

CHAPTER 2

OVERVIEW OF THE BILL

2.1 This chapter briefly outlines the main provisions of the Bill.

Main provisions of the Bill

Schedule 1 – Dangerous goods

2.2 Item 1 of Schedule 1 inserts new subsection (1A) into section 206 of the Customs Act.

2.3 Currently, section 206 allows the CEO of Customs or a Regional Director for a state or territory to dispose of goods seized under a seizure warrant or seized without a warrant under subsections 203B(2), 203(2A), 203CA(3) or 203CB(2), where the goods are:

- perishable goods or live animals, and the CEO or Regional Director is satisfied that the retention of those goods would constitute a danger to public health, the health of other animals, or to plants, or to agricultural produce; and
- a vessel in the possession of Customs officers, and the CEO or Regional Director is satisfied that the vessel is so unseaworthy that its custody or maintenance is impracticable.

2.4 The current provisions of section 206 do not allow for the disposal of other classes of seized goods, the retention of which would also potentially constitute a danger to public health and safety (for example, explosive material, chemical and biological agents). According to the Explanatory Memorandum to the Bill (EM), Customs does not currently possess the necessary staff or infrastructure to safely store these types of goods for extended periods of time.¹

2.5 New subsection 206(1A) will allow the CEO or a Regional Director to dispose of any seized goods (including the destruction of the goods) where he or she is satisfied that the retention of the goods would constitute a danger to public health or safety.

Schedule 2 – Unauthorised entry

2.6 Section 234AA of the Customs Act allows a Collector of Customs² (Collector) to display a sign at or near a place that is to be used by Customs officers

1 p. 5.

2 A Collector of Customs is a reference to the CEO, the Regional Director for a state or territory, or any officer doing duty in the matter in relation to which the expression is used: *Customs Act 1901*, para 8(1)(a).

for the questioning of ship or aircraft passengers, the examining of the personal baggage of such passengers, and as a holding place for such passengers. These places are defined as section 234AA places.

2.7 Under subsection 234A(1) of the Customs Act, it is an offence for a person to:

- enter into a section 234AA place; or
- enter on, or be in or on a ship, aircraft or wharf at which a ship is berthed where the personal baggage of a disembarking or embarking passenger is being examined, at or in the vicinity of the ship, aircraft or wharf.

2.8 The penalty for violation of this provision is 50 penalty units or \$5,500.

2.9 Subsection 234A(1A) sets out several circumstances in which the offence in subsection 234A(1) does not apply. For example, the offence does not apply where a person enters into, or is in or on, the relevant place by authority (paragraphs 234A(1A)(a) and (b)); or where the person is a holder of a security identification card and enters into, or is in, the relevant place for the purposes of his or her employment (paragraph 234A(1A)(ab)). Currently, a security identification card is either an Aviation Security Identification Card (ASIC) or a Visitor Identification Card (VIC) under section 213A of the Customs Act and regulation 170B of the Customs Regulations 1926.

2.10 The responsibility for issuing ASICs and VICs lies with so-called 'issuing bodies'. Division 6.3 of the Aviation Transport Security (ATS) Regulations 2005 stipulates a range of bodies considered to be 'issuing bodies', including:

- Customs;
- the Civil Aviation Safety Authority;
- operators of security controlled airports; and
- other approved aviation industry participants (including airlines) or government agencies.

2.11 AISCs and VICs can expire, in which case they must be returned to the issuing body under the ATS Regulations.³ The issuing bodies are also equipped with the power to cancel ASICs and VICs; the ATS Regulations stipulate various circumstances in which the cancellation of a security card is mandatory or discretionary.⁴

2.12 In the circumstance where a person is the holder of a security identification card, it is proposed to impose an additional requirement in order to tighten the exemption from the offence in subsection 234A(1). Item 2 of Schedule 2 repeals and substitutes paragraph 234(1A)(ab) so that, in addition to holding a card, the person

3 Reg 6.45.

4 Regs 6.43 and 6.44.

must also not be subject to a written direction from a Collector under new subsection 234A(1B) not to enter into, or be in or on, the relevant place.⁵

