



Australian Government
**Australian Customs and
Border Protection Service**

**Submission to the Senate Legal and Constitutional Affairs Legislation
Committee on the Customs Amendment Bill 2014**

**Items 2, 3, 5, 25 and 26 - Goods on ships and aircraft subject to Customs
control and amending the definitions of “designated place” and “Customs
place”**

Amendments to section 31 of the Act extend Customs control to include those places that ships or aircraft are brought other than a port or airport in Australia under section 58 of the Act. Under section 58, ships or aircraft may be brought to a place other than a port or airport due to stress of weather or other reasonable cause (s.58(1)) or subject to permission given by a Collector (s.58(2)). To provide equivalence of powers, the definitions of “designated place” (ss. 4) and “Customs place” (s. 183UA) have also been amended accordingly for section 58(1).

The growth in offshore resource activities and the cruise ship industry increasingly requires ships to arrive from a place outside Australia direct to a place that is not a proclaimed port. In these instances, permission is currently sought from ACBPS in accordance with section 58 of the Act. Given that unloading and loading of goods and the disembarking of travellers also occur in these places, border risks and intervention activities must be managed appropriately. Rather than require ships or aircraft to arrive at a proclaimed port or airport where border activities can be managed, the proposed amendments will allow ACBPS to manage risks and conduct necessary activities at places where ships or aircraft are brought under section 58.

The proposed amendments will ensure equivalence of powers where ACBPS is required to apply them. The amendments will simply apply to ships and aircraft that may pose a border risk but can be dealt with at those places approved under section 58. It is not expected that the airline or shipping industries will be impacted.

Items 6 – 11 - Arrival reports and reports of stores and prohibited goods

Amendments to sections 64AA and 64AAA of the Act insert additional provisions to provide greater flexibility in relation to the reporting of the arrival of ships and aircraft in Australia and reporting of stores and prohibited goods on such ships and aircraft.

The current reporting requirements imposed on a ship or aircraft to provide details about their arrival and the particulars about stores and prohibited goods on arrival are restricted in that the reports must be made, in relation to a ship,

before 24 hours after the ship's arrival (disregarding Saturdays, Sundays and holidays) and, in relation to an aircraft, before 3 hours after the aircraft's arrival. Details in these reports are necessary for ACBPS to assess the risks of items that may be on board and to plan resources to deal with them, i.e. firearms, weapons and narcotics that may be required to be detained or managed to minimise detriment to the Australian community.

These proposed amendments will ensure that ACBPS has the ability to require these reports for specified ships or aircraft or in specified circumstances at a time that would be more appropriate to minimise impacts on the master or owner of the ship or pilot or owner of the aircraft.

Dealing with the information in these reports at a more convenient time will also allow earlier assessment and enable deployment of ACBPS resources to be prioritised more efficiently. An outcome of improved risk assessment and intervention targeting may be increased detections at the border.

Item 12 – 16 - Certificates of Clearance, Items 17 – 21 - Ships' and Aircraft's Stores, Items 22 – 24 - Transfer of goods between certain vessels

Amendments to sections 118, 127, 129 and 175 of the Act will provide consistency and clarity in dealing with how to make applications to load and unload ship's and aircraft's stores, to transfer goods between certain vessels, and make an application for a Certificate of Clearance before departure.

While the Act currently provides for permissions to be provided for some activities at wharves, airports or at sea, the manner of making an application for those permissions is not clear or consistent across the Act. The proposed amendments to sections 118, 127, 129 and 175 will:

- clarify how, and in what form, applications for approvals or permissions must be made;
- allow different approved forms to be used for different circumstances, by different kinds of owners or masters of ships or owners or pilots of aircraft, or different kinds of ships or aircraft;
- allow conditions to be imposed by Collectors when granting an approval under section 127 of the Act and make it an offence if a person fails to comply with such conditions.

These proposed amendments will provide increased visibility for industry and deliver a more clearly defined and robust framework on which to base decisions.

Industry will be provided a reliable, more accurate and accountable process to meet their needs by enabling a means to communicate electronically, supported by clear and consistent legislation. Application processes currently rely on paperwork being faxed, mailed, emailed or hand delivered, imposing ongoing costs. Proposed online initiatives will align more generally with how industry operates using smarter and quicker technology.

