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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CUSTOMS LEGISLATION AMENDMENT AND REPEAL (INTERNATIONAL TRADE MODERNISATION) BILL 2001

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice and Customs, Senator the Hon Christopher Martin Ellison)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

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Table of Contents

Page

Glossary

The following abbreviations and acronyms are used throughout this Explanatory Memorandum:

ATO	Australian Taxation Office
AQIS	Australian Quarantine and Inspection Service
CEO	Chief Executive Officer of Customs
CMR	Cargo Management Re-engineering
Customs Act	*Customs Act 1901*
Customs Administration Act	*Customs Administration Act 1985*
Excise Act	*Excise Act 1901*
GST	Good and Services Tax
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*

General Outline

The Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000 has as its basic aim the modernisation of the way in which Customs manages the movement of cargo into and out of Australia. The Bill will amend the Customs Act 1901 and the Customs Administration Act 1985 to:

- create the legal foundations for an electronic business environment for cargo management;
- establish a new approach to managing compliance that recognises that "one size doesn't fit all": and
- improves controls over cargo and its movement where there has been a failure to comply with regulatory requirements.

Major features are as follows:

Communicating with Customs

The legislation sets out how people will electronically communicate with Customs.

It is proposed to allow people to communicate with Customs using a variety of connection options, such as the Internet.

Generally speaking, those wishing to communicate with Customs will be able to provide the information formerly provided to Customs using Customs specific systems with relevant information using "open" communication systems that satisfy the technical requirements set down by Customs to ensure the integrity of the information received. The existing systems operated by Customs will cease to become operative in due course. See Chapter 1.

Reporting Cargo

Consistent with the National Illicit Drug Strategy, the Government has decided to introduce compliance measures in relation to the report and accounting of imported cargo. The purpose of these measures is to improve the quality and timeliness of cargo information provided to Customs to facilitate the identification of high-risk cargo, particularly cargo that may contain illicit drugs.

There are weaknesses in the current reporting regime. For example, there are indications that up to 59% of sea cargo is not reported on time. Indeed, 12% of such cargo is reported after vessel arrival. For air cargo 48% is not reported on time. Of this percentage, 35% of reports were received after the plane landed in Australia.

In brief, a person who organises the transport of goods into Australia will be obliged to report information about goods within time frames set out in the legislation.

Cargo unloaded from a ship or aircraft will have to be accounted for by means of an outturn report, which shall be used to identify surplus or shortlanded cargo. As a general rule, those who unload cargo from a ship or aircraft will have to make the relevant report.

The legislation will also permit officers of Customs to control the movement of goods where there are reasonable grounds to believe they have been incorrectly reported or where there are reasonable grounds to believe there has been a breach of the Customs Act or some other piece of border legislation.

Penalties will apply for late or erroneous reporting. See Chapter 3.

Changes to the way import information is communicated

There will also be changes in the way that information about goods that need to be entered for home consumption is communicated to Customs.

It is proposed that goods will be entered for either:

- warehousing; or
- home consumption.

Transhipment entries are to be abolished.

There will be some changes to the way import information will be communicated to Customs.

One is to be called an import declaration. This effectively replaces the current "entry" for home consumption, and will be the one commonly used. The amount of information to be communicated in an import declaration will vary, depending on the type of goods imported, their customs value, place of exportation, etc.

Information relating to goods of nominal customs value (that is less than $250 or such other amount set in the Customs Regulations) will not be required to be contained in an import declaration. For these goods, as a general rule a self-assessed clearance declaration will need to be made. See Chapter 1.

Finally, importers with a history of providing accurate information may be able to enter into an agreement with the CEO of Customs to communicate import information to Customs using a new format called a request for cargo release (an "RCR"). In such a case, the person will only have to communicate minimum amounts of information at the time of importation.

People who can make RCRs are to provide a monthly periodic declaration providing further information to Customs by the first day of the calendar month following the month in which the importations were made. See Chapter 2.

Exports

There will be changes to the way export information is to be reported.

For most people, the way exports are reported to Customs will not change.

However, where a person has a history of providing accurate information, the CEO can enter into an agreement with the person to communicate export information under the terms of the agreement.

It is proposed that these exporters will receive a set number of accredited client export authorisation numbers (ACEANs). In the typical case the ACEAN will be the only thing quoted at the time of exportation. See Chapter 2.

By the first day of each subsequent month following exportation, the person would be obliged to communicate a periodic declaration, giving greater details as to the goods exported. See chapter 2.

The other significant change is that exported goods will now be able to be reported up to 3 days after the goods have left Australia, rather than (as is the case now) as the goods are loaded onto transport. See Chapter 4.

There are other changes to the way goods bound for export is to be reported and controlled.

It is proposed to give Customs officers a qualified power to enter premises where there are reasonable grounds to believe export goods are located in commercial premises.

The reason for these powers is because the sheer volume of export information communicated to Customs, coupled with time sensitivity, logistical and cost issues involved in the export trade means that examination of goods intended for export when they reach wharves and airports can impede trade.

The proposed new powers can only be exercised with the consent of occupiers or people apparently in charge of premises (other than wharves, airports or other premises licensed by Customs) by specifically authorised Customs officers.

Authorised officers must advise that consent can be refused or withdrawn at anytime. Because there are no Customs revenue implications, if consent is refused there is no right to apply for a warrant to enter the premises. In addition, an authorised officer must also leave the premises when requested to do so.

No penalty can be imposed for failure to either answer questions or produce documents. See Chapter 4.

The Customs Act 1901 will also be amended to extend Customs control to all goods brought to places such as wharves and airports. This means Customs will have the right of examination for all goods brought to a place for export, not just goods whose export is subject to a statutory condition or requirement.

There will be changes to the way in which goods moving to places of export are controlled.

The first set of powers are necessary because both Customs and the ATO have identified that goods under Customs control that are said to be bound for export are instead going into Australian commerce, with the net result that tax and duty that is properly payable is not being paid.

The ATO believes diversion in Australia is comparable to levels overseas, which are in the order of 30%. Customs has also identified that this diversion activity is widely undertaken at various stages of the underbond process.

In future, licensees of Customs warehouses must not allow goods for export to be taken from a Customs warehouse until the licensee has confirmed with Customs that the goods have been entered for export and have been given an authority to deal.

Moreover, consolidations of goods under Customs control for export must only be done at a wharf, airport, licensed depot or place appointed under the Customs Act or the Commerce (Trade Descriptions) Act 1905 where goods can be examined for export. The operator of the place where the consolidation is to take place must tell Customs the goods have arrived. See Chapter 4.

The final set of changes is necessary to ensure Customs has the time to locate and identify goods, and, where necessary, examine them. This is necessary to guard against the diversion into Australian commerce of goods on which duty has not been paid, exportation of prohibited exports and other controlled goods, as well as to ensure goods are exported when "GST-free" status is claimed.

A person will not be able to send goods for export directly to a wharf or airport without an entry for export, unless a person at the wharf or airport is prepared to make the entry on receipt of the goods, as happens now particularly with air cargo. Equally, the person at the wharf or airport cannot accept the goods unless they are prepared to make an export entry for the goods on behalf of the exporter at the time of receipt.

In a case where goods have already been entered, it is proposed that the party receiving goods at a wharf or airport will have to advise Customs they have in fact received goods. See Chapter 4.

In addition, it is proposed that if no export entry is required for a consignment of goods, the person delivering exempt entry goods to the wharf or airport must provide details of the goods to the person at the wharf or airport. It will then be the responsibility of the person at the wharf or airport to report those goods to Customs.

Penalties are proposed for failure to report the movement of cargo through the export process. See Chapter 4.

Extension of time for short paid duty

It is proposed to extend the time for recovery of short paid duty from 12 months to 4 years.

These time periods have been extended because not all audits are conducted within 12 months from the day Customs duty is paid on goods.

The 12 months time limit within which refunds can be claimed will also be extended from 12 months to 4 years, in line with the recovery provision.

These time limits are the same as those set out in the GST legislation. See Chapter 2.

Audit/monitoring powers

So Customs can adequately discharge its commercial and border responsibilities in assessing:

- compliance with a Customs-related law;
- whether a person's record keeping, accounting, computing or other operating systems accurately record and generate information to enable compliance with a Customs-related law; or
- the correctness of information communicated to Customs;

the legislation proposes a revision of the audit powers currently contained in the Customs Act.

The information Customs would like to examine relate to:

- information provided to Customs by cargo reporters;
- information provided to Customs by those who communicate with Customs;
- information provided to Customs by those who import goods; and
- information provided to Customs by those who export goods;

new audit provisions known as “monitoring powers” will be incorporated into the Customs Act.

Specific Customs officers will be authorised to be “monitoring officers”.

The primary means of entry to premises for the purpose of exercising monitoring powers is through consent of the occupier of the premises. Consent may be refused or withdrawn at any time. A warrant to exercise monitoring powers may be sought from a Magistrate either initially or where consent is refused or later withdrawn.

The ambit of these provisions take into account the comments and recommendations made by the Senate Standing Committee's report on Entry and Search Provisions in Commonwealth legislation. See Chapter 2.

Offences and penalties relating to commercial audits

There will be changes in the way penalties may flow following the conduct of a commercial audit, or the examination of documentation at the point of importation.

These changes are being proposed because Customs considers the existing administrative and remission penalty system contained in sections 243T and 243U of the *Customs Act* to be unwieldy and inefficient. These provisions are proposed to be repealed.

A simpler system, where Customs can issue an infringement notice *in lieu* of prosecution for strict liability offences, will replace it. This is explained in Chapter 5.

It is also proposed to introduce new penalties for failure to provide accurate information, particularly in relation to exports. These are explained in Chapter 2.

Where any non-compliance has GST implications, appropriate penalties will be issued in the manner set out by the GST legislation.

Penalty Provisions

The legislation introduces a strict liability penalty regime where:

- errors are made in communications with Customs; or
- communications to Customs are received late or not at all; or
- goods under Customs control are moved contrary to a direction from Customs, or without the permission of Customs.

The new penalties regime introduces the option of issuing an infringement notice to a person, to the value of 20% of the penalty that would have been payable if a strict liability prosecution was commenced. If the person pays the penalty, Customs' right to prosecute is extinguished.

However, there remains the capacity to commence a prosecution in a circumstance where Customs believes it can be proved that a person intended to breach the law. See Chapter 5.

This "three tier" liability penalty regime is not imposed lightly. However, the mischief intended to be addressed in the legislation is (for the most part) either the late or inaccurate reporting of information to Customs. If this information is received either late or inaccurately, Customs cannot perform its community service obligations of analysing information about incoming cargo so as to ensure that prohibited goods such as drugs are kept out of the country, or that the correct amount of duty and taxes is paid as a result of the importation or exportation of goods. The intention of the communicator is therefore irrelevant. The critical outcome is the quality of the information.

In the case of the movement of goods, it is important that goods that could be a risk to the Australian community stay put until Customs has completed its analysis of available information.

As the offences can be characterised as being technical or regulatory in nature, it is appropriate in the circumstances for there to be an infringement notice/strict liability penalty regime in place.

Disclosure of Protected Information

The Bill also includes amendments to improve Customs capacity to communicate with Commonwealth and State agencies, agencies and instrumentalities of foreign countries, and international organisations. The purpose of the amendments is to address shortcomings in the operation of section 16 of the *Customs Administration Act 1985* (the Customs Administration Act'), which concerns the recording and disclosure of protected information by Customs officers and people working in and for Customs. To achieve this outcome the Bill amends the Customs Administration Act to:

- enable Customs to disclose personal information to the Australian Bureau of Statistics;
- enable Customs to disclose information to the Norfolk Island Customs Service and other Norfolk Island agencies;
- enable Customs to disclose personal information where the individual concerned has consented to that disclosure;
- resolve certain technical inconsistencies and minor typographical errors;
- delete the parts of section 16 which allow Customs to disclose cargo reports and import declarations to AQIS, and
- delete the part of section 16 which allows Customs to disclose cargo reports to port authorities.

In addition, the Bill amends the *Customs Act 1901* ('the Customs Act') to allow Customs to disclose cargo reports to port authorities, including privatised port authorities.

Commencement

The substantive provisions of the legislation are to commence at various dates to be proclaimed. A relevant date can be a date 2 years from the day the Act received the Royal Assent.

The only exemption to this relate to those provisions which:

- preserve the status quo in relation to communications made to Customs using the current EXIT or COMPILE computer systems during the period between the date of Royal Assent and the commencement of this legislation; or

- relate to the provision of information of held by Customs to port authorities and AQIS.

These provisions will commence on the day of Royal Assent.

This is a variation from the usual practice, which provides that where legislation is to commence on a date of proclamation, the commencement date must be no longer than six months from the day the legislation received the Royal Assent.

The reason for the additional period is to cater for the significant change being introduced to industry through new cargo management processes and new information technology systems.

Aspects of this development include testing the new system, allowing an opportunity to those who wish to communicate with Customs to test the compatibility of their in-house systems against that of Customs; and subsequent migration from 'old' to 'new' systems. This work is currently being undertaken with the co-operation of the Australian trading community.

Because of the vagaries of developing a new computer system, and so as to avoid having to insert and administer complicated savings and transitional provisions in legislation if the computer system hasn't been fully developed, tested and in production by the time the Act receives the Royal Assent, plus six months, it is proposed to allow the legislation to commence up to 2 years after the Act receives the Royal Assent.

In this way, the trading community has plenty of time to consider, and be ready for, the new legislative provisions contained in the Bill, including, in particular, the new reports required by the Act and their communication in a new electronic environment.

Financial Impact Statement

The combined result of the amendments proposed in this Bill, the Import Processing Charges Bill 2000 and the Customs Depot Licensing Charges Amendment Bill 2000, is that there is an anticipated decrease in costs for Customs of approximately $3.0m in the first year of full operation (noting that the amendments will commence over time as the systems developments necessary for them to operate come on line). That continues to some extent for the next two years where the anticipated savings for Customs is estimated at $2.56m and $1.92m respectively. Combining this with the anticipation of full cost recovery, the results of the cargo management reforms will significantly benefit Government.

Regulation Impact Statement

CUSTOMS AMENDMENT AND REPEAL (INTERNATIONAL TRADE MODERNISATION) BILL 2000

1. BACKGROUND

Over recent years there have been major changes in the communications and computing technologies in business. International business practices have also changed dramatically, as has the structure and business processes of the cargo handling industry.

The Australian Customs Service (Customs), in consultation with the Australian Quarantine and Inspection Service (AQIS) and the Australian Bureau of Statistics (ABS), has initiated a project to re-engineer its cargo management business systems.

The re-engineering of cargo processes and systems is an issue that is clearly at the forefront of the agenda for the international trade community. The Australian Customs Service is not alone in recognising the need for cargo re-engineering. The United States of America and Sweden are also in the process of addressing this issue.

The technology would allow the movement away from a 'one size fits all' method of reporting information to Customs. Information would be able to be provided in a number of ways, allowing greater flexibility for traders. There would also be an arrangement whereby the Chief Executive Officer of Customs may enter into individual contracts, which will be tailored to meet the needs of specific clients.

It is proposed to make changes to the way in which cargo is reported which would complement the changes being undertaken in the cargo re-engineering project.

The information contained in cargo reports ensures all goods landed in Australia are brought to account and dealt with in accordance with the *Customs Act 1901* ('the Act'). Further this ensures Customs duties and tax liabilities are met and all Commonwealth legislation has been complied with, especially in relation to community protection matters.