2.13 Item 4 of Schedule 2 amends section 234A by inserting new subsection 234A(1B) into the Customs Act. For the purposes of new paragraph 234A(1A)(ab), new subsection (1B) sets out the power of a Collector to give a written notice to a person who is the holder of a security identification card (within the meaning of section 213A), directing the person not to enter into, or be in or on:

- a place in relation to which a sign is displayed under subsection 234AA(1); or
- any of the following:
 - a ship;
 - an aircraft;
 - the wharf at which, or the part of a wharf adjacent to which, a ship is berthed,

at a time when goods being the personal baggage of passengers disembarking from, or embarking on that ship or aircraft are being examined, for the purposes of the Customs Act, at or in the vicinity of the ship, aircraft, wharf or part of a wharf.

2.14 Item 5 of Schedule 2 amends section 234A by repealing and substituting subsection 234A(2). Subsection 234A(2) currently provides that subsection 234A(1) does not prohibit a person:

- who has, or is a member of an authority which has, the management or control of a wharf or wharves or an airport or airports; or
- who is employed in connexion with the management or control of a wharf or wharves or an airport or airports,

from entering on, or being in or on, a place, ship, aircraft, wharf or part of a wharf for the purposes of that management or control.

2.15 The people referred to in the second dot point extends to 'cleaners, handymen, security staff and other staff' who are not the actual management of an airport or wharf but are necessary for management and control.⁶ The EM states that it is no longer considered appropriate that such people be completely exempt from the offence in subsection 234A(1). Such people will be removed from subsection 234(2) and will

5 In most instances, the holders of a security identification card will not be subject to such a written direction from a Collector. However, there are some circumstances in which Customs may wish to issue such directions. For example, the holder of a security identification card might assert that he or she is in a relevant place for the purposes of his or her employment but Customs may not be satisfied that this is the case, particularly if that person is in the place outside their normal working hours: EM, p. 6.

6 EM, p. 8.

become subject to the offence in subsection 234A(1). They will only be exempt from the offence if they satisfy any of the exemptions in subsection 234A(1A).

2.16 New subsection 234A(2) will limit the complete exemption from the offence in subsection 234A(1) only to a person who has, or is a member of an authority which has, the management or control of a wharf or wharves or an airport or airports.

Schedule 3 – US originating goods

2.17 Division 1C of Part VIII of the Customs Act contains the rules for determining whether goods imported into Australia from the United States (US) are 'US originating goods' and thereby eligible for preferential rates of customs duty. Division 1C was inserted into the Customs Act by Schedule 1 to the *US Free Trade Agreement Implementation Act 2004* and implements, for Australia, the Australia-United States Free Trade Agreement (FTA). Division 1C commenced on 1 January 2005.

2.18 However, the EM states that Division 1C contains some minor errors which mean that Division 1C does not accurately reflect the terms of the FTA.⁷ The proposed amendments in Schedule 3 aim to correct those errors.

Schedule 4 – Providing Customs with information

2.19 Employees at international airports include:

- airport employees (for example, airport management and cleaners);
- airline employees (for example, baggage handlers and maintenance staff);
- employees of retail businesses that operate in the airport; and
- government employees (including Customs and Australian Quarantine and Inspection Service (AQIS) officers).

2.20 The EM states that only a limited number of people working at international airports in Australia with access to restricted areas require a security clearance, yet all are involved in a vetting process as part of their being issued with Aviation Security Identification Cards (ASICs). All people working at international airports must wear an ASIC. Visitors to international airports may also be required to wear a Visitor Identification Card (VIC). Under the Customs Act, these cards are collectively known as a security identification card.⁸

2.21 A class of restricted areas to which ASIC and VIC holders have access is the section 234AA place.

7 p. 9.

8 p. 14.

2.22 In order to monitor any potential border integrity and security threats due to the presence of ASIC and VIC holders in a section 234AA place, under section 213B of the Customs Act, a person who issues an ASIC or a VIC to another person in respect of an international airport must provide specified information to an authorised Customs officer within seven days of doing so. Currently, the information that must be provided is:

- the name and address of the other person;
- the date and place of birth of the other person; and
- the details of any area that is covered by a notice under section 234AA to which the other person has access to perform his or her duties (this detail is only relevant to the holder of an ASIC).