These initiatives will also provide for quicker assessment by border agencies and more certainty for international ships regularly seeking such permissions.

Item 27 – Domestic cargo, travellers and their personal effects on international flights

The general powers of examination of goods by ACBPS officers are provided in section 186 of the *Customs Act 1901* (the Act) and are limited to goods that are under the control of Customs.

ACBPS officers currently have powers to question all travellers, whether they are international travellers or domestic travellers on the domestic leg of an international flight or voyage, in relation to dutiable, excisable or prohibited goods. ACBPS officers may also conduct personal searches of travellers on international journeys including domestic travellers on the domestic leg of international flights or voyages.

However, the ability to examine the personal effects of domestic travellers and domestic cargo on an international flight or voyage are not currently covered by the Act.

Domestic cargo and domestic travellers can be carried on domestic legs of international flights or voyages between Australian international airports by approved airlines. Eligibility for an airline to carry domestic travellers on an international flight is managed by the Department of Infrastructure and Regional Development.

Domestic travellers on international flights or voyages have the opportunity to mingle with international travellers during embarkation or disembarkation processing, on the aircraft or ship and in transit lounges. Mingling can occur before international travellers are cleared on arrival or after international travellers are cleared on departure.

Mingling of international and domestic travellers presents a border risk that dutiable and prohibited goods can be transferred between international and domestic travellers to evade detection by ACBPS.

New section 186AA of the Act seeks to provide officers of Customs with powers to examine domestic cargo, and the personal effects of domestic travellers that complete a domestic leg of an international flight or voyage.

For example, an international flight destined for Tokyo may commence in Sydney, fly to Cairns and then fly to Tokyo. In this scenario, “domestic travellers on an international flight” means travellers who board the flight in Sydney and depart the aircraft in Cairns. International travellers are those travellers who board the aircraft in Sydney or Cairns and depart the aircraft in Tokyo.

In this example, the domestic leg of the international flight is the leg from Sydney to Cairns. The new power under 186AA will allow officers of Customs to examine the personal effects of domestic passengers who board the flight in Sydney and depart the flight in Cairns.

A second example is an international voyage from Auckland destined for Melbourne that first arrives in Sydney, and then sails to Melbourne. In this scenario, “domestic cargo on an international voyage” means cargo that is loaded in Sydney and is unloaded in Melbourne.

In this second example, the domestic leg of the international voyage is the leg from Sydney to Melbourne. The new power under 186AA will allow officers of Customs to examine domestic cargo that is loaded in Sydney and unloaded in Melbourne.

There is no intention to require domestic cargo to be reported to the Australian Customs and Border Protection Service (ACBPS); rather to enable officers to examine goods in domestic cargo for the purposes of ensuring compliance with the Customs Act.

Enhance the interaction of the Infringement Notice Scheme (INS) with the claims process under the Customs Act in relation to prohibited imports

On 1 February 2014, the new INS in the Customs Act commenced. The INS allows for the issuing of an infringement notice in relation to strict liability offences under the Customs Act, including the offence of importing a prohibited import. Prohibited imports can also be seized under the Customs Act and are then dealt with under the claims processes set out in Division 1 of Part XII of the Customs Act.

Since the commencement of the INS, a technical error has been identified in the interaction of the INS with the claims process. The Bill proposes an amendment to correct this error, without compromising the integrity of either scheme.

Allow class-based authorisations to include future offices or positions that come into existence after the authorisation is given

There is no provision in the Acts Interpretation Act 1901 (AIA) for statutory authorisations. While the CEO can currently authorise an individual (by name or position number), or a class of offices or positions to be an 'authorised officer' for the purposes of a particular provision in the Customs Act, the law remains unsettled as to whether an authorisation will apply to future offices or positions within an 'authorised class' that come into existence after the authorisation is given.

It is proposed that the definition of 'authorised officer' in the Customs Act be amended so that authorisations can apply to offices or positions which come into existence after the authorisation to a class of offices is given. This will provide legislative clarification for statutory authorisations under the Customs Act, similar to that provided in section 34AA of the AIA for delegations.