to defraud the revenue is charged the averment shall not be deemed sufficient to prove the intent and—
- (b) In all proceedings for an indictable offence or for an offence directly punishable by imprisonment the guilt of the defendant must be established by evidence.

(a) By sub-clause (2.) of clause 35 of the Bill, it is provided that sub-clause (1.) of the Bill shall be deemed to have commenced on the day upon which the *Customs Act 1901* was proclaimed to commence.

The section proposed to be inserted in the Principal Act by clause 37 of the Bill, instead of section 255, is as follows :—

**255.—(1.)** In any Customs prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be prima facie evidence of the matter or matters averred.

(2.) This section shall apply to any matter so averred although—

(a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses ; or

(b) the matter averred is a mixed question of law and fact, but in that case the averment shall be prima facie evidence of the fact only.

(3.) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) Sub-section (1.) of this section shall not apply to—

(a) an averment of the intent of the defendant ; or

(b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

#### REGULATIONS.

Section 270 of the Principal Act, as proposed to be amended by clause 38 of the Bill, will read as follows :—

**270.—(1.)** The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing—

(a) the nature, size, and material of the packages in which imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped ;

(b) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package ;

(c) the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles used for food or drink by man ;

(d) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export ; and

(e) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.

(2.) The regulations may prescribe penalties not exceeding Fifty pounds in respect of any contravention of any of the regulations.

#### PUBLICATION OF REGULATIONS.

Section 271 of the Principal Act, proposed to be omitted by clause 39 of the Bill, is as follows :—

**271.** All regulations so made shall—

(i) Be published in the 'Gazette,'

- (ii.) Take effect from the date of publication or from a later date to be specified in such regulations; and
- (iii.) Be laid before both Houses of the Parliament within seven days after publication if Parliament is in session and if not then within seven days after the commencement of the next session;

but if either House of the Parliament passes a resolution at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation such regulations shall thereupon cease to have effect.

#### PROCEEDS OF SALES.

Section 277 of the Principal Act, as proposed to be amended by clause 40 of the Bill, will read as follows:—

**277.** The proceeds of any goods sold by the Collector shall be applied as follows:—

- Firstly, in the payment of the expenses of the sale.  
 Secondly, in payment of the duty.  
 Thirdly, in payment of the warehouse rent and charges.  
 Fourthly, in payment of the harbor and wharfage dues and freight if any due upon the goods if written notice of such harbor and wharfage dues and freight shall have been given to the Collector.

And the balance if any shall be paid to the Treasurer on account of the person entitled thereto.

#### REPEAL OF SCHEDULE II.

Schedule II. of the Principal Act, proposed to be omitted by clause 41 of the Bill is as follows:—

#### SCHEDULE II.

The Commonwealth of Australia.

Scale of Fees for Warehouses to be Paid by Licensees.

When the whole services of a locker are required	...	...	£200 per annum
When the whole services of more than one locker are required, for each additional locker after the first	...	...	£150     55
When only half the services of a locker are required	...	...	£100     55
When the whole services of a locker are not required, a charge of 2s. per hour for each hour or part of an hour necessary for the locker to be in attendance, and a sum to be fixed by the Minister, not exceeding	...	...	£50     55

All questions as to the number of lockers required and the time necessary for their attendance shall be determined by the Minister.

The above scale shall apply to the following places only:—

Sydney,  
 Melbourne,  
 Brisbane,  
 Hobart,  
 Adelaide and Port Adelaide,  
 Perth and Fremantle.

At any other place such fees not exceeding the above scale shall be charged as may be prescribed.



SCHEDULE IV.

Schedule IV. of the Principal Act as proposed to be amended by clause 42 of the Bill, will read as follows:—

SCHEDULE IV.

THE COMMONWEALTH OF AUSTRALIA.

*Customs Warrant.*

To

You are hereby authorized to enter into, at any time in the day or night, if necessary, and search any house, premises, or place; and to break open the same, and any chests, trunks, or packages in which goods may be or are supposed to be and to seize and take away any forfeited goods or goods which you have reasonable grounds to believe are forfeited, you may find therein, and forthwith to put and secure the same in the King's warehouse, or such other place of security as the Collector may direct: And for so doing this shall be your sufficient warrant.

This warrant shall remain in force for ~~one month~~ **three months** from the date thereof.

Dated this                      day of                      in the year One thousand nine hundred and

(SEAL)

Signature.

SCHEDULE V.

The following Schedule is proposed to be inserted after Schedule IV. of the Principal Act by clause 43 of the Bill:—

SCHEDULE V.

The Commonwealth of Australia.

*Customs Warrant.*

To

Whereas information in writing has been given on oath to me that goods have been unlawfully imported, undervalued or entered or illegally dealt with or that it is intended to unlawfully import, under-value or enter or illegally deal with goods, (or

Whereas goods have been seized or detained)

You are hereby authorized, in the event of                      failing to comply immediately with any requirement made in pursuance of section two hundred and fourteen of the Customs Act 1901-1923, to enter into, at any time of the day or night, and search, any house premises or place in which any books or documents relating to the goods are or are supposed to be; and to break open any such house premises or place and search any person therein or thereon and any chests trunks or packages therein or thereon; and to take possession of, remove and impound any of those books and document which are found: And for so doing this shall be your sufficient warrant.

This warrant shall remain in force for one month from the date thereof.

Dated this                      day of                      19                      .

(Seal)

(Signature)

**NOTE.**—In addition to the foregoing amendments there are certain verbal amendments consequential thereto which are set out in the Schedule to the Bill and which are not contained in this memorandum.

# ILL Request

Item 1 of 1

ILL no 6161864

Status 17 Sep 2008

Change Date

Title Comparative Memorandum for

Customs Bill 1923

Volume/Issue 28.6.1923

date of publication

Pagination 17 pages

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