The reporting of cargo is fundamental in fulfilling Customs objectives. If Customs is not made aware of the individual consignments being landed in Australia it will not be able to risk assess consignments for prohibited goods. The risk assessment procedure primarily involves electronically screening consignment details (such as the consignor and consignee names) against known risk profiles.

The current cargo-reporting regime demonstrates low levels of compliance by industry particularly with respect to timeliness in the lodgement of cargo reports. In order that Customs can meet its responsibilities to prevent the movement into Australia of illicit drugs and other prohibited imports and maintain a high level of

trade facilitation, it is imperative that Customs is able to identify high-risk cargo ahead of arrival.

It is therefore proposed to legislate to make it mandatory to provide an electronic report of cargo information prior to arrival of the vessel or aircraft and to introduce penalties for non-compliance. This will provide Customs with adequate time to screen the information and to take any necessary pre-emptive action. This also has benefits for industry because Customs can generally provide a Customs release for consignments by the time the consignments arrive in Australia, enabling cargo handlers and importers to plan collection and delivery in advance.

The changes to the reporting of export cargo and the strengthening of Customs control over export cargo would assist Customs in adequately performing functions including controlling the export or prohibited or restricted exports; collection of statistical data for the Australian Bureau of Statistics; control of underbond goods to prevent evasion of Commonwealth revenue; and verification of exports for the Australian Taxation Office for GST purposes.

Customs must also ensure that imported and exported goods comply with Customs and the Australian Taxation Office's commercial requirements to ensure duty and tax obligations are properly acquitted.

Customs commercial compliance system is based on self-assessment. An effective self-assessment regime must be underpinned by record retention requirements, audit powers and deterrent penalties. These areas have been identified by Customs as being critical to ensuring that the risks inherent in a self assessment regime are kept to acceptable limits. It is therefore imperative that there are effective and efficient auditing measures available to monitor compliance, given that Customs conducts its commercial audits in a post transactional environment.

The requirements and powers need to be modernised to reflect recent changes to Government and criminal law policy.

There have also been significant changes in technology and to business practice in recent years. The amendments will allow industry to utilise those advances. The amendments will also recognise technology currently used in commercial business practice.

Detailed examination of each area of these proposals is set out in the Schedules to this Regulation Impact Statement as follows -

Schedule 1 - Cargo management re-engineering
Schedule 2 - Commercial compliance
Schedule 3 - Cargo reporting
Schedule 4 - Exports measures

2. IMPLEMENTATION/REVIEW

The distinct, although related, areas within the Bill will need to be implemented at different stages. This is necessary as some of the changes depend upon the

commencement of the computer systems being introduced as part of the cargo re-engineering process.

2.1 Cargo management re-engineering

It is proposed to introduce the cargo management re-engineering reforms progressively in line with systems developments from the third quarter of 2001. It is proposed that the provisions of the Bill relevant to particular aspects of systems development commence at varying times by Proclamation to tie in with the implementation of each stage of business systems and processes reform.

The amendments will include changes to cargo reporting requirements, introduce flexible electronic communication mechanisms, provide for early identification of surplus and shortlanded cargo and reform current cargo entry requirements. While the legislation will provide a legal basis for accredited client arrangements, each accredited client agreement will be tailored to suit the circumstances of the particular client, and therefore each agreement will be different. In order to ensure certainty regarding the scope of the arrangement, articulating the scope and the rights and responsibilities of the parties, is required.

2.2 Commercial compliance

In the commercial compliance context, it is proposed that the compliance powers will commence upon Proclamation. These requirements and powers are not dependent upon computer systems being activated - they simply ensure that Customs can monitor compliance with current obligations. There will be an administrative moratorium for 6 months after commencement for *new* offences, to enable Industry to familiarise themselves with the new requirements.

Customs commercial compliance audit teams will continue to advise clients of the proposed changes. Further information also will be provided to industry through the Customs Advisory Service and Customs Information Centres.

2.3 Cargo reporting requirements

It is proposed to commence the new cargo reporting provisions (including sanctions for non-compliance) with the introduction of the new electronic systems, which are due to become operational during 2001. The new electronic systems will make the administration of the cargo reporting requirements more efficient.

Customs will in the intervening time commence an industry awareness program ensuring industry is ready for the introduction of the cargo reporting requirements in order to avoid application of the proposed sanctions for non-compliance. In recognition that some cargo reporters will need more time to comply with the requirement to report electronically prior to the arrival of the vessel or aircraft, it is proposed to include a provision in the legislation to enable the CEO to provide a period of to such reporters. The grace period could be up to 2 years provided the cargo reporter can demonstrate to the CEO that they will make the necessary

arrangements to allow them to comply with the legislation at the end of the grace period.

A working group will be formed with industry representatives to ensure the smooth introduction of the proposed legislative changes. In addition any issue of major concern may be raised by industry at the quarterly meetings of the Customs National Consultative Committee.

2.4 Exports measures

The proposals in relation to reporting movement of goods for export and requiring cargo handlers to confirm the status of goods for export with Customs are dependent on the systems enhancements in the cargo management re-engineering proposal. The new measures will therefore commence by Proclamation in accordance with the cargo management proposals detailed above.

In the intervening time, Customs will conduct an awareness program for the relevant segments of the export industry to ensure that the industry is ready for the implementation of the new requirements.

Schedule 1 - CARGO MANAGEMENT RE-ENGINEERING

1. IDENTIFICATION OF THE PROBLEM

The cargo management systems, processes and legislation used by Customs have developed over time in a piecemeal manner. While individually the systems for reporting and monitoring cargo movements and lodging import and export entries are considered to be amongst the world's best, when considered as a whole they are not keeping pace with the changes and developments in domestic and international business practices. This will ultimately hamper the competitiveness of the Australian trading community through increasing costs and over-regulation. It will also add to the Government's cost in maintaining these systems.

Currently, the underlying principle to Customs legislation and processes is an inflexible "one size fits all" approach to cargo management. This means is that all import and export transactions are subject to exactly the same level of regulation, without any significant regard being given such factors as the type of goods being imported or exported, and the history of the client's dealings with Customs.

2. SPECIFICATION OF DESIRED OBJECTIVES

The objective of Cargo Management Re-engineering (CMR) is to reduce the costs and regulatory burden faced by industry in importing and exporting goods, while enhancing the Government's capacity to fulfil its community protection role.

2.1 Existing Regulations

The *Customs Act* is prescriptive in nature, providing detailed directions as to the character and manner in which cargo information is to be communicated to Customs. An example is the identification of specific computer systems to be used to provide information to Customs. As a result, the legislation has required regular updates to ensure that the processes and systems prescribed reflect the latest business trends.

The legislation also is inflexible in that it imposes the same level of regulation over both high risk, less compliant clients and low risk, highly compliant clients.

While Customs is the primary regulatory authority, it also administers import and export controls on behalf of other government organisations.

3. OPTIONS IDENTIFIED

3.1 **Option 1 - Amend legislation to underpin risk managed, flexible cargo management processes and systems.**

3.2 **Option 2 - Introduce process and system reforms <u>without</u> complementary reform of the legislation.**

This option would entail implementing reforms to cargo management systems within the limitations of current legislation.

4. IMPACT ANALYSIS

4.1 Impact Group Identification

Reform of cargo management processes and systems will have an impact on business, government and the community. Specifically the affected parties in business and government are:

- Business
  - importers and exporters
    - low risk and highly compliant importers and exporters (" accredited clients"), and
    - other importers and exporters
  - customs brokers
  - the freight and transport sector
    - shipping companies
    - airlines
    - container terminal operators
    - stevedores
    - warehouse operators
    - freight forwarders
    - air couriers
    - port maritime authorities

- Government
  - Customs
  - ABS
  - AQIS
  - the Australian Taxation Office
  - permit issuing authorities (PIAs).

4. 2 Option 1

- **Business**

Benefits

Facilitation of Industry Development

Industry is rapidly redeveloping its business processes to take advantage of electronic commerce both at international and local levels. Legislative reform to remove the prescriptive nature of provisions for communicating with Customs will facilitate industry making full advantage of the opportunities offered by e-commerce.

Administrative Efficiencies

Periodic reporting and periodic payment of duty will result in administrative efficiencies for people identified as low risk to Customs, including a reduction in the number of entries lodged, a reduction in time devoted to submitting import and/or export entries and a reduction in communications costs. In addition, a single periodic duty payment will reduce the overall administrative burden associated with transactional payments. The extent of these savings will depend on the volume and type of imports and/or exports, the complexity of the relevant company's business systems, and the degree of involvement of government agencies with a company.

The improvements to Customs information technology systems will also allow importers to choose from a number of electronic options for providing particular information for particular imported lower value goods. The method of providing information in general will be based upon the value of the consignment - this is based upon the general rule that the lower the value of an importation the less information needed. The importing community will benefit through access to a wider range of electronic options, including the Internet, for providing information to Customs leading to faster access to goods.

In addition, the proposed simplification of Customs entry requirements for cargo transhipped through Australia will result in administrative efficiencies for imports and exporters.

Reduction in Communication Costs

Less prescriptive legislation coupled with an open communications gateway to Customs systems will allow the industry users of those systems to select a communications channel that best suits their commercial needs. Overseas experience indicates this will lead to a 30 to 40 per cent reduction in messaging costs.

Improved Resource Allocation

Periodic reporting of detailed trade data by preferred clients will alleviate the resource allocation problems faced by some businesses due to fluctuations in import and export activity from month-to-month.

Costs

Retraining

There will be costs associated with retraining personnel to familiarise them with the new reporting and payment procedures. Customs will publish instructional material and guidelines which will help reduce that cost.

Set-up of Computer Systems

There would be set-up costs involved for accredited clients in adapting their systems for periodic reporting and payment. Their decision will be based on the perceived commercial advantages they see in making the change. However if the companies choose to adapt their systems, up-front IT costs may be offset by a long-term reduction in IT communication costs, as discussed above.

Systems Review and Negotiations

The initial assessment of each business applying for the accredited client arrangements will be rigorous to enable all relevant government agencies to ascertain whether the applicant constitutes an acceptable risk. A significant time investment by relevant senior personnel of each applicant company will be required.

Cost Recovery Charge

Customs, in line with Government policy, will impose a cost recovery charge on the Request for Cargo Release that will replace an import entry for this class of client. (Note, a cost recovery charge currently applies to import entries.). There will also be cost recovery charges for processing declarations in relation to lower value imported goods. Liability for these will rest with the owner or the person making the communication depending on the nature of the declaration. Larger communicators may enter into arrangements with the Chief Executive Officer of Customs to remit changes payable over a particular period specified in the arrangement.

Electronic Reporting of Cargo

Currently cargo can be reported to Customs prior to its arrival or departure either as an electronic message or using documents. Customs is unable to effectively use its computer-based risk profiling tools on documentary reports. The CMR legislative reforms would introduce compulsory electronic reporting of pre-arrival and pre-departure cargo reports. There would be a cost associated with electronic reporting for some cargo reporters. Current figures show that less than 1 per cent of air cargo import reports are documentary, the figure is 5 per cent in respect of sea cargo import reports, and up to 50 per cent of pre-departure cargo reports for exports are documentary.

Reduction in the Warehousing of Goods

A reduction in the warehousing of goods is anticipated. In effect, since goods will be released before payment of duty, the requirement to move or store

goods under bond will be eliminated for those who defer payment. This will lead to decreased business for warehouse operators.

Discharge/Unpack Reporting

The legislative amendment would formalise arrangements generally in place requiring stevedores and other terminal operators and depot operators to provide a report that assists Customs to identify surplus cargo. Surplus cargo is a term given to cargo not previously reported to Customs and is considered to be high risk until its bona fides can be established. The proposal is that the discharge/unpack reports would also be an electronic message.

There would be a cost involved for those businesses that currently fail to comply or a late in complying with the reporting arrangements.

- **Government**

Benefits

Improved Facilitation

One of the objectives of Customs is to facilitate the movement of legitimate international trade. Accredited client arrangements such as periodic returns and periodic duty payment will help Customs to achieve its objective. Separating the payment of duty from the clearance of goods from Customs control will streamline the physical movement of goods and assist in the speed of delivery of cargo.

Community Protection

Customs, AQIS and the PIAs have an objective of protecting the Australian community by preventing, or controlling, the entry or departure of goods that have the potential to adversely affect the community. The mandatory electronic reporting of cargo will help government agencies to achieve this objective through Customs being in a stronger position to undertake the necessary profiling and screening for high risk cargo.

Furthermore, the additional legislative requirement that Progressive Discharge Reports be provided to Customs will allow for the earlier identification of surplus, or potentially high risk cargo.

Cost Effective Use of Resources

The changed reporting requirements for those identified as being low risk to Customs will lead to administrative efficiencies for Customs as a result of a reduction in the number of entries lodged, a reduction in the time devoted to submitting entries and a reduction in messaging costs for Customs. The anticipated reduction in the warehousing of goods and underbond movements will enable a more efficient use of Customs resources. Overall, this will lead

to a more effective deployment of resources in dealing with high-risk goods and a tighter focusing of compliance and processing resources.

Improved Data Integrity

Importers and exporters will be able to ensure that transaction details are correct before lodging data with Customs (and later forwarding to the ABS), which is likely to result in improved data integrity. This will mean that less resources will be devoted by Customs (and later the ABS) to post-transaction inquiries and amendments.

Increased Voluntary Compliance Levels

The co-operative nature of changed arrangements for low risk clients will lead to increased voluntary compliance levels which will benefit all government agencies concerned. It is anticipated applicants will address all areas of risk within their trading operations and raise their compliance levels before the assessment for eligibility to make periodic reports to Customs. There will also be incentives for brokers, freight forwarders and carriers to improve their operations to meet requirements for a client to participate in the changed arrangements, improvements that will carry over to their dealings with other importers/exporters.

Costs

Implementation Costs

There will be costs for Customs associated with implementing the new systems and processes. Customs intends to meet these costs from within its own resources.

Potential for Reduction in ABS ability to Service its Clients

Currently Customs provides data to the ABS for statistical purposes on a daily basis. The implementation of a periodic trade data return by accredited clients has the potential to result in some reduction in the ability of the ABS to satisfy client needs due to a reduction in the data collected. One criterion for acceptance to the accredited client arrangements is the client's demonstrated ability to provide data in a timely and accurate manner.

- **Community**

Benefits

In the medium to long-term, accredited client arrangements will benefit consumers indirectly by helping to maintain the international competitiveness of Australian industry. Consumers will also be safeguarded through rigorous assessments of applications for accredited client status. The increased

knowledge of accredited clients regarding their regulatory obligations, as a result of the accredited client initiative, should lead to a decrease in the number of goods that are imported or exported in breach of legislation or international conventions.

Costs

There should be no direct costs for the community arising from Option 1 as the overall effect of this option is to reduce costs for Australia's international trading community.

4.3 Option 2

- **Industry**

Benefits

Reduction in Communication Costs

Customs would be able to introduce an open communications gateway without amending the legislation. The new communications gateway would lead to reduced communication costs for industry because importers and exports would be able to select a communications channel that best suited their commercial needs. However, it is expected that any reduction in communication costs would be less than that available under Option 1 due to the prescriptive nature of the legislation.

Maintain Current Cargo Reporting Requirements

Companies could continue to choose how they communicated pre-arrival and pre-departure cargo reports to Customs, either by computer or document. There would not be any requirement, and associated costs, for documentary reporters to use computers to provide the necessary information to Customs.