2.23 However, at present, there is no mechanism whereby Customs can receive updates of any of the information provided in accordance with the original obligation. If, after the initial obligation to provide information has been satisfied, a change in duties requires access to a section 234AA place, the person who issued the ASIC has no obligation to inform Customs of the change. Customs also has no way of finding out this change. Customs, therefore, may not have details of all ASIC holders who have access to a section 234AA place at any particular point in time.⁹

2.24 According to the EM, the amendments to section 213B of the Customs Act will give Customs the ability to seek updates of information in relation to the holder of an ASIC or a VIC that has been provided in accordance with the original obligation.¹⁰

Schedule 5 – Accredited clients

Background - the Accredited Client Program

2.25 The amendments in Schedule 5 relate to Subdivision C of Division 4 of Part IV of the Customs Act, which was inserted by the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*¹¹, and which commenced on 19 July 2005.

2.26 Subdivision C sets out the legislative framework for the Accredited Client Program (ACP) relating to the importation of goods. The ACP is designed to simplify reporting requirements for Australian importers and exporters with a history of high compliance, rather than having all importers and exporters treated the same by

9 EM, p. 15.

10 EM, p. 15.

11 The Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 was the subject of a Senate Legal and Constitutional Committee inquiry in 2001: *Inquiry into the Provisions of the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001, the Import Processing Charges Bill 2000, and the Customs Depot Licensing Charges Amendment Bill 2000*, May 2001.

Customs. Essentially, such a cooperative arrangement between Customs and ACP participants should aim to facilitate the clearance of goods with minimal intervention by Customs, and, at the same time, assist in achieving supply chain security through its compliance requirements. It is envisaged that the ACP will advance Australia's international trading viability and competitiveness by ensuring that Australia's Customs processes are more efficient and effective, and in line with international best practice.¹²

2.27 In the context of supply chain security, Customs advised the committee that entry to, and continued participation in, the ACP requires compliance with Business Rules to be published by the CEO of Customs. It is intended that Accreditation Standard #6 of the Business Rules will include a requirement for entrants in the ACP to have in place security standards that are consistent with the 'Customs-to-Business Pillar' of the World Customs Organisation (WCO) *Framework of Standards to Secure and Facilitate Global Trade* (Framework).¹³

2.28 Customs advised that, in June 2005, it provided the WCO with formal notification of its intention to implement the WCO Framework generally, and to provide assistance with implementation to other Customs administrations within the region. Although adoption of the Framework by Customs administrations is voluntary, the Australian Customs Service is of the view that the WCO Framework represents a sound platform upon which, over time, Customs administrations can aim to achieve a degree of harmonisation of supply chain security. Further, the ACP 'is entirely consistent with and complementary to the WCO Framework of Standards.'¹⁴

2.29 Under the ACP, a person who has met certain audit requirements may enter into an import information contract with Customs. Such a person ('an accredited client') is then able to import goods that are covered by the contract for home consumption by making a request for cargo release (RCR) in respect of the goods.

2.30 An accredited client will only need to provide minimum information about the goods in the RCR. The accredited client is then required to provide, for a particular month, one or more periodic declarations containing more detailed but less time-sensitive information on all of the goods entered for home consumption on RCRs during that month.

2.31 The EM states that the ability of accredited clients to provide a single aggregate report on all goods imported in a month, as opposed to a report for every consignment of goods imported in that month, may significantly reduce the

12 Australian Customs Service, *Submission 3*, pp 2-3.

13 *Submission 3*, p. 2.

14 *Submission 3*, p. 3.

transaction costs for the accredited client associated with the importation of the goods.¹⁵

2.32 Similar to the import processing charge imposed on the making of a normal import entry, an RCR processing charge and periodic declaration processing charge are imposed on the making of an RCR and periodic declaration respectively.

Proposed amendments – general outline

2.33 The EM states that the purpose of the proposed amendments to Subdivision C is to implement a scheme for the payment of duty and processing charges in relation to the ACP.¹⁶ The ACP, as introduced by the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* is not yet operational.¹⁷

2.34 Under the proposed scheme, an accredited client is required to pay, on the 15th day of a particular month (Month 1), an accredited client monthly duty estimate that is approximately equal to the total duty payable on the goods that have been and are expected to be imported and cleared for home consumption on RCRs for Month 1.

2.35 On the 15th day of the following month (Month 2), based on the full details reported in the periodic declaration(s) covering all goods entered for home consumption on RCRs during Month 1, the accredited client will pay:

- the actual import duty payable on the goods that have been imported and cleared for home consumption on RCRs in Month 1 (reduced by the duty estimate paid in Month 1); and
- the RCR and periodic declaration processing charges with respect to those goods.

2.36 Special provisions apply where the accredited client monthly duty estimate paid is greater than the actual import duty payable. This duty payment scheme ensures that the duty collection component of the ACP does not affect the Budget.

2.37 On the 15th day of Month 2, accredited client monthly duty estimate for goods entered, or intended to be entered, for home consumption on RCRs during Month 2 will also be payable. The actual duty (reduced by the duty estimate already paid) and RCR and periodic declaration processing charges in respect of goods entered for home consumption on RCRs for Month 2 will be payable on the 15th day of Month 3.

Items 1 and 2

2.38 Item 1 of Schedule 5 inserts a new definition of 'accredited client' into subsection 4(1) to mean a person who has entered into an import information contract.

15 p. 17.

16 p. 17.

17 Australian Customs Service, *Accredited Client Program Fact Sheet*, June 2005.

2.39 Item 2 of Schedule 5 inserts a new definition of 'accredited client payment day' to mean, for a particular month, the 15th day of that month. All payments relating to the ACP will be payable on the accredited client payment day. These include payments of duty (see new section 71DGB), accredited client monthly duty estimate (see new section 71DGA), RCR processing charge (see section 71DC as amended) and periodic declaration processing charge (see section 71DG as amended).

Item 3

2.40 Section 71DB of the Customs Act currently relates to the making of an RCR by 'a person who has entered into an import information contract'. Such a person is an 'accredited client' under the new definition inserted by Item 1 of Schedule 5. An RCR can also be made on behalf of an accredited client by a broker nominated for such a purpose in the relevant import information contract.

2.41 Item 3 of Schedule 5 inserts in paragraph 71DB(3)(a) the words 'an accredited client' in parentheses after the reference to 'a person who has entered into an import information contract' in that paragraph. This reproduces, at the beginning of Subdivision C, the new definition of 'an accredited client' in subsection 4(1), which makes it easier to follow the rest of Subdivision C as amended by the following items.

Item 4

2.42 Section 71DC of the Customs Act relates to the liability to pay an RCR processing charge in respect of an RCR sent to Customs. Item 4 of Schedule 5 amends subsection 71DC(1) to substitute 'an accredited client' for the description 'a person who has entered into an import information contract' and to make other technical changes as a result of that substitution.

2.43 Under amended subsection 71DC(1), an accredited client becomes liable to pay the RCR processing charge when an RCR is sent to Customs by or on behalf of that accredited client.

Item 5

2.44 Under current subsection 71DC(2), the RCR processing charge in respect of an RCR is payable at the time the periodic declaration in respect of the particular goods to which the RCR relates is taken to have been sent to Customs. Item 5 of Schedule 5 amends subsection 71DC(2) such that the charge is payable on the accredited client payment day for the month following the month during which the goods are taken, under section 71DB, to have been entered for home consumption.

2.45 Section 71DB sets out when goods, in respect of which an RCR is made, are taken to have been entered for home consumption. Under subsection 71DB(7), if an RCR is sent, or taken to be sent, in respect of goods after the goods have been imported or brought to the first port or airport in Australia at which any goods are to be discharged, the goods are taken to have been entered for home consumption at the time the RCR is sent or taken to be sent (as the case may be).