Costs

Maintain Current Regulatory Burden

Option 2 would maintain the current "one size fits all" approach of the legislation. The inflexible "one size fits all" approach to the legislation provides no real scope for government to reward good corporate citizenship.

Retraining

There will be costs associated with retraining personnel to familiarise them with new systems. Customs will publish instructional material which will help reduce that cost.

- **Government**

Benefits

Maintain Status Quo

For agencies other than Customs, Option 2 would maintain the status quo. That is, there would be no need for those agencies to change systems or processes.

Costs

Less Cost Effective Use of Resources

Customs would be unable to effectively re-deploy resources on risk management principles as it would still need to allocate resources to low risk cargo management processes, such as consideration and approval of applications for routine movements of underbond cargo.

Less Effective Identification of High Risk Goods

Allowing industry to continue to communicate documentary cargo reports will hamper government agencies' ability to identify and deal with high risk goods in a timely manner.

Implementation Costs (for Customs)

There will be costs for Customs associated with implementing its new computer systems. Customs intends to meet these costs from within its own resources.

No Incentive for Improved Compliance

The inflexible nature of the legislation does not provide any incentive for industry to voluntarily improve its compliance with the legislation.

5. CONSULTATION

Customs has conducted a program of wide and ongoing consultation for CMR. This is to ensure that the reformed processes reflect the needs of all government and industry organisations. Throughout the consultation process, industry and government have expressed support for Option 1.

Customs has utilised a three-tiered structure in order to conduct government and industry consultations. Customs has established the following groups for consultations with organisations external to Customs:

- an Industry Reference Group (IRG) comprising representatives from peak industry bodies and senior representatives from the international trading community; and

- a High Level Reference Group (HLRG) comprising representatives from Customs and other government agencies.

At a working level, key internal and other government agency stakeholders have provided personnel for the project to address areas of greatest relevance to them.

5.1 Industry Reference Group

Customs established the IRG in early 1999. The Managing Director of the Australian Stock Exchange Ltd (Mr Richard Humphry) chairs the Group and its members are drawn from the senior ranks of the importing, exporting and international trade service industries.

The organisations represented on the IRG include:

- AQIS/Industry Cargo Consultative Committee
- Association of Australian Ports and Marine Authorities
- Ansett
- Australian Chamber of Commerce and Industry
- Australian Customs Service
- National Farmers' Federation
- Austroads
- Australian Industry Group
- Australian Railways Association
- Australian Shipping Federation
- Australian Small Business Association
- Victorian Employers' Chamber of Commerce and Industry
- Federal Chamber of Automotive Industries
- Food and Beverage Importers Association
- International Air Couriers of Australia
- Australian Federation of International Forwarders
- Patrick Stevedores
- P&O Ports
- QANTAS
- Road Transport Forum
- Sea-Land (Australia) Terminals P/L
- Tradegate ECA
- Customs Brokers Council of Australia

The IRG's charter is to:

- provide high level strategic guidance to the project;

- identify areas where industry experts can work with the project team to greatest advantage;

- explore ways and means to gain efficiencies in cargo management through innovative and co-operative effort by all parties involved; and

- provide high level consultation and co-ordination to work towards achieving identified efficiencies.

Consultation with relevant companies and industry associations has continued throughout development of the CMR Project and in relation to proposed legislation to underpin it.

5.2 High Level Reference Group

The HLRG comprises senior personnel from the ABS, AQIS, the Department of Transport and Regional Services and Customs.

The role of the HLRG is to:

- provide a mechanism for consultation on the project within government; and
- ensure that the project encompasses the needs of relevant government agencies.

6. CONCLUSION AND RECOMMENDED OPTION

6.1 Option 1 is the preferred option.

Customs through the CMR project is seeking to introduce a more flexible approach to cargo management processes and systems, an approach that is clearly in line with stated industry requirements.

Implementing the systems reforms without changing the current legislative regime is not considered to be a viable option. This is because the present regulatory framework does not have the flexibility or scope to allow for the effective reform of government processes, hindering Customs ability to keep pace with the changes and developments in domestic and international business practices. For example, the manner in which clients communicate with Customs will be rigid and outdated in the modern environment. This will ultimately hamper the competitiveness of the Australian trading community through increasing costs and over-regulation. Furthermore, by failing to satisfactorily address the legislative issues surrounding cargo management, the Government would be undermining its position as a world leader in Customs.

6.2 Assessment of Effectiveness

As a result of the high level of consultation which has occurred throughout the CMR process, the proposed reforms to the systems and processes should reflect the needs of all government and industry organisations. In order to test the overall accredited client concept and overcome potential problems, Customs embarked on a pilot study with a small number of companies. Once the accredited client arrangements are in place, ongoing evaluation of the overall preferred client arrangements and individual agreements will occur.

In addition it is expected that the Australian National Audit Office will review the process adopted for the CMR Project. **ATTACHMENT A**

To Schedule 1

DETAILED DESCRIPTION OF OPTION 1

Option 1 - Amend legislation to underpin risk managed, flexible cargo management processes and systems.

These changes would introduce the following key reforms to support the desired objective.

(a) Recognition of low risk import and export transactions and an importer's or exporter's capability to comply with regulations.

This reform would:

- allow importers who have well established compliance records in relation to import regulations to:
  - take possession of their cargo on the basis of meeting minimum information requirements (a Request for Cargo Release);
  - provide trade data returns to Customs on a periodic basis; and
  - pay Customs duty (and proposed GST) liability periodically.
- provide exporters who have well established compliance records in relation to export regulations with:
  - streamlined procedures for obtaining export clearance; and
  - the capability to provide trade data returns to Customs on a periodic basis.

Authorisation to take advantage of these arrangements would depend on the importer or exporter making an application and being considered against criteria designed to assess the applicant's compliance record. Indicative criteria would include items such as:

- business systems which satisfy generally accepted auditing standards;
- willingness to be subjected to a review;
- no convictions under the *Customs Act 1901* in the preceding 5 years;
- past compliance record (whole of government);
- high level assurance provided through an unqualified audit opinion on the effectiveness of control procedures in relation to Customs responsibilities; and
- demonstrated ability to transfer data in a timely and accurate manner as prescribed by legislation.

(a) Improved cargo reporting mechanisms to ensure that:

- information about all cargo will be made available to Customs in an electronic form, prior to arrival in the case of imports or departure in the case of exports, allowing Customs to undertake the necessary profiling and screening for high risk cargo;

- cargo information is sourced from the party best equipped to provide the information; and

- where appropriate, clients can lodge a combined report to notify the arrival of cargo and import entry information.

(a) Provision of more open access to Customs computer systems for reporting the inward and outward movement of cargo, import entries/returns/declarations, export clearances and trade data returns.

(b) Allow for early identification of surplus (potentially high risk cargo) and shortlanded cargo

(c) Reformed Entry Requirement

- to simplify the import and export of transhipment goods; and
- to provide flexible arrangements for other goods.

Schedule 2 – Commercial Compliance Measures

Proposed amendment of Customs legislation to provide for common and consistent document retention obligations, audit powers and deterrent penalty provisions to cover the entire range of Customs commercial activities.

1. PROBLEM OR ISSUE IDENTIFICATION

1.1 Document Retention

Section 240 of the *Customs Act* 1901 contains provisions in relation to document retention which apply to goods that are the subject of an import or export entry or an import return. In its current format this provision provides the majority of the obligations and powers considered necessary to enable a self-assessment regime based on post transaction audits to be effective. It does not however cover some sectors of Customs client base nor does it reflect technological change. It is proposed to change the way in which documents might be kept, the copying of such documents or the translation of documents into electronic format to reflect the changes made to technology and to recognise current commercial business practice.

The Section also needs to be expanded to cover other import related activities not presently caught (ie. refund, rebate or drawback applications), without however altering the current policy intent that it should represent that broad class of persons involved in the communication of import or export information to Customs. This amendment is particularly necessary given that the importing and exporting industry consists of a large number of people, all of which perform different functions at different stages of importation or exportation. This will mean that the entire range of Customs commercial activities will be covered under a single document retention and production obligation, thereby addressing previous anomalies within the legislation.

It is proposed that owners will be required to retain and produce documents for 5 years; those who communicate information will be required to retain and produce documents for 12 months. The different time periods reflect different purposes and time frames for auditing owners compared with communicators. The document retention and production requirements are necessary to assess whether the person is complying with a Customs related Act or the correctness of information communicated by, or on behalf of, the person to Customs.

1.2 Audit Powers

Audit powers are the lynch-pin of a self-assessment program, because they enable the administrator to monitor compliance after the conclusion of a particular transaction to which the relevant self-assessment scheme relates. This post transaction audit ability is a necessary pre-condition to a self-assessment regime where information supplied is treated, at first instance, as true and correct.

The current non-warrant commercial audit power in s.214AA of the Act is limited to only a few import and export functions. Refunds, drawbacks, elements of the offset-schemes, non-entry export goods, to name but a few, are not covered. In addition, for

those limited areas which are covered, the powers need to be modernised to enable the auditing of computer operating, accounting and internal control systems which might be employed to generate the various documents provided or communicated to Customs.

The current monitoring powers also need to be modernised to reflect Government policy. The powers will continue to be consent based, that is consent is sought from the occupier of the premises to enter and that consent may be refused or subsequently withdrawn. Although the preferred means of entry to premises is through consent (the consent of the occupier is needed) a warrant may be sought initially or where consent is refused or later withdrawn.

Finally, several general examination and inspection powers are needed for the audit process. These powers will cover activities to assess the accuracy of information provided to Customs.

1.3 Deterrent Penalties

The final pre-requisite for an effective self-assessment regime is an appropriate penalty system. That system should provide appropriate penalty options to ensure that the regime operates expeditiously and encourages compliance by means of pecuniary penalties that are not only perceived as a sufficient deterrent, but are in fact capable of achieving that end result. An administrative penalty option is frequently included in a self-assessment model, and is an appropriate sanction to ensure the accuracy of information.

The current administrative penalty option in sections 243T and 243U of the Act, introduced in 1989, is limited to revenue errors resulting in duty short payment appearing on import entries only (errors on export entries, refund or drawback applications, movement permissions, or Cargo reports, to name but a few, are not covered). Another glaring problem is that the model involves an almost automatic remission facility, because the quantum of the initial administrative penalty is set at 200% of the value of the underpaid duty, which in many circumstances exceeds the level of penalty a Court might consider for an offence which requires a guilty mind on the part of the offender. This is an onerous and administratively inefficient method of monitoring compliance.

It is proposed to replace the existing administrative penalty regime with a model more closely aligned with the Diesel Fuel Rebate Scheme (s.164A to s.164AC of the Act), which was introduced as part of the Diesel Fuel Modernisation Project (Act No. 97 of 1997). The imposition of sanctions in the model starts with a simple recovery option for the duty shortpaid, or unrepaid refund or drawback of duty and then introduces three levels of sanctions, in descending order of severity, namely;

- prosecutable offences where a mental element must be proved;
- strict liability offences where only the physical elements need be proved;
- administrative penalties imposed by means of an infringement notice

The administrative penalty option is a reasonable alternative for any person who makes an error that would result in a strict liability offence and the facts surrounding the error are not in dispute. Rather than face the prospect of an offence punishable in Court with a penalty up to five times the administrative penalty, such person might well be inclined to pay the administrative penalty if presented with that option.

The proposed model is expected to offer a more effective and expeditious process of monitoring and facilitating compliance than the current scheme.

Until the introduction of the GST there were no revenue liability considerations in relation to exports, which are currently valued at approximately $100 billion. Under the Government's new tax system supplies of goods are GST free if exported within 60 days from the date of supply. The extended application of penalties for false or misleading statements in export communications will provide greater incentive to provide correct information to Customs, thereby enhancing Customs capacity to ensure compliance with the export requirements of the GST legislation.

In addition to ensuring compliance with the GST legislation, Customs needs to improve export data integrity. The current reporting regime for exports (that is, export entries) relies on the information provided in those entries to determine the nature and extent of the control which Customs is expected to administer over the movement of goods from Australia. The volume of export information communicated to Customs, coupled with the time sensitive nature of export trade, provides little opportunity for pre-export checks of export entries. Increasingly, the reality is post-export audit examination.

Customs and the Australian Bureau of Statistics ("the ABS") have recognised that the integrity of data in export entries needs to be improved. The Jet Fresh "Paddock to Plate" Report (1996) of the House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform, included the result of a survey conducted in respect of export entries lodged in Melbourne over a three month period. The survey indicated a relatively high number of errors. While it was limited to a relatively small number of transactions, it may be indicative of more widespread inaccurate reporting in export entries generally. Customs is proposing the introduction of penalty sanctions to help improve the accuracy of export information. Accurate export data is necessary to ensure proper reporting of Australia's balance of payments and statistics.

2. POLICY OBJECTIVE

2.1 The policy objective is to modernise the regulatory regime administered by Customs in relation to document retention, audit powers and deterrent penalties to enhance compliance with government requirements.

The objective is to align the compliance regime with Government and criminal law policy relating to auditing/monitoring powers and commercial penalty regimes. The proposals reflect, inter alia, the Senate Standing Committee for the Scrutiny of Bills Fourth Report into Entry and Search Provisions into Commonwealth Legislation. The

proposals also have been developed in consultation with the Attorney-General's Department to ensure that they are in accordance with current criminal law policy.

The broader objective is to ensure through the above regulatory mechanism that the correct amount of Customs duty is calculated and collected, and that refunds of Customs duty, which might subsequently be made, are correctly claimed and paid. Similarly, it is imperative that accurate information is provided to Customs to ensure that Customs may fulfil the broader objective. This includes ensuring the correct amount of duty is calculated and collected, but extends to ensuring that the information provided to Customs is accurate - the information is used by the ABS for trade data purposes. It is therefore imperative that Customs has an ability to monitor compliance with its requirements and those of other agencies.

3. OPTIONS

Option 1 - Maintain Current Practice

By maintaining the current practice, the powers, penalties and commercial requirements do not reflect current Government and criminal law policy and current commercial practice.

Option 2 - Extend the compliance improvement model

As highlighted in paragraphs 1.1, 1.2 and 1.3, there are problems with the current compliance improvement model. The regulatory mechanisms (as discussed especially throughout paragraphs 1.1, 1.2 and 1.3) propose to extend the compliance improvement model introduced for the Diesel Fuel Rebate Scheme (via Act No. 97 of 1997), to the other areas of Customs commercial activities which either operate in a self-assessment environment, or are moving to that position. The objective is to modernise the existing audit powers, penalty regime and commercial requirements those provisions of the *Customs Act* will reflect current Government and criminal law policy and will offer a more expeditious and efficient penalty regime.

4. ASSESSMENT OF IMPACT (COST AND BENEFITS) OF OPTIONS

4.1 Impact group identification

- Exporters (including owners, freight forwarders, customs agents, air couriers, slot charterers, export consolidators, shipping companies, airline companies, etc.)

- Importers (including owners, freight forwarders, customs agents, air couriers, slot charterers, shipping companies, airline companies, etc.)

- Government agencies

It is not expected that the proposed legislative provisions will impact greatly on the Industry groups identified as the changes are designed to modernise the existing provisions, particularly in the area of computing systems, as well as make consistent the requirements under the Act with other statutory and common law requirements.

Administrative penalties will, however, be extended to industry groups not currently subject to them.

4.2 Assessment of costs and benefits

4.2.1 Document Retention

a) Importers/Exporters

The "owner of goods" is defined to include any person 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. The existing document retention provision is currently imposed on the majority of people who will be affected by the proposed legislative change to impose an obligation to retain and produce documents containing information relating to a communication made to Customs, namely those involved in the "import/export" chain.

It is anticipated that these provisions will, in the main, have a minimal impact on the importing and exporting community because the proposed legislative amendments are intended to allow importers and exporters to take advantage of technology to retain documents or records, whether in Australia or overseas. The impact of permitting the retention of documentation in an electronic format is likely to be beneficial to many large scale importers, as data stored electronically does not provide the same storage problems as hard copy. Most importers already maintain documents in electronic format as this is the preferred means of communication with Customs for lodgement of entries.

While there may be a cost to industry, particularly exporters, associated with the proposed modernisation of document retention provisions in the area of storage facilities for data, in the majority of cases, it is considered the costs will be minimal as those persons are currently caught by the Act's antiquated obligation which makes no provision for the translation or copying of hard copy documents into electronic format.

It is envisaged that some costs could be incurred as a result of the changes, whereby it is proposed that any person who communicates information to Customs in relation to import/export entries will be obliged to produce documents in relation to that communication, when requested by Customs to do so. Some people in the import/export chain (not expressly covered by the broad definition of owner) who previously have not kept documents will now be required to do so. Consequently, such people may incur storage and administrative costs, as a result of these obligations.

b) Government

It is not envisaged that there will be any costs to Government associated with the proposed document retention and production provisions. The benefits will include improved ability for Customs and the Australian Taxation Office to conduct post-

transaction audits. It will also prove useful in further validating data integrity for the purposes of ABS trade figures.

4.2.2 Audit Powers

a) Importers/Exporters

It is considered the modernisation of the non-warrant commercial audit powers, especially in regard to the legislative ability to audit computer operating, accounting and internal control systems which might be employed to generate the various documents provided or communicated to Customs, will have minimal impact in terms of costs on the importing and exporting community to which the audit provisions currently apply.

b) Government

The new audit provisions will improve Customs ability to check the veracity of information submitted to it. It will enable Customs to monitor compliance with the *Customs Act 1901* and Customs related laws.

4.2.3 Deterrent Penalties

a) Importers/Exporters

The evaluation of the EXIT (Customs Export Integration) System in 1997 identified areas of concern to industry such as inconsistent practices and procedures and the necessity for enforcement of penalties. The perceived benefit to Industry from the modernisation of the penalty sanction provisions ensures an improved level of compliance with the proposed legislation within the import and export sectors, therefore achieving a 'level playing field' for all potential competitors.

b) Government

The extension of an appropriate and consistent deterrent penalty sanction to the entire range of Customs commercial activities should assist the effective management of Customs compliance responsibilities.

5. CONSULTATION

The Customs EXIT Evaluation Team in 1997 established an Export Industry Consultative Group (EICG) to provide clients and stakeholders with the opportunity for direct involvement and influence on the developments within EXIT and the export process. The EICG consisted of representatives from export groups which in the main, are also representatives of the importing industry. It enabled the members to obtain a broad understanding of the nature of the problems Industry had in respect of the export process, but also provided an excellent mechanism for conveying Government requirements and concerns to Industry.

The Jet Fresh Report recommended that Customs in consultation with the Australian Quarantine Inspection Service and ABS initiate action to improve exporter knowledge of export clearance regulations and procedures. Additionally, the Committee recommended Customs and ABS review the accuracy and completeness of export data supplied to the ABS with a view to improving it via common and consistent enforcement powers.

Customs has more recently discussed the proposed issues with industry, in a series of detailed seminars that were held throughout the country during July and August 2000. There were representatives from across all sectors of industry in attendance.

The seminars provided detailed information on the proposed legislation and how the penalty regime might be administered. Industry generally supported the proposals. Following the industry consultation seminars, Customs revisited the document retention and production proposal - the current policy position addresses industry's concerns with the previous proposal.

6. CONCLUSION AND RECOMMENDED OPTION

In conclusion, it is recommended that Option 2, which proposes to extend the compliance improvement model introduced for the Diesel Fuel Rebate Scheme in 1997 to other areas of Customs commercial activities, be considered as the primary means of achieving the desired policy objectives. This option is simply an extension of the current Customs commercial compliance provisions which have already received endorsement both from the Parliament and Industry.

Schedule 3 – Cargo Reporting

A proposal to amend the Customs Act to introduce sanction arrangements related to the reporting and accounting of cargo to Customs.

1. PROBLEM

1.1 The importance of reporting and accounting of cargo

All goods landed in Australia are required to be brought to account and dealt with in accordance with the *Customs Act 1901* for the purposes of ensuring Customs duties and tax liabilities are met and to ensure all Commonwealth legislation has been complied with, especially in relation to community protection matters.

The reporting of cargo is fundamental to achieving these objectives. If the Australian Customs Service ("Customs") is not made aware of the individual consignments being landed in Australia it will not be able to risk assess consignments for prohibited goods. The risk assessment procedure primarily involves electronically screening consignment details (such as the consignor and consignee names) against known risk profiles.

Without this information Customs is unable to prevent prohibited goods such as illicit drugs from entering Australia.

1.2 Who is required to report cargo?

The responsibility for reporting cargo to be landed in Australia rests with the person who is responsible for the transportation of that cargo to Australia. Such persons include, among others, shipping and airline companies, freight forwarders and express couriers (hereafter referred to as "cargo reporters").

1.3 What happens if cargo is not reported properly?

If consignments are not reported properly, that is to say, they are not reported in a timely manner or not reported in a comprehensive manner or not reported at all, the consignments will most likely evade the Customs risk assessing process. Consequently a consignment, such as one containing illicit drugs, could enter Australia without detection.

Based on the known quantities of drugs detected, it can be deduced that the improper reporting of cargo is a contributing factor to this problem.

1.4 Compliance with current cargo reporting legislation

There is significant and on going evidence that consignments are not being properly reported to Customs. The major problem concerns the late report of cargo. Surveys have indicated that up to 59 % of sea cargo is not reported within the current legislated timeframes. Some 12% of this cargo is reported after vessel arrival. Late

report limits the time available to Customs to properly evaluate and risk assess the cargo.

The reporting of cargo to Customs has been a long-standing requirement. Customs has been in constant discussions with industry in an attempt to increase compliance. Customs also introduced electronic reporting of air cargo in 1990 and sea cargo in 1992 in order to facilitate the reporting procedure.

Coupled with the problem of cargo being reported late, there has also been significant incidents of delivery of consignments that were not reported. Of even greater concern is the fact that in many cases these consignments were targeted by Customs.

1.5 Why isn't the current legislation working?

The current provisions and the principles underpinning them were introduced in 1990 (Customs and Excise Legislation Amendment Act 1990) with some minor modification in 1992 (Customs Legislation Amendment Act 1992) to accommodate the introduction of electronic reporting.

Section 64AB of the Act requires sea cargo to be reported 48 hours before the arrival of the ship (24 hours if the sea journey takes less than 48 hours). Air cargo must be reported 3 hours after the arrival of the aircraft, but if it is reported electronically it must be reported 2 hours before arrival.

There are no offences for circumstances where the cargo is not reported within these time frames or the report is incomplete. Instead of the use of an offence regime, the provisions of section 74 of the Act apply.

Section 74 of the Act requires the cargo reporter to obtain a permission from Customs to unload the cargo. The intention of this provision is that if the cargo has not been properly reported a permission to unload will not be given. It was intended that the provision would be an incentive for cargo reporters to report their cargo properly.

This approach has proven to be untenable because of the disruption and cost to industry caused by delaying the unloading of ships and aircraft until the cargo has been reported properly. Consequently, the current provisions are proving ineffective in dealing with non-compliance with the requirements.

In addition, the application of section 74 of the Act does not only affect the offending cargo reporter, but also penalises those cargo reporters who have complied with the reporting requirements. This occurs in circumstances involving consolidations of LCL (less than container load) or FAK (freight of all kinds) containers. Consolidations are consignments belonging to more than one cargo reporter that are packed together into one container.

Industry consultation, "help desk" services and the use of admonishment letters have not had the desired effect of obtaining industry compliance. Consequently the objectives of the current legislation, to ensure cargo reporters properly report their cargo, are not being achieved.

Developments in the transport industry have aggravated the issue. On-going fragmentation in the industry has resulted in more parties becoming involved in the cargo reporting process. There has been a significant expansion in the number of freight forwarders involved in the reporting of cargo.

Freight forwarders buy space on ships and aircraft from the shipping/airline companies to carry freight for their own clients as well as on-sell any surplus space to other (usually smaller) freight forwarders.

2. SPECIFICATIONS OF DESIRED OBJECTIVES

2.1 The Customs role

To enable Customs to detect the importation of prohibited goods into Australia and to ensure revenue is not being evaded, Customs must be able to screen and risk assess information about consignments of cargo entering Australia.

2.2 This role is achieved in part by screening information

To be able to screen consignments effectively Customs must have certain information about each consignment. The person best positioned to provide this information to Customs is the person responsible for transporting the cargo to Australia – the cargo reporter. This information is held by the cargo reporters in documentary or electronic form as part of their commercial process.

2.3 The cargo report – an important source of information

It is important that cargo reports are presented to Customs within minimum time frames before the arrival of consignments in Australia. The minimum times are considered to be 24 hours for sea cargo and 2 hours for air cargo. However these times may need to be modified in relation to journeys that take less time than these minimum times such as Port Moresby to Cairns and Dili to Darwin.

It is important to provide Customs with adequate time to screen the information and to take any necessary pre-emptive action. This also has benefits for industry because Customs can generally provide a Customs release for consignments by the time the consignments arrive in Australia, enabling cargo handlers and importers to plan collection and delivery of cargo in advance.

2.4 Bringing the cargo report to account

Certain parties, namely stevedores, and licensed Customs depot operators perform an important ancillary function to the cargo reporter. This function relates to the bringing to account of cargo landed as distinct to cargo reported by the cargo reporter. Cargo reporters contract this function to them. These parties have over many years played an important role in ensuring Customs has an accurate picture of cargo landed including sea containers which are temporarily unloaded for operational reasons (known as “restows” in the industry).

An outturn report relates to the bringing to account of all the cargo listed in the cargo report for landing on a particular ship or aircraft. Usually cargo additional to that shown on the cargo report is landed (referred to as "surplus cargo") or cargo which has been listed on the cargo report does not arrive (referred to as "shortlanded cargo").

Stevedores and depot operators should provide Customs with timely outturn reports and information about restows.

2.5 The importance of this information in achieving Government objectives

The timely and accurate provision of information about consignments landed in Australia is essential if Customs is to fulfil the objectives of the Government's National Illicit Drug Strategy.

3. IDENTIFICATION OF OPTIONS

As the history of this issue indicates, other measures have been adopted by Customs in order to improve compliance by industry. These measures have generally been unsuccessful in achieving the level of compliance necessary to allow Customs to meet its border responsibilities.

3.1 Self regulation, quasi-regulation and co-regulation

The history of industry compliance suggests that the option of a self regulation regime would not be successful in increasing the level of compliance.

It can be argued that the industry has to some extent already been operating in a self regulating environment because of the practical limitations associated with applying the current provisions.

However, the industry is fragmented into a number of different sectors representing different interests – shipping and airline companies, freight forwarders, express couriers, stevedores, and depot operators. Among these sectors there are a number of industry associations representing different elements of each sector. Consequently there are a range of different interests which are difficult to reconcile in a self regulated/quasi regulated/co-regulated environment.

The industry is highly competitive, in which tight timetables, speed of delivery and cost factors are the primary considerations. Such an environment is not conducive to self regulation.

It is concluded that the option of a self regulated/quasi regulated/co-regulated regime would not be effective in achieving the desired objectives.

3.2 Could another person report cargo?

Some sections of industry have argued that the responsibility for reporting cargo should rest with the importer of the consignment, as this person will usually have all the required information in advance of the arrival of the consignment.

3.2.1 Using importers' information

This option would require the importer or the importer's representative – the customs broker – making a 2 in 1 report to Customs covering the import declaration for a consignment of goods which would double as the cargo report. It is argued that the information provided in such a report would be more accurate. Such an approach would reduce electronic communication costs for cargo reporters as the obligation for reporting cargo would be moved from them to the importer.

3.2.2 The problems with using importers' information

- *Information about transport logistics*

This approach, of using importers' information, is fundamentally flawed. The importer does not always know on which ship or aircraft the consignment is to arrive. Only the person responsible for bringing consignments to Australia – the cargo reporter - is in a position to know exactly when and where consignments are to be landed in Australia. If the consignment does not arrive, only the cargo reporter is in a position to provide an explanation to Customs as to the reason it has not arrived.

- *How would Customs know a cargo report is complete?*

This proposal is administratively untenable. The individual entry of consignments into the Customs electronic system by the importers/customs brokers does not in itself provide a comprehensive list of cargo to be landed from a particular ship/aircraft. Customs would not be in a position to determine when all the consignments for a particular ship/aircraft have been received, only the cargo reporter can determine when this point is reached. It presupposes that all importers/customs brokers will provide Customs with the entry details within the time frames in advance of the arrival of the ship/aircraft. In many cases importers do not receive their import documents from suppliers until after the ship/aircraft has arrived.

- *Not all consignments are required to be entered*

It should be noted that not all consignments which are landed in Australia require a declaration in the form of a Customs entry. Consignments with a value not exceeding $250, such as mail order goods and small one-off importations may be cleared in other less formal ways. These consignments comprise a significant proportion of all importations. To the extent that these consignments do not require a formal Customs declaration they could not be reported by Customs brokers. The importers of these consignments would, in the majority of cases be unfamiliar with Customs procedures and therefore would not be in a position to provide timely information.

- *Delays in receipt of information impact on Customs effectiveness*

It is also anticipated that this option would cause delays in receipt of the cargo report by Customs thereby hampering Customs efforts to obtain the cargo report information early for screening purposes. Importers and customs brokers have acknowledged that they will not be able to provide the required information prior to the arrival in all cases. Consequently the screening of cargo reports could be less effective.

- *Additional administration for importers/customs brokers*

In such circumstances there would be an added administrative burden on importers and Customs brokers to establish the flight/voyage details. In circumstances where the cargo reporter has had to change the original flight/voyage plans the importer may not be aware of these changes until after the aircraft/ship has arrived. Both these cases will involve considerably more communications between the cargo reporter and the importer and customs broker and generally increase the administrative burden on industry. Under the option of the cargo reporter giving the cargo report to Customs much of this administration by importers and brokers is unnecessary.

It is concluded that the option of using information which Customs receives from importers and customs brokers does not make up the necessary elements of the cargo report and therefore does not achieve the desired objectives.

3.3 Explicit government regulation

The final option is that there be explicit Government regulation to increase the level of compliance and thereby assist Customs in fulfilling its border responsibilities, especially as they relate to detection of illicit drug importations.

3.3.1 Creation of offences

This option proposes the making of offences where:

- a cargo reporter reports consignments later than the legislated times;

- a cargo reporter does not provide all the information required;

- a cargo reporter fails to report consignments; and

- a stevedore or depot operator fails to give Customs an outturn report within the legislated times. (an outturn report relates to the bringing to account of all the cargo listed in the cargo report for landing - some additional cargo may have been landed or some cargo listed for landing was not landed).