2.46 Under subsection 71DB(8), if the RCR is sent, or taken to be sent, before the goods are brought to the first port or airport in Australia at which any goods are to be discharged, the goods are taken to have been entered for home consumption when they are brought to that port or airport.

2.47 The import duty (see new section 71DGB) and periodic declaration processing charge(s) (see section 71DG as amended) in respect of the goods are payable on the same day as the RCR processing charge(s).

Item 6

2.48 Section 71DD relates to the making of import information contracts. Subsection 71DD(1) currently provides that the CEO of Customs may enter into an import information contract for the purpose of enabling RCRs to be made by, or on behalf of, that person. Item 6 of Schedule 5 amends subsection 71DD(1) to insert an additional purpose in relation to the making of import information contracts. Amended subsection 71DD(1) provides that the CEO may enter into an import information contract for the additional purpose of enabling the payment of amounts of import duty, accredited client monthly duty estimate, RCR processing charge and periodic declaration processing charge to be made on accredited client payment days.

Item 7

2.49 Subsection 71DD(4) sets out certain matters that the provisions of an import information contract are to include. Item 7 of Schedule 5 amends subsection 71DD(4) such that the provisions of an import information contract are to also include how amounts of accredited client monthly duty estimate payable under new section 71DGA are to be determined.

Item 8

2.50 Item 8 of Schedule 5 inserts new subsection (4A) into section 71DD. Under new subsection (4A), an import information contract must provide a method of working out the amounts of accredited client monthly duty estimate payable that results in the estimate payable by an accredited client for a particular month being approximately equal to the total amount of import duty that the accredited client will be liable to pay in respect of goods covered by the import information contract and taken, under section 71DB, to have been entered for home consumption during the month.

Item 9

2.51 Section 71DF relates to the sending of periodic declarations by accredited clients who make RCRs in respect of goods. Item 9 repeals and substitutes section 71DF. Under new subsection 71DF(1), if an RCR in respect of goods is sent by or on behalf of an accredited client, and the goods are taken to have been entered into home consumption under section 71DB, the accredited client must send electronically to Customs one or more periodic declarations containing such information on the goods

as is set out in an approved statement. The periodic declaration(s) may also be sent on behalf of the accredited client by a broker nominated for such a purpose in the relevant import information contract.

2.52 New subsection 71DF(2) requires that a periodic declaration in respect of goods required to be sent under subsection (1) be sent to Customs on or before:

- the first day of the month following the month during which the goods are taken to have been entered for home consumption under section 71DB (the following month); or
- such other day of the following month as is prescribed.

2.53 It is intended to make regulations prescribing the seventh day of the following month for the purposes of new subsection 71DF(2) and for such regulations to commence at the same time as this item.

Item 10

2.54 Section 71DG of the Customs Act relates to the liability to pay a periodic declaration processing charge in respect of a periodic declaration sent to Customs. Item 10 of Schedule 5 amends subsection 71DG(1) to substitute 'an accredited client' for the description 'a person who has entered into an import information contract' and to make other technical changes as a result of that substitution.

2.55 Under amended subsection 71DG(1), an accredited client becomes liable to pay a periodic declaration processing charge when a periodic declaration is sent to Customs by or on behalf of that accredited client.

Item 11

2.56 Section 71DG(2) currently provides that a periodic declaration processing charge for a periodic declaration in respect of particular goods is payable at the time the periodic declaration is taken to have been sent to Customs. Item 11 of Schedule 5 amends section 71DG(2) such that the charge is payable on the accredited client payment day for the month following the month during which the goods are taken, under section 71DB, to have been entered for home consumption.

2.57 The import duty (see new section 71DGB)) and RCR processing charge(s) (see section 71DC as amended) in relation to the goods are payable on the same day as the periodic declaration processing charge(s).

Item 12

2.58 Item 12 of Schedule 5 inserts new sections 71DGA and 71DGB into the Customs Act.

New section 71DGA

2.59 New section 71DGA relates to the liability of an accredited client to pay the accredited client monthly duty estimate in respect of goods.