3.3.2 Creation of an obligation on stevedores and depot operators

Although stevedores and depot operators have over many years provided Customs with outturn reports and lists of restows, on behalf of the cargo reporter, there is not

always a legal requirement for them to do so. It is proposed to recognise these practices in law and introduce offences related to timely and complete provision of such information.

This has become necessary because under an offence based regime it is essential to identify the persons actually responsible for an act, thereby addressing issues associated with the principles of vicarious liability. Currently the cargo reporter is held responsible for the actions of the stevedores and depot operators in relation to the accounting and clearance of the cargo from Customs control.

3.3.3 Creation of an administrative penalty scheme

The proposal seeks to introduce an administrative penalty regime where Customs would be able to issue a penalty notice for non-compliance to which would be attached a financial penalty.

Prior to the issue of such a notice Customs would seek an explanation from the cargo reporter for the non-compliance. In considering whether to issue a penalty notice Customs will need to take into consideration the reasons for the non-compliance and whether such reasons would be accepted in any judicial procedures which may follow if the cargo reporter refused to pay the penalty associated with the issue of the penalty notice.

Any administrative penalty would not exceed 12 penalty units. If the matter was to be prosecuted it is proposed the penalty would be more substantial, depending on further advice from the Attorney-General's Department.

3.4 Certain elements common to all the options

There are a number of elements which would be part of each of the options discussed previously. These elements are as follows:

a) cargo reporters to provide certain additional information as part of the cargo report related to:
   - the discharge of empty sea containers both international and domestic;
   - export cargo that is required to be discharged in an Australian port or airport prior to the departure of the ship or aircraft from Australia;
   - domestic cargo transported by sea; and
   - clarify the requirement to report mail.

b) provide for a direction power in relation to cargo at wharves, airports and depots which is identified by Customs as being high risk or which has not been properly reported;

c) require stevedores and depot operators to electronically communicate all outturn reports to Customs, and in the case of stevedores that they also electronically communicate lists of restows to Customs;

d) provide monitoring powers at the premises of cargo reporters, stevedores and depot operators (these activities have been practised for many years but without any legislative basis);

e) suspend an authority given by Customs to deal with a consignment which has not been delivered from Customs control and where a Customs officer receives information about the consignment and forms a suspicion that it involves an offence against the Customs related law.

With regard to paragraph (a), it should be noted that cargo reporters already provide Customs with this information except for the information related to empty domestic containers. It is proposed to formalise these practices and require the reporting of empty domestic containers. The reporting of empty domestic containers is not expected to be onerous or costly.

Regarding paragraph (c), most stevedores and depot operators already electronically communicate outturns to Customs. Stevedores presently electronically communicate lists of restows to Customs. The electronic communication is fundamental to ensuring timely and effective control over all cargo and containers that have been landed. Manual communication of this information would adversely effect the equitable application of the proposed sanction arrangements. Manual procedures introduce delays for importers and Customs brokers and increase the risks of cargo being delivered without Customs knowledge.

The information about empty containers and domestic cargo is required to assist Customs with the identification of the cargo for which it is responsible. History shows, for example, that empty containers and restows have been used to import illicit drugs. Because domestic cargo and export containers are intermixed, the status of this cargo is not always clear. It is difficult for Customs to determine whether such cargo is supposed to be part of the imported cargo.

4. ASSESSMENT OF IMPACT

The impact assessment is based on the option of applying explicit Government regulation (see points 3.3 “Explicit Government regulation” and 3.4 “Certain elements common to all options”).

In general the proposal will have a low financial impact on Government and industry. Any additional costs will be associated with the requirement that cargo reporters provide some additional information and also the provision of air-freight cargo reports earlier than at present.

None of the other measures have any financial implications.

4.1 Impact group identification

4.1.1 Sea freight

(a) Cargo reporters

The proposal will require cargo reporters to report some additional information as part of the cargo report related to the unloading of empty domestic containers and export containers (see point 3.4 "Certain elements common to all options"). Although cargo reporters already have this information, it will require some additional administration on their behalf to communicate this information to Customs. This will affect some 367 shipping companies and freight forwarders.

The proposed legislation will mandate the electronic provision of the cargo report information 24 hours prior to the vessels estimated time of arrival in the port where the cargo is to be discharged or such other lesser time in recognition of any voyages that might be less than 24 hours. Current provisions do not mandate the electronic provision of this information however there is a requirement that the cargo report be provided 48 hours prior to vessel arrival or 24 hours prior to arrival if the voyage is less than 48 hours.

Statistics for end of financial year 99/00 indicate that nationally 95.1% of sea cargo was reported electronically with 68.9% reported within the proposed 24 hour, prior to arrival, timeframe. These figures suggest there is some impact on cargo reporters who will need to purchase the necessary hardware and software to report electronically and within the required timeframe. Some cargo reporters will need to make the necessary arrangements to report their cargo after hours or on public holidays to ensure this information is provided within the specified times.

In recognition of the circumstances of these cargo reporters, it is proposed to include a provision in the legislation to enable the CEO to provide a period of grace to such reporters. These cargo reporters would need to demonstrate, in an application to the CEO, that they will take such necessary steps so that they can comply with the legislation at the end of the period.

(b) Stevedores and depot operators

Stevedores and depot operators will be required to electronically communicate an outturn report to Customs (see point 2.4 "Bringing the cargo report to account" and point 3.3.2 "Creation of an obligation on stevedores and depot operators").

The proposal is not expected to impact on the majority of these operators as they already electronically communicate outturns and restows lists to Customs.

The requirement will impact on some stevedores in smaller regional ports who currently provide this information in a documentary form.

4.1.2 Air freight

(a) Cargo reporters

Air freight cargo reporters will be required to report some additional information as part of the cargo report related to the unloading of export containers (see point 3.4 "Certain elements common to all options"). However as they already have this information and such unloadings are not a regular occurrence, any additional administration on their behalf will be minimal. The proposal will affect some 346 airline companies, freight forwarders and express couriers.

Under the proposal, a cargo reporter is required to give Customs a cargo report 2 hours before the aircraft arrival. Currently, manual cargo reports may be given to Customs up to 3 hours after the aircraft has arrived. It will no longer be acceptable to make manual cargo reports. Currently 99.7% of air cargo is reported electronically but only 67.8% were reported 2 hours prior to arrival. Consequently, those cargo reporters who currently make manual reports and those that do not submit cargo reports in a timely manner will be required to review their administrative arrangements in order to meet the proposed new requirements. This may include the purchase of computer equipment or computer services in order to comply with this requirement.

This aspect of the proposal has the potential to affect some 21 cargo reporters. In recognition of the circumstances of these cargo reporters, it is proposed to include a provision in the legislation to enable the CEO to provide a period of grace to such reporters provided they can demonstrate to the CEO that they have taken such steps so that they can comply with the legislation at the end of the period.

(b) Depot operators

Depot operators will be required to electronically communicate an outturn report to Customs (see point 2.4 "Bringing the cargo report to account" and point 3.3.2 "Creation of an obligation on stevedores and depot operators"). All depot operators are already required to be connected to the Customs electronic cargo reporting system.

The proposal is not expected to impact on them as they already electronically communicate outturns to Customs.

4.2 Assessment of costs

4.2.1 Cost to Government

The proposal has been developed on a basis of cost neutrality. Administration of the sanctions arrangements will be undertaken by officers currently allocated to cargo tracking functions as well as by some internal re-arrangement of work functions. Development of the Customs electronic systems is already accommodated within the budget of the Australian Customs Service. All these costs are charged against General Budget Appropriations.

4.2.2 Cost to business

As alluded to at point 4.1 "Impact group identification", while cargo reporters may experience a minor increase in costs, most stevedores and all depot operators should not experience any cost increases.

(a) Sea freight - cargo reporters

There may be a slight increase in costs for cargo reporters in relation to the transmission of the proposed additional information relating to empty domestic containers and certain export containers.

Current costs for electronic communications is $0.30 per kilobyte. In most cases such additional information is not expected to equate to a kilobyte for each cargo report. Because the information is handled by electronic systems, it is expected that any labour costs would be limited to the initial modification of electronic systems.

(b) Sea freight – stevedores and depot operators

The proposal is expected to have minimal cost impact on most stevedores and depot operators as they already electronically communicate outturns and restow lists to Customs.

However the proposal is expected to incur some costs on a minority of stevedores. Such stevedores are located in smaller regional ports.

(c) Air freight - cargo reporters

Air cargo reporters will incur a minor increase in costs related to the electronic communication of the proposed additional information relating to export containers.

The current cost for electronic communications is $0.30 per kilobyte. In most cases such additional information is not expected to equate to a kilobyte for each cargo report. Because the information is handled by electronic systems, labour costs would be limited to the initial modification of electronic systems.

It is anticipated that some cargo reporters will incur additional costs related to the modification of their administrative arrangements. Such modifications may be necessary to obtain the information for the cargo report in time to meet the time requirements (i.e. 2 hours before the arrival of the aircraft). Because each business has its own administrative arrangements it is difficult to estimate the cost associated with making any modifications.

(d) Air Depot operators

The proposal is expected to have minimal cost impact on depot operators as they already electronically communicate outturns to Customs.

4.2.3 Costs to consumers

Cargo reporters, stevedores and depot operators may choose to pass on any additional costs of communicating with the Customs electronic system. However any passing on of costs will need to be tempered in the context that the majority of cargo is already reported electronically and the economies of scale would suggest that any increase would be marginal. Provision of early cargo release status and proposed enhancements to the Customs electronic systems should result in improved transport and storage gains for industry and consequently consumers.

4.3 Assessment of benefits

4.3.1 Benefits for Government

The proposal. as outlined at points 3.3 "Explicit Government regulation" and 3.4 "Certain elements common to all options", will assist in giving effect to the Government's National Illicit Drugs Strategy.

- *Sanctions will improve compliance*

It is anticipated that the proposed sanctions arrangements will significantly improve the level of cargo reporting compliance. Currently there is no effective penalty that can be used against those cargo reporters who do not provide their cargo reports within the prescribed times or who do not provide all the required information on their cargo reports. The greater the level of compliance the more timely and effective the Customs screening process becomes, thereby increasing the chances of detecting prohibited goods, in particular, illicit drugs.

- *Additional information will assist in identifying cargo of interest to Customs*

The proposal that the cargo reporters provide additional information as part of the cargo report enables Customs to effectively identify cargo and containers and removes confusion which occurs at wharves and depots as a result of the intermingling of all categories of cargo and containers.

- *Outturn reports will be more effective*

The requirement that this information be provided by stevedores and depot operators is based on legal advice that cargo reporters cannot be held responsible for actions related to the making of the outturn report. This is an important consideration for the effective application of the proposed sanction arrangements.

- *Clear rules for compliance monitoring*

The proposed monitoring powers will benefit both Customs and business as they will set out clearly the extent of powers and rights for both parties. The current ad hoc

arrangements are considered to be inappropriate in an environment based around legislative penalties.

4.3.2 Benefits for business

- *Greater equity for all cargo reporters*

Although some cargo reporters may feel apprehensive about the introduction of sanction arrangements for non-compliance, the proposal will result in greater equity for all cargo reporters. Currently, cargo reporters complying with the cargo reporting requirements watch on as some of their colleagues do not comply, while Customs is unable to take effective measures against those non-compliant reporters.

- *Greater efficiencies for industry*

As a result of the proposal, if cargo is reported on time and in a complete form, Customs will be able to screen the cargo promptly. This will mean that in the majority of cases industry will know the Customs status of consignments before the ship or aircraft arrives. This will free up movement of cargo at wharves, airports and depots thereby assisting to relieve congestion at these places. Such developments would be expected to impact favourably on industry and contribute to waterfront and airport reform.

- *Clear rules for compliance monitoring*

The proposed monitoring powers will benefit both Customs and business as they will set out clearly the extent of powers and rights for both parties. The current ad hoc arrangements are considered inappropriate in a sanctions environment.

4.3.3 Benefits for the community

The main benefit for the community is that the proposal will assist Customs to more effectively detect prohibited goods, especially illicit drugs. Other border agencies, such as the Australian Quarantine and Inspection Service, will also benefit from the timely and accurate report of cargo.

5. OTHER ISSUES

5.1 Effects on small business

The proposal, as outlined at points 3.3 “Explicit Government regulation” and 3.4 “Certain elements common to all options”, is not considered to have a particular impact on small business. Customs cargo reports are essentially constructed from details already provided in standard transportation documentation, such as ocean bills of lading and air waybills.

However, the proposal is expected to impose costs on smaller stevedoring operations located in regional ports. These costs will be associated with establishing electronic connections with the Customs computer system.

Comments from some small businesses are detailed at 6.2.1.

5.2 Effects on trade

Although cargo reporters will be required to provide information about export containers discharged at Australian ports and airports as part of the cargo report, this is not expected to impact on export procedures.

6. CONSULTATION

6.1 Government agencies

6.1.1 Attorney-General's Department

Discussions have been held with the Attorney-General's Department and the Australian Government Solicitor. Their advice indicates that it is legally feasible to develop a sanctions arrangement as described at point 3.3 "Explicit government regulation".

6.2 Business

Industry has been consulted through industry associations, working groups and in some cases individual companies. As expected, industry does not whole-heartedly support the proposal, although they do acknowledge non-compliance is an issue for Customs.

Outlined below are the main issues raised by the various industry bodies.

6.2.1 Industry Reference Group

This body was established by Customs for the purpose of developing and implementing the Cargo Management Re-engineering Strategy which is concerned with the redevelopment of Customs electronic systems for reporting the arrival of cargo in Australia and its clearance. Member of this Group are:
Australian Air Transport Association,
Australian Chamber of Commerce,
Australian Container Depot Operators Association,
Australian Federation of International Forwarders Ltd.,
Australian Shipping Federation which includes:
the Australian Shipowners Association and
the Australian Chamber of Shipping Ltd);
Customs Brokers Council Inc.,
International Air Couriers Association of Australia, and
P&O Ports

Issues raised by the Group and the Customs response to them are as follows.

- *Fairness associated with requirement to make timely and accurate cargo reports*

The Group suggested that it would be fairer if responsibility associated with making timely and accurate cargo reports be broadened to include the person who supplies information to the cargo reporter for making the cargo report.

The information used to make the cargo report comes from the (air)ports where the cargo was loaded. This information may be transmitted directly to the cargo reporter in Australia or the information is consolidated overseas prior to transmitting to the cargo reporter in Australia. Because the person providing the information to the cargo reporter is based overseas, there is no action which may be taken against such a person. Responsibility for making the cargo report has to rest with a person in Australia.

- *Requirement to work in a 24-hour, 7 days-a-week environment to report cargo*

During a series of seminars to familiarise and consult industry on the proposed legislative changes one of the most common issues raised was the implied requirement that industry will be required to work in a 24-hour, 7 days-a-week environment to report cargo.

Many of the smaller industry operators claimed they couldn't afford the additional cost of a bureau, or pay overtime to staff, to meet with cargo reporting deadlines. Some smaller industry participants also were concerned about the costs of CMR compatible software.

There was criticism that the social (change in lifestyle of participants), capital (additional cost of more advanced IT) and recurring (staff overtime or use of bureaux) costs the proposal placed on industry has not been properly considered by Customs.

Customs acknowledged there would need to be some change to business practices by some cargo reporters, however Customs considers that in the context of obtaining timely information for the purposes of identifying prohibited goods, it is imperative these changes occur.

There were also a number of participants who understood that Customs required early reporting to ensure its border and revenue community service obligations are discharged, and that the market for bureaux will ultimately mature, thus providing cost effective services to reporters who need it. Alternatively, relevant information could be redirected electronically, so it can be processed after hours.

- *Concern about arbitrary application of administrative penalties*

In circumstances where the cargo reporter can demonstrate that the late or incomplete report of cargo was beyond the cargo reporter's control then Customs is unlikely to issue a penalty notice. In saying that non-compliance was beyond the cargo reporter's

control, the cargo reporter would be required to demonstrate what steps had been taken with the overseas supplier of the information to rectify the problems. It should be noted that in many cases the information is provided by the overseas office of the local company.

As mentioned in point 3.3.3 "Creation of an administrative penalty scheme", in applying any administrative penalty Customs needs to be certain that it has sufficient evidence to demonstrate that the cargo reporter was primarily responsible for the late or incomplete report of the cargo. This is critical in order to pursue prosecution in the event that the cargo reporter refused to pay the administrative penalty.

Such a procedure would be a deterrent against arbitrary application of the penalty provisions.

6.2.2 Conference of Asia Pacific Express Carriers (CAPEC)

The members of CAPEC are:
DHL,
Federal Express,
TNT, and
United Parcel Services (UPS)

Issues raised by this group and the Customs response to them are as follows.

- *Questioned the need for penalties and their application*

CAPEC stated its members would work with Customs to maximise timely report of cargo and questioned the need to introduce a penalty scheme. It was argued that a penalty scheme may not make allowances for events such as electronic transmission breakdowns beyond the control of the cargo reporter.

As stated in point 6.2.1, there will not be any arbitrary application of penalties. Customs will approach the issuing of penalty notices on the same basis as preparing a prosecution brief. In other words the evidence in relation to a particular non-compliance must be able to be defended in a court of law. This approach will prevent any arbitrary application of penalties.

- *Unreported cargo is low risk in depots*

CAPEC challenged the Customs assertion that cargo not reported on the cargo report is necessarily high risk. Their argument is based on the fact that cargo when unloaded is in Customs appointed airports and depots and is therefore secure under Customs control.

This argument is not, through Customs bitter experience, correct. Customs effectiveness at these places is dependent upon identifying the known risks of cargo and activities at a particular time. Consequently there are many opportunities for non-reported cargo to be secreted away without Customs knowledge. In more

irresponsible circumstances such cargo has been allowed to be delivered into home consumption before Customs has had an opportunity to screen and risk assess it. Hence the importance of having cargo reported in an accurate and timely manner.

- *Focus should be on delivery without Customs authority*

CAPEC suggested that Customs attention should be focused on stopping cargo that has not be reported or not reported properly from being delivered into home consumption. This would be preferable to an approach where Customs places emphasis on ensuring that cargo has been reported or reported properly at an earlier stage.

Customs accepts the point made by CAPEC. However Customs already utilises its existing powers to prevent cargo that has not been reported or not reported properly from being delivered into home consumption. While this approach is an effective tool it has the potential to disrupt the commercial procedures related to the cargo handling and delivery processes.

Customs view is that if the cargo is reported and reported properly in the first instant there will be no necessity to disrupt the commercial cargo handling and delivery procedures by delaying the delivery of cargo.

6.2.3 Patrick Stevedoring

- *The time proposed to provide an outturn for non containerised cargo*

While Patrick Stevedoring generally supported the proposal, there was concern about the time proposed by Customs in which an outturn is to be given to Customs for non containerised (break-bulk) cargo. Customs is proposing that an outturn for break bulk cargo must be given to Customs within 5 days of completion of unloading of a ship. Patrick Stevedoring would prefer that the break bulk report be given to Customs within 10 days.

The proposed time is considerably longer than the time proposed in which a containerised cargo outturn is to be given to Customs. An outturn for containerised cargo is to be given every 3 hours commencing from the discharge of the first container until discharge is completed. In the case of cargo unpacked from containers at depots, the proposed time to provide Customs with an outturn report is to be 24 hours from the time of unpack of a container.

Customs primary concern is to know about surplus cargo as soon as possible after it has been landed so that the risk of the cargo can be established. If the cargo is suspected of carrying prohibited goods such as illicit drugs, then steps can be taken to examine and monitor the consignment.

In allowing 5 days for stevedores to provide Customs with an outturn for break bulk cargo, Customs is acknowledging the practical difficulties faced by industry to

provide the outturn any earlier. However to extend this period to 10 days would further reduce the effectiveness of the outturn in these circumstances.

6.2.4 Other submissions

Qantas, Ansett Air Freight, and BOC also made submissions. They did not express substantive concerns about the proposal.

6.2.5 Other organisations invited to make submissions

Sealand (stevedore), Smith Brothers (depot operator), Customs Cargo Automators (bureau service) and Tedis (software provider) were also invited to make submissions but did not do so.

7. CONCLUSION AND RECOMMENDATIONS

7.1 Explicit Government regulation

As explained in Part 3 "Identification of Options", the conclusion is that explicit Government regulation is the preferred option to ensure cargo is reported on time and in a complete manner. Current legislative powers to deal with non-compliance have proven to be too disruptive and impede industry. Consequently they are ineffective and do not achieve their objective.

Considering the significant degree of non-compliance, self-regulation is not an appropriate response in such a highly competitive industry in which time, speed and costs are primary characteristics.

The introduction of sanctions will enable Customs to take action against non-compliance by way of an administrative penalty scheme and in more serious breaches, court action. Sanctions will not impede commercial dealings with cargo. The possibility of the application of administrative penalties or court action will provide a greater incentive for industry to comply with cargo reporting requirements. The proposal provides greater equity in Customs dealings with the industry in so far as those non-complying parties will be seen to be penalised for non-compliance.

7.2 Implementation

The proposal is part of the Customs International Trade Modernisation Project, which includes the re-engineering of Customs electronic cargo management systems. It is proposed to commence the sanctions proposal with the introduction of the new electronic systems which are due to become operational during 2001. The new electronic systems will make the administration of the proposed sanction proposal more efficient.

Customs will in the intervening time commence an industry awareness program ensuring industry is ready for the introduction of the sanctions proposal.

A working group will be formed with industry representatives to ensure the smooth introduction of the proposal. In addition any issue of major concern may be raised by industry at the quarterly meetings of the Customs National Consultative Committee.

7.3 Reporting

Information about the issue of penalty notices or other prosecution action will be reported in the Annual Report of the Australian Customs Service.

Schedule 4 – Exports Measures

A proposal to amend the customs Act to enhance compliance with statutory requirements in relation to exported goods

1. PROBLEM OR ISSUE IDENTIFICATION

1.1 Outwards Manifests

Section 119 of the *Customs Act 1901* requires the master or owner of a vessel or pilot or owner of an aircraft to present an outward manifest to Customs prior to the departure of the vessel or aircraft. This manifest has a dual function for Customs purposes. As export entries may be lodged any time prior to exportation, the manifest is used as the confirmation that the goods are to be actually exported and where the goods are located. This information is used by Customs to identify where goods are for the purposes of examination to prevent the exportation of prohibited exports.

The manifest is also used by Customs, the Australian Bureau of Statistics (ABS) and other government departments and agencies to identify which goods have been exported from Australia for statistical and cargo control purposes.

Current industry practice is to provide Customs with the outward manifest immediately prior (eg, one hour) to the departure of the vessel or aircraft. This affords industry with as much time as possible to compile the necessary information while still conforming as closely as possible with the requirements of the Act.

This dual use of the outward manifest by Customs, however, presents a number of problems in that the document does not adequately serve Customs (and others) in both roles. As a method for providing Customs with information regarding the location of goods prior to exportation, it is inadequate as the short timeframes involved give Customs little scope to locate and organise an examination of goods for export. As a method of identifying which goods have been exported, it is inadequate as carriers are often able to accurately complete a final manifest only after the vessel or aircraft has departed, resulting in exported cargo not being reported to Customs.

1.2 The Exportation of Goods Under Customs Control

Certain customable and excisable goods are stored under Customs control in licensed Customs warehouses. In particular, high duty rate items such as alcohol and tobacco are stored under Customs control until they are delivered for home consumption or exportation in order to defer or avert any payment of duty.

When warehoused goods are exported, subsection 99(3) of the Act requires that they must not be taken from the warehouse unless they have been entered for exportation and an authority to deal (ATD) with the goods has been issued in accordance with section 114C of the Act.

It has become apparent that goods are frequently released from warehouses when the licensee is presented with either false or altered export documentation and some or all of those goods are never exported but rather diverted into the domestic market without the duties having been paid to Customs. Customs effectively loses control of the goods between their departure from the warehouse until they are delivered to a prescribed place for export. It is during this time that large quantities of dutiable goods are diverted into the domestic market and are not brought to account, resulting in a significant loss of government revenue and commercial disadvantage to legitimate operators.

1.3 Export Entry Thresholds

Subsection 113(2) of the Act specifies the instances where goods for export do not require the lodgement of an export entry with Customs. Two paragraphs relate to the exemption from entry requirements based on the value of the goods. They are:

- paragraph 113(2)(b) - consignments exported via Australia Post, valued at $2000 or less, need not be entered; and
- paragraph 113(2)(c) - consignments of a single commodity (ie, single statistical item) exported by ship or aircraft, valued at $500 or less, need not be entered.

The different definitions of these export entry thresholds result in the different application of reporting requirements across different modes of export. This causes confusion in the exporting industry, particularly with the reference to statistical items, and may provide Australia Post with a competitive advantage with regard to export entry requirements. Similar differences with respect to import entry thresholds have recently been the subject of a report by the Commonwealth Competitive Neutrality Complaints Office.

1.4 Examination of export goods

The power to examine goods for export is considered crucial to the control of exports, for the detection of prohibited exports and the prevention of evasion of excise duty or GST liability by diversion of goods into the domestic market. The general power of Customs to examine goods applies to goods that are 'subject to the control of Customs'. A principal impediment to the effective control of exports are the limitations imposed by section 30(1)(d) of the Act in respect of the types of, and the places at which, goods become subject to Customs control. Section 30(1)(d) of the Act provides that goods for export to which conditions apply are subject to the control of Customs from the time they are brought to a prescribed place for export. Prescribed places include ports, airports and licensed Customs depots. The difficulty is that not all goods for export can be examined at such places either because of the limited time that they are located there, or the way in which they have been packaged for export.

2. POLICY OBJECTIVES

Customs must prevent the exportation of prohibited exports and the evasion of government revenue through diversion of goods into the domestic market. In order to perform these roles, Customs must be able to risk assess information about consignments departing Australia. Customs also collects statistical information regarding exported goods for both the ABS for balance of trade statistics and the Australian Taxation Office (ATO) for GST risk-assessment and compliance purposes.

The objective is to enhance Customs capacity to perform these functions without placing an undue compliance burden on industry.

3. OPTIONS

3.1 Outwards Manifests

3.1.1 Continue Current Practice
The current industry practice of providing outward manifests close to the departure of the vessel or aircraft makes it difficult for Customs to adequately screen the cargo to be exported on board that vessel or aircraft to investigate the presence of prohibited exports. This increases the potential for the exportation of prohibited exports and the difficulty to verify the exportation of goods for GST purposes.

As the manifests are reported prior to departure, when the carrier is not aware of all of the cargo loaded on board the vessel or aircraft, it is common for cargo to be excluded from the manifest presented to Customs. This results in cargo not being considered exported for statistical purposes, requiring significant effort from Regional Exports Processing sections to correct the manifests after departure.

The current arrangements are wasteful of Customs resources, do not allow Customs to adequately undertake its responsibilities with regard to the examination of export cargo and do not provide the desired quality of export data.

3.1.2 Cargo Status Reporting at Cargo Terminal Operators and Post-Departure Lodgement of Manifests
As the current outward manifest inadequately fulfils two functions, it would be more appropriate to develop separate mechanisms to fulfil each of these functions individually. This would require one instrument to inform Customs of goods for export arriving at a Cargo Terminal Operator (CTO) for examination purposes and another to report the goods exported on each vessel or aircraft for statistical purposes.

When goods are delivered to a CTO, the Customs document number for the consignment or consolidation (eg, Export Declaration Number, Transhipment Number) is reported to Customs by the CTO. This will inform Customs of the location of goods for export and whether or not they have an ATD. As it is unlikely that the goods would have been loaded for export at this stage, Customs has the opportunity to adequately risk assess and examine the goods, if necessary. This also has benefits in preventing the diversion of underbond and goods for which GST-free status has been claimed into the domestic market (refer 3.2.2).

Many carriers are unable to provide Customs with a complete outward manifest until after vessel or aircraft departure. Since the manifest will not be needed to determine the location of the goods, it is possible for it to be required at some time after departure. This will ensure that carriers have more time to finalise their manifests to provide Customs with complete and accurate information, thus meeting ABS requirements.

3.1.3 No Reporting of Export Cargo to Customs

A common approach used in other countries is not to collect information regarding goods for export prior to the exportation occurring. In these cases, exporters or agents provide the relevant Customs agency with a periodic post-departure report to allow for the compilation of export trade statistics. Risk assessment of export cargo is based on gathered intelligence.

Under this option, exporters would prepare a summary of the goods that they have exported over the last month and provide this to Customs. This would be used as the basis for any future risk assessments and also be provided to the ABS and the ATO for use in the compilation of trade statistics and for GST risk assessment. This would not meet Permit Issuing Agency requirements for the control of prohibited and restricted goods for export.

3.2 The Exportation of Goods Under Customs Control

3.2.1 Continue Current Practice

Currently, underbond goods may only be released from a licensed warehouse for export if the goods have been entered for export and have an ATD. The only resource available to warehouse proprietors to check those requirements is to examine the Export Clearance Number (ECN) of the consignment to see if it is clear (ATD) or in error (no ATD). As this method is open to manipulation of the status-character of the ECN (the 'C' for clear or 'E' for error), it is possible for goods without an ATD to be released from a warehouse. As the details of the entry are not validated against Customs systems, it is also possible for an ECN that does not relate to the particular goods being removed from the warehouse to be used.

This has the potential to, and does, result in goods subject to Customs control being diverted into the domestic market and significant amounts of government revenue being evaded. In addition, there is an uncertainty as to the liability of the licensed warehouse proprietor when goods are released when only a fraudulent ATD is provided by the exporter.

3.2.2 Require the Movement of Goods Under Customs Control to be Reported to Customs

Diversion of goods under Customs control generally occurs for a number of reasons. These include:

- no ATD for the goods exists;
- goods in quantities in excess of that specified in the ATD are released from the warehouse; and
- goods released from a warehouse are not accounted for at their destination.

If these problems are addressed, the likelihood of goods under Customs control being diverted should be significantly reduced.

To this end, prior to goods being released from the licensed Customs warehouse Licensed under section 79 of the Act), the existence of an ATD for the goods to be released should be verified with Customs. The warehouse proprietor should electronically check the validity of the ATD presented to them and that it is related to the goods to be released. Only if the goods to be released are the same as those reported on the export entry should the goods be released. Customs should also be made aware of this release at the time that it occurs for risk assessment purposes.

All data validation will be undertaken electronically by Customs systems with minimal impact upon the warehouse proprietor.