2.60 New subsection 71DGA(1) imposes a liability on an accredited client to pay an accredited client monthly duty estimate for a month in respect of goods that are taken, or expected to be taken, to have been entered for home consumption on an RCR during that month. Such goods must be covered by the import information contract entered into by the accredited client.

2.61 New subsection 71DGA(2) provides that the accredited client monthly duty estimate for a month is payable on the accredited client payment day for that month (that is, the 15th day of that month).

2.62 Under new subsection 71DGA(3), the amount of accredited client monthly duty estimate payable by an accredited client for a particular month in respect of goods is to be worked out in accordance with the import information contract entered into by the accredited client that covers those goods. Under amended subsection 71DD(4), the provisions of the import information contract must include how amounts of accredited client monthly duty estimate payable are to be determined.

2.63 Further, new subsection 71DD(4A) ensures that, as much as possible, the estimate, worked out for a particular month in accordance with the provisions of the relevant import information contract, would approximately equal the total amount of import duty the accredited client is liable to pay on goods that are entered for home consumption on an RCR during that month.

New section 71DGB

2.64 New section 71DGB relates to the payment of import duty on goods that:

- are covered by an import information contract that is entered into by an accredited client; and
- have been imported and entered for home consumption by or on behalf of that accredited client on an RCR.

2.65 Under new subsection 71DGB(1), the import duty on such goods is payable on the accredited client payment day for the month following the month during which the goods were taken, under section 71DB, to have been entered for home consumption (where an entry for home consumption is made in respect of goods by sending an RCR, section 71DB sets out the time these goods are taken to have been entered for home consumption).

2.66 Subsection 71DGB(2) then provides for the reconciliation of the accredited client monthly duty estimate paid and the import duty payable in respect of such goods. Under this subsection, the import duty payable on the goods is reduced by the

amount of accredited client monthly duty estimate already paid by the accredited client.

2.67 Subsection 71DGB(3) deals with the situation where the accredited client monthly duty estimate paid is greater than the import duty payable on the goods. In this case, the excess amount is to be dealt with by Customs as agreed in writing with the accredited client.¹⁸

Item 13

2.68 Section 132AA sets out when import duty on imported goods must be paid. Subsection 132AA(1), which sets out the general rule, has effect subject to the provisions listed in column 2 of the table in subsection 132AA(4).

2.69 New subsection 71DGB(1), which relates to the payment of import duty on goods entered for home consumption on an RCR, does not follow the general rule in subsection 132AA(1).

2.70 Item 13 of Schedule 5 inserts subsection 71DGB(1), as a new item 1A, into column 2 of the table in subsection 132AA(4). The EM states that this is to ensure that subsection 71DGB(1) operates as an exception to the general rule in subsection 132AA(1) in respect of the payment of import duty on goods entered for home consumption on an RCR.¹⁹

Schedule 6 – Protection from criminal responsibility

2.71 Item 1 of Schedule 6 repeals subsections 233(3A) and (3B) of the Customs Act, as a consequence of new section 233BABA.

2.72 Item 3 of Schedule 6 inserts new section 233BABA into the Customs Act.

2.73 New subsection 233BABA(1) provides that a Customs officer who, in the course of duty, possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods is not criminally responsible for an offence against a law of the Commonwealth or a law of a state or territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

2.74 New subsection 233BABA(2) provides that a person who possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods and, in doing so, is acting in accordance with written instructions referring to this section issued by a Customs officer acting in the course of duty, is not criminally responsible for an offence against a law of the Commonwealth or a law of a

18 For example, Customs and the accredited client may agree that the excess amount be used to pay the RCR and periodic declaration processing charges on the goods: EM, p. 23.

19 p. 23.

state or territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

2.75 These statutory protections from criminal responsibility are currently in section 233 of the Customs Act but do not, under subsection 233(5), currently apply to, or in relation to, narcotic goods. The EM states that Customs officers have regular contact with narcotics goods in the course of their duties, especially as part of the drug detector dog training programs, and there is increasing concern that the current statutory protections do not extend to narcotic goods.²⁰