Goods under Customs control may be sent to either a CTO or consolidated for export. If they are to be exported directly, the ATD should be reported to Customs by the CTO (refer 3.1.2). If the goods are to be consolidated for export, this should occur at a Customs place, namely a licensed Customs depot (licensed under section 77G of the Act)so that the goods remain under Customs control.

When the goods arrive at the depot for consolidation, they should be reported to Customs by the depot proprietor. This will inform Customs of the location of the goods and the time that it took for them to arrive from the warehouse from which they were released. After the goods have been consolidated, their release should be communicated to Customs in the form of an acquittal of the submanifest number (CRN) that relates to the consolidation. The goods will then be sent to a CTO.

This option will allow Customs to track the movement of underbond goods from the warehouse to depot to CTO in real time and use this information for risk assessment purposes.

3.3 Export Entry Thresholds

3.3.1 Maintain Current Threshold Values

The current export entry thresholds vary for postal goods and goods exported as air or sea cargo. Postal consignments valued at $2000 or under do not require an export entry. Consignments exported by air or sea do not require an export entry if they are of a single statistical item (under the Australian Harmonised Export Commodity Classification) and valued at $500 or less. This current situation causes confusion, particularly with regard to air and sea cargo as the classification of the goods, in addition to their valuation, affects the entry requirements.

There is also confusion as to where the thresholds actually take effect. The postal threshold is for consignments exceeding $2000, ie, any consignments valued at $2001 and over require an entry. The threshold for air and sea cargo is for consignments exceeding $500, ie any consignments valued at $501 and over require an entry.

It has been repeatedly suggested that the current arrangements offer an unfair advantage to Australia Post, in that the cargo exported by them is subject to less

stringent regulatory requirements than those applying to other segments of the export industry. This is of particular concern to the air courier industry , where types of cargo similar to that exported by Australia Post are exported by this industry.

3.3.2 Align the Export Entry Threshold for Air, Sea and Postal Cargo at $2000
Aligning the export entry thresholds for all cargo simplifies the export entry requirements for industry. It also allows Australia Post and the air courier industry, which have developed a service similar to that of Australia Post, to compete within the same regulatory environment. The new threshold for all cargo would be that any consignment valued at under $2000 would be exempt from export entry requirements, unless the consignment requires an export permit or licence; is subject to Customs or excise duty; or is subject to a Drawback claim or exported under the Tradex scheme..

Those consignments that require an export permit or licence will not be subject to the export entry exemption, ie, all goods requiring an export permit or licence will require an export entry. In addition, if the goods are subject to Customs or excise duty and that duty has not been paid, the goods will require an export entry, regardless of value.

This option will not have significant impact on Balance of Merchandise Trade statistics: advice from the ABS is that raising the export threshold to $2000 for air and sea cargo consignments will cause the loss of 0.3% of trade data by FOB value. This option will, however, significantly reduce the number of consignments reported to Customs by 22%.

3.3.3 Align the Export Entry Threshold for Air, Sea and Postal Cargo at $500
As with the above option, there are benefits for industry in aligning the export entry thresholds for all modes of export. The need for reporting all cargo requiring an export permit or licence, or subject to Customs or excise duty, will also apply.

As consignments exported via Australia Post valued between $500 and $2000 do not require an export entry, and these goods would require an export entry under this option, it is impossible to determine the volume of consignments that would be captured by this option. Given that raising the air and sea cargo threshold to $2000 is deemed by the ABS not to have significant statistical impact, it would be reasonable to assume that this option would not have a significant impact either.

3.4 Examination of Exports
3.4.1 Maintain current arrangements
The low number of examinations will continue because of the lack of time at the wharf in which to examine the goods. This will hinder Customs ability to perform its functions under the GST legislation, namely to verify that goods destined for export are in fact exported.

3.4.2 Extend the powers of examination before Customs control commences
The object of these powers is to confer powers on authorised officers to enter premises and examine goods that are reasonably believed to be intended for export. The powers are exercisable before the goods become subject to the control of Customs and are conferred for the purpose of enabling officers to assess whether the

goods meet the requirements relating to exports. The powers are exercisable only with the consent of the occupier of the premises at which goods are situated.

4. ASSESSMENT OF IMPACT

4.1 Outwards Manifests

The impact assessment for outwards manifests is based on the option of making use of cargo status reporting at CTOs and the post-departure lodgement of manifests (3.1.2).

4.1.1 Impact Group Identification

(a) Cargo Terminal Operators

CTOs will be required to communicate with Customs, whereas they are currently not required to do so. Depending on the size of the CTO and the type of cargo they handle (air/sea, containerised/bulk), they may be affected differently.

(b) Carriers

Sea and air carriers are required to lodge an outward manifest for their vessels or aircraft.

(c) Exporters and Agents

Export entries for goods delivered to a CTO may have to be lodged earlier than is currently the case to allow their admittance to the CTO. While most CTOs already require an ATD to admit cargo, there is still the potential for persons lodging export entries, ie, exporters and their agents, to be affected in the initial stages of the implementation.

4.1.2 Assessment of Costs

(a) Cost to Government

The proposal does not require any more staff than is currently the case, as staffing resources used to screen export cargo, primarily Clearing Clerks, will not be required to screen manifests prior to clearance. The resources made available can therefore be applied to the risk management of goods reported by the CTO prior to exportation.

The development of the electronic systems by Customs is already accommodated within the budget of the Australian Customs Service.

(b) Cost to Business

(i) Cargo Terminal Operators

The proposal will require CTOs to communicate the Customs document number for the consignment or consolidation (eg, Export Declaration Number, Transhipment Number) to Customs when goods are received at the CTO gate. In order to account for the possibility of invalid numbers being reported, a second field (such as container number or air waybill number) would also have to be reported as a cross-check. Accordingly, there is the potential for greater data entry requirements by the CTO upon receival of export cargo. The transmission costs should be significantly reduced through the use of the Customs Connect Facility (CCF), which will allow communication with Customs via the Internet.

Many CTOs already communicate with Customs for the purposes of imported cargo, through Sea Cargo Automation (SCA) and Air Cargo Automation (ACA), so the infrastructure for CTOs to communicate with Customs should already be in place.

CTOs will not be required to turn cargo away if it does not appear to have an ATD.

(ii) Exporters and Agents
Currently, an ATD does not need to be obtained by an exporter until prior to the goods being loaded for export. Under this option, the exporter will need to lodge an entry and obtain an ATD prior to the goods being delivered to the CTO. This may require a change in business practices.

4.1.3 Assessment of Benefits
(a) Benefit to Government
Through the use of status reporting at the CTO, Customs and its client agencies will be better placed to locate and identify goods for export and, if necessary, examine them. The use of post-reporting of outward manifests will ensure that the quality of data provided on these documents is of a higher quality and is more useful for statistical and GST purposes.

This is of particular importance given Customs role in GST compliance in relation to export goods. A reporting regime such as this is necessary for Customs to verify the exportation of goods for GST purposes and to minimise the diversion of dutiable underbond goods into the domestic market. Under current arrangements, this is not possible.

(b) Benefit to Business
(i) Carriers
Carriers (airlines and shipping companies) will not have to provide an outward manifest to Customs until after the departure of the vessel or aircraft. This will allow them to make use of the manifests that they compile for their own business purposes (which is normally done after departure), rather than having to create a separate one for Customs.

(ii) Cargo Terminal Operators
CTOs will be aware of the status of the goods in their premises. In the cases where goods without an ATD are delivered to a CTO, a CTO may accept them but choose not to load them until the ATD has been obtained. This will reduce the likelihood of cargo that has no ATD being offloaded from a vessel or aircraft at Customs request, with the extensive costs usually borne by the CTO.

Electronic reporting should fit into current and future electronic initiatives considered by the industry, such as the use of transponders and electronic Export Receival Advices.

4.2 The Exportation of Goods Under Customs Control

The impact assessment for exportation of goods under Customs control is based on the option of requiring the movement of those goods to be reported to Customs (3.2.2).

4.2.1 Impact Group Identification

(a) Customs Warehouses

Customs warehouses (licensed under s79 of the Act) will be required to communicate the details of goods released from and accepted back into their premises with Customs.

(b) Licensed Customs Depots

Licensed depots (under s77G of the Act) will be required to communicate the details of goods accepted into and released from their premises with Customs.

(c) Depots, other than Licensed Customs Depots

Goods under Customs control will not be able to be consolidated at a depot other than a licensed Customs depot. This may have an affect on those depots that are not licensed with Customs.

(d) Exporters and Agents

Exporters will be required to consolidate goods under Customs control at a licensed depot. This may affect their current business practices.

(e) Freight Forwarders and other Consolidators

Freight forwarders and other companies that arrange the consolidation of goods under Customs control will be required to consolidate goods under Customs control at a licensed depot. This may affect their current business practices.

4.2.2 Assessment of Costs

(a) Cost to Government

Reporting the movements of goods to Customs will allow Customs to utilise its existing staffing resources more efficiently and effectively, so any increase in staffing costs would be due to an increased compliance effort.

The development of the electronic systems by Customs is already accommodated within the budget of the Australian Customs Service.

(b) Cost to Business

(i) Customs Warehouses & Licensed Customs Depots

While these premises are currently required to keep records relating to the goods that they accept, hold and release in accordance with Customs legislation, they are not currently required to communicate this information to Customs on a real-time basis. Costs may be incurred in the development of systems to allow these premises to communicate to Customs and through changes to current business practices. The transmission costs should be significantly reduced through the use of the CCF, which will allow communication with Customs via the Internet.

(ii) Depots, other than Licensed Customs Depots
The legislative requirement for goods under Customs control to be consolidated at a licensed Customs depot will provide these depots with a stronger position in this segment of the market. Depending on the importance of the consolidation of goods under Customs control to unlicensed depots, this may have an adverse affect on the business of these depots.

(iii)Exporters and Agents, Freight Forwarders and other Consolidators
The requirement for goods under Customs control to be consolidated at a licensed Customs depot will provide these depots with a stronger position in this segment of the market. This will reduce the choice of depots available to exporters, their agents, freight forwarders and other consolidators.

4.2.3 Assessment of Benefits
(a) Benefit to Government
Customs will be able to maintain a greater level of control over goods subject to Customs or excise duty liability. By making the controls over the movement of these goods more effective, and by having access to information relating to the movements of these goods, Customs will be more able to prevent the diversion of underbond goods into home consumption and the resultant loss of government revenue.

There are currently insufficient controls in place to ensure that goods removed from a Customs warehouse are released with the necessary ATD. Goods are often removed without an ATD, or with an ATD that refers to goods other than those removed. This can lead to difficulties in determining which party (the warehouse proprietor or exporter/agent) is responsible for the duty liability in the event that the goods are diverted into the domestic market.

By communicating with Customs in real-time, warehouse proprietors will be able to determine whether or not goods should be released. As Customs will provide the warehouse proprietors with an approval to release or not in real-time, there should be less uncertainty over which party is at fault for releasing goods with an ATD.

(b) Benefit to Business
(i) Customs Warehouses
Benefits arising from less uncertainty for liability of releasing goods without an ATD, as specified above, also apply to the proprietors of Customs warehouses.

(ii) Retailers of alcohol and tobacco
When goods are diverted from Customs control into the domestic market (usually tobacco products and spirits), a revenue liability to the Commonwealth is evaded. In doing so, the person in possession of these goods is able to sell them at a price significantly below the current market price. Accordingly, those proprietors who trade in goods on which all relevant Commonwealth revenue has been paid are at a considerable disadvantage in the marketplace. Law-abiding retailers of alcohol and tobacco would benefit from a reduction in the amount of diverted alcohol and tobacco in that there would be fewer retailers with an unfair competitive advantage.

(iii)Licensed Customs Depots
The legislative requirement for goods under Customs control to be consolidated at a licensed Customs depot will provide these depots with a monopoly on this segment of the market. Depending on the size of this segment of the market and the degree to which it is conducted in unlicensed depots, this may have a positive affect on the business of licensed Customs depots.

4.3 Export Entry Thresholds

The impact assessment for export entry thresholds is based on the option of aligning them at $2000 for goods exported by air, sea and post (3.2.2).

4.3.1 Impact Group Identification
(a) Exporters and Agents
Exporters or their agents are required to lodge export entries in order to export goods from Australia. A change in the export entry threshold may affect them.

4.3.2 Assessment of Costs
(a) Cost to Government
Aligning export entry thresholds for goods exported by all modes of export will reduce the number of export entries by approximately 22%, however this will only reduce the total value of reported cargo by 0.3%. Therefore, while there will be little statistical loss from a reduction in the value of entries lodged with Customs, there will be a significant reduction in the number of entries lodged and hence the risk-assessment that may take place for export cargo. This effect can be reduced through the greater use of exempt goods information provided on cargo reports.

Export entries will still be required for goods under $2000 that require an export permit or licence or are subject to Customs or excise duty. Therefore Customs will still be provided with sufficient information to adequately risk assess these high risk goods.

(i) Cost to Business
(i) Australia Post
Australia Post will be placed in a similar regulatory environment to the air courier industry, as exporters of goods valued at less than $2000 will not require an export entry, regardless of how the goods are exported.

4.3.3 Assessment of Benefits
(a) Benefit to Government
Export entry data is transmitted to the ABS every night for the compilation of trade statistics. Fewer export entries will mean that there will be fewer transmission costs involved in Customs sending the information to the ABS.

(b) Benefit to Business
(i) Exporters and Agents
Fewer export entries will be required for cargo exported via air and sea. This will impose a smaller regulatory burden on the export industry, reducing the number of export entries lodged with Customs by about 22%. This will reduce the cost and effort of exporters complying with government export requirements.

(ii) Air Courier Industry
The alignment of export entry thresholds to $2000 for all modes of export will allow the air courier industry and Australia Post to operate in the same regulatory environment.

4.4 Examination of goods not yet subject to Customs control

4.4.1. Impact Group Identification
Exporters (including owners, freight forwarders, customs agents, air couriers, slot charterers, export consolidators, shipping companies, airline companies, etc.)

4.4.2 Assessment of Costs and Benefits
a) Importers/Exporters

It is anticipated that any costs incurred by the export industry resulting from examination of export goods at premises other than wharves or airports would be in the form of lost time and production as a result of providing access to premises and goods to Customs officers. However, it is believed that the benefit to industry will outweigh the costs. Export cargo can be examined at the exporter's premises before the cargo is scheduled for delivery to the place of export. This will avoid delays and costs resulting from examination at wharves and airports where containers would have to be unpacked and repacked before the goods can be loaded onto the vessel or aircraft. It should also be noted that this power can only be exercised at the consent of the occupier of the premise where the goods are located.

b) Government

Customs will be able to monitor and control export cargo better. Furthermore, statistics gathered on behalf of the ABS will more accurately reflect the current exporting climate.

It is not envisaged that there will be any impact from the proposed changes on general trade outcomes for Australia.

5. CONSULTATION

5.1 Outwards Manifests

5.1.1 Government Agencies
(a) Australian Bureau of Statistics
Discussions have been held with the ABS regarding the use of post-reporting of manifests. Their opinion is that, since they currently receive manifest information three days after acquittal (ie, departure) when the manifest has been finalised, there will be little, if any, negative impact from the post-reporting of manifests if this is done in a timely manner. Given that these post-reported manifests should be more accurate than those currently submitted, there should be less likelihood for inaccuracies and idle ECNs, thus enhancing the ability of the ABS to develop trade statistics from manifest information.

5.1.2 Business
Original industry consultation arose as a part of the EXIT Evaluation 1997. This option is closely based on the CMR Business Model proposed by industry in late 1999. More recently, there has been consultation with specific focus groups as well as informal discussions with individual representatives of industry. The proposal for post-reporting of manifest is widely supported by carriers, while CTOs can see benefits in the proposal for status reporting.

5.2 The Exportation of Goods Under Customs Control

5.2.1 Government Agencies
The ATO is aware of this proposal and in favour of increasing controls on the movement goods subject to Customs or excise duty in order to reduce the possibility of loss of Commonwealth revenue arising from diversion of these goods into home consumption.

5.2.2 Business
Original industry consultation was conducted as a part of the EXIT Evaluation 1997. Current industry consultation is ongoing.

5.3 Export Entry Thresholds

5.3.1 Government Agencies
(a) Australian Bureau of Statistics
Preliminary discussions have been held with the ABS regarding changes to the export entry thresholds. In terms of the statistical data that will be lost by increasing the air and sea export entry threshold, the ABS reported that if the threshold was raised to $1000, they would lose 0.1% of statistical data. If the threshold was raised to $2000, the ABS would lose 0.3% of statistical data. The ABS considered these to be insignificant amounts, hence the proposal to raise the threshold to $2000 will not be a significant issue for the ABS.

5.3.2Business
Original industry consultation arose as a part of the EXIT Evaluation 1997. More recently, there has been consultation with specific focus groups and informally. Industry widely supports the raising of the export entry threshold for air and sea cargo from $500 to $2000.

5.4 Examination of goods not yet subject to Customs control

The proposals were discussed with industry during the series of national seminars in July and August this year. Industry did not appear to have any concerns, given that the proposed powers are consent based.

6. CONCLUSION AND RECOMMENDED OPTION

6.1 Outwards Manifests

6.1.1 Cargo Status Reporting at Cargo Terminal Operators and Post-Departure Lodgement of Manifests

The conclusion is that the use of cargo status reporting at CTOs and post-departure lodgement of manifests is the preferred option. It will effectively provide Customs with the ability to identify and locate goods for export prior to departure for both Customs purposes (prohibited exports) and ATO purposes (GST export verification). It will also ensure that more accurate information can be supplied to the ABS for statistical purposes and to the ATO for GST compliance purposes.

The current measures used by Customs are ineffective for risk assessing goods for export and the collection of statistical and GST-related information.

There has been a greater need for identification and examination of export cargo under Customs responsibility to verify exportation of goods under the GST. The current arrangements are unable to sufficiently meet Customs needs.

6.2 .The Exportation of Goods Under Customs Control

6.2.1 Require the Movement of Goods Under Customs Control to be Reported to Customs

The requirement of Customs warehouses and depots to report the movement of goods under Customs control is the preferred option. It will most effectively provide Customs with the ability to monitor, and intervene in, the movement of goods under Customs control. The measures currently in place are ineffective in preventing the diversion of high-revenue goods into home consumption.

6.3 Export Entry Thresholds

6.3.1 Align the Export Entry Threshold for Air, Sea and Postal Cargo at $2000

The preferred option with regard to export entry thresholds is to align the thresholds for air, sea and postal cargo to $2000. While Customs will lose approximately 22% of export entry data, the increased amount and consistency of exempt goods information should assist Customs officers in the risk-assessment of export cargo.

6.4 Examining goods not yet subject to Customs control

6.4.1 Introduce power to examine goods for export before they are subject to Customs control

The desired option for Customs is for these powers to be consent based. The objective is to confer powers on authorised officers to enter premises and examine goods that are reasonably believed to be intended for export. The powers are exercisable before the goods become subject to Customs control and are only exercisable with the consent of the occupier of the premises at which the goods are situated. They will assist Customs in fulfilling requirements on behalf of the ATO.

Chapter 1 - Cargo Management Re-engineering

Outline of Chapter

This Chapter explains the changes to the Customs Act made necessary following the development of a new integrated cargo management system that allows people to communicate with Customs using "open" forms of communication such as the Internet.

This Chapter also explains the new concepts of:

- an import declaration;
- a warehouse declaration;
- a self-assessed clearance declaration;
- the new legislative provisions permitting Customs to advise owners of goods whether their goods are clear to enter Australian commerce; and
- changes to transhipment provisions.

Detailed Explanation of the Law

Maintenance of Electronic Communication Systems by Customs

The Customs Act currently sets out a number of electronic systems for people to use when wishing to communicate with Customs electronically. For example:

- reports of cargo (and some applications to move goods) can be made either by the Sea Cargo Automation System or the Air Cargo Automation System established by section 67A of the Act;

- COMPILE is used to make entries for home consumption. It is established by Division 4A of Part IV of the Act; and

- the EXIT system created by Division 3 of Part VI to the Act establishes the method of communicating information about exports.

These systems are sometimes described as "legacy systems".

In preference to this multiplicity of computer systems, Customs is creating an single integrated system so Customs and its client base can communicate with each other in relation to cargo being imported to and exported from Australia. This is known as the Cargo Management Re-enineering Project, or CMR

This gives effect to the terms of the recently amended Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, which requires Customs administrations to allow the lodging of information by electronic means.

Generally speaking, people will be able to give Customs information via "open" communication systems that satisfy the technical requirements set down by Customs to ensure the integrity of the information received. This could include the use of the public Internet.

As a result of this, provisions of the Customs Act referring to specific systems such as COMPILE and Sea Cargo Automation are to be removed from the Act. Part 4 of Schedule 3 and ***item 99 of Part 5 to Schedule 3*** removes from the Act provisions relating to "legacy systems" not otherwise removed from the Customs Act by other changes contained in this bill.

Items 82 and 84 of Part 4 to Schedule 3 and item 99 of Part 5 are savings provisions which commence the day the legislation receives the Royal Assent. They preserve the status quo in relation to communications made by those legally eligible to use the legacy systems, between the day of Royal Assent and the proclamation of the provisions establishing CMR, once CMR is ready to start.

Item 1 of Part 1 to Schedule 3 adds a ***new section 126D*** of the Act, which requires the CEO to maintain information systems so people can communicate with Customs electronically.

It also adds ***new section 126E*** of the Act. This requires the CEO to Gazette:

- the information technology requirements that have to be met by a person wishing to communicate information with Customs;
- the action a person has to take to verify the receipt of information communicated to Customs;
- the information requirements that have to be met to satisfy a requirement that a person has "signed" an electronic communication; and
- information technology requirements to be met to satisfy a requirement that a document be produced to Customs when that document is produced electronically.

This advises the community of the CEO's requirements that must be met before communications can be sent to Customs electronically, as permitted by Part 2, Division 2 of the *Electronic Transactions Act 1999.*

These requirements are to ensure electronic communications are secure, and as far as practicable protected from corruption.

This is an example of a requirement likely to be Gazetted.

Proposed ***new paragraph 126D(2)(c)*** allows the CEO to determine the electronic technology requirements that have to be met to satisfy a requirement that a person's signature be given to Customs in connection with information, when the information is communicated electronically.

So that current Government policy can be implemented, and there is a degree of assurance that the person communicating with Customs is the person they claim to be, it would be desirable for the CEO to require an entity with an ABN to use a digital

certificate which includes that entity's ABN, issued by a certification authority approved by the National Office of the Information Economy.

Where the CEO is satisfied that a Customs information system will be inoperative for a significant period, people wishing to communicate with Customs may either utilise another system used by Customs, or paper.

However, where paper is used, ***new section 126E*** of the Customs Act provides that the person must then provide the information electronically to Customs within 24 hours from the time the CEO advises on the Internet, or, where practicable, by E-mail that the system is again operative. Failure to do so can lead to a penalty of 50 penalty units.

It is recognised that most payments made to Customs use electronic funds transfer (EFT) technology. When the system is inoperative, payments to Customs can't be made, and according to law, goods can't be taken into Australian commerce.

A ***new section 126F*** allows Customs to accept an undertaking given by a person that they will make all payments owing on the importation of goods within 24 hours of the system again becoming operative.

Failure to discharge an undertaking can lead to a penalty of up to 50 penalty units.

The Importation of Goods

Items 38 and 39 of Part 2 to Schedule 3 will repeal sections 71A to 71D and sections 71F to 71L of the Customs Act.

These provisions govern how information (other than that contained in arrival, cargo and outturn reports) is provided to Customs, and how goods move from Customs control, and into Australian commerce.

As a general rule, the substance of the old provisions remain. However, there are a number of small changes. These are now outlined.

To make the terms of the Customs Act more modern, references to making reports "by computer" have been removed. Instead, reports that must be reported using the new system are required to be made "electronically". To confirm this, ***item 95 of Part 5 to Schedule 3*** inserts into subsection 4(1) of the Act a definition of "***electronic***". In relation to a communication, the term "electronic" is defined to mean the "transmission of a communication by computer".

There is one other important change in nomenclature. The legislation creates the concept of "import declarations" and "requests for cargo release" (or "RCRs").

. "RCRs" are discussed in greater detail in Chapter 2.

The Kyoto Convention uses the term "declaration", rather than the traditional Australian term of "entry". The Customs Act is amended to reflect the term used internationally.

That notwithstanding, ***item 34 of Part 2 of Schedule 3*** adds a ***new subsection 68(3A)*** that says that an "entry for home consumption" is made by communicating either an import declaration or RCR to Customs.

This is important so other legislation which uses the term "entry for home consumption" can continue to operate.

An example of this sort of legislation is section 16AC of the Quarantine Act 1908, which says that regulations may provide for a notice to Quarantine of the proposed importation of goods can be made in an "entry" for home consumption.

Other changes are in ***new sections 71K and 71L***. These proposed amendments provide that the CEO may set out the information required in (amongst other things) an import declaration. It is proposed to remove any doubt the CEO can make more than one type of import declaration for different circumstances, or different classes of importers.

This is so importers importing goods with a limited customs value can make an import declaration that contains less information than a "full" declaration.

It is proposed that goods with a customs value between $250 and $1000, or such other value as may be set out in the Regulations will be able to use the simpler declaration. The import processing charge payable for making this communication will be less than that payable for a "full" import declaration. For further information, see the explanatory memorandum to the Import Processing Charges Act 2000.

A further change to these provisions will allow Customs to have goods under Customs control held where they are presently located.

Currently, when an application is made to move goods into either Australian commerce or to another place under Customs control, Customs can either approve the move or require the goods to be moved somewhere for further examination.

One of the greatest risks of prohibited imports going into Australian commerce is when a consignment of goods is moving.

Therefore, where Customs has yet to complete an assessment of the possible risks goods contained in a particular consignment pose, such as where a cargo report has been provided late, the law will give Customs the capacity to hold goods at their current location, until it and other agencies (such as AQIS) have completed their risk assessments.

The final change allows an officer of Customs to suspend or cancel an authority given by Customs to take goods into Australian commerce where there are grounds to believe there has been a breach of a "Customs-related law."

Item 11 of Part 5 to Schedule 1 adds a ***new section 4B*** to the Customs Act. It provides that a Customs-related law is the Customs Act, the Excise Act 1901 (and regulations) or any other Act (and their regulations) which relates to either the importation or exportation of goods, where the act of importation or exportation is subject to any restrictions, charges or taxation.

New subsections 71C(11)-(14) allow an officer of Customs to suspend an authority, effective from the time the notice is served (if on paper) or sent (if communicated electronically). The officer must set out the reasons for the suspension, and where there are no reasonable grounds to believe there is a breach of a Customs- related law, revoke the notice.

These powers are necessary because sometimes Customs receives late information suggesting the contents of a particular consignment breach a customs related law. The capacity to take appropriate action is thus necessary to be contained in the legislation.

Finally, ***item 44 of Part 2 to Schedule 3*** amends ***subsection 167(3A)*** of the Customs Act, which governs how payments under protest are made. This is one way in which an importer indicates that it disputes an assessment of customs duty made by Customs. The section is amended so that a "payment under protest" can only be made at the time of making payment in respect of goods following an import declaration advice, or a periodic declaration.

However, to remove any confusion, ***item 45*** makes clear that the old subsection 167 (3A) remains applicable to entries made using the former COMPILE computer system, made prior to the commencement of provisions removing recognition of the COMPILE system, even after the new legislation commences operation.

Self- Assessed Clearance Declarations

Item 37 of Part 2 to Schedule 3 introduces the new concept of a self- assessed clearance declaration.

The ***new section 71*** of the Customs Act inserted by this legislation provides that unless:

- a particular communicator of information falls within a class of person set out in the Customs Regulations; or

- the goods being imported fall within a class of goods set out in the Regulations;

an owner of goods (as defined in the Customs Act) of a kind referred to in paragraphs 68(1)(e), (f), or (i) will have to report the importation of goods that have a customs value of less than $250 (or some other figure specified in the Customs Regulations) in a self- assessed clearance declaration. A self-assessed clearance declaration is not an entry and will require very little information such as whether or not the value of the goods exceeds the $250 threshold.

This self-assessed clearance declaration replaces the old “screen-free” process previously conducted by individual Customs officers.

Once the declaration is made, Customs decides whether the goods are to move into Australian commerce, or remain under Customs control. Where goods are to remain under Customs control, reasons must be given.

So long as the self-assessed clearance declaration charge (if payable) and any other charges and taxes are paid, the goods may then be moved into Australian commerce.

The ***new section 71AAA*** of the Customs Act provides the person making the self assessed declaration will be required to pay an import processing charge under the *Import Processing Charges Act 2000*. For further information, see the explanatory memorandum to the Import Processing Charges Bill 2000.

However, the Regulations will be able to exempt particular classes of people from having to pay the charge. In addition, those who report goods in an "abbreviated cargo report" (as defined by section 63A of the Customs Act), will not need to pay the self-assessed clearance declaration charge. This is because these persons operate under a legislative scheme with its own charging regime and if not exempted they would be paying two lots of charges.

Finally, the ***new section 71AAB*** of the Customs Act will allow a person to enter into an arrangement with the CEO to pay charges in respect of self-assessed declarations.

This is designed to assist people such as express carriers, who make many such declarations daily on behalf of their clients.

Payments must be made by the 21st day of the next month if no other arrangement has been made with the CEO.

Failure to pay the charges leads to an agreement being terminated, with the outstanding amount recoverable as a debt.

Section 71 of the Customs Act currently provides that where goods are not required to be entered the owner of the goods must provide certain information to Customs. Section 71 is being replaced by ***Item 37 of Part 2 of Schedule 3*** and in respect of certain goods not required to be entered the owner or person acting on behalf of the owner must communicate information to Customs.

Subsection 132(4) of the Customs Act sets out the time at which the rate of duty is determined for goods whose owner is required by section 71 to provide information about them.

Subsection 132(5) of the Customs Act sets out the time at which the rate of duty is determined for goods whose owner is not required by section 71 to provide information about them.

Item 3 of the table in subsection 132AA(1) of the Customs Act sets out when duty must be paid on goods whose owner must provide information about them under section 71.

Items 41A, 41B and 41C of Schedule 3 will amend these provisions to reflect the changes proposed to be made to section 71, ie that in some circumstances the owner of goods or a person acting on behalf of the owner must provide information about the goods.

Transhipment

Under the current Customs Act, goods that are imported into Australia, but have as their ultimate destination a place overseas are called "transhipped" goods.

The current section 68 of the Customs Act requires these goods to be "entered".

Items 32 and 33 of Part 2 of Schedule 3 and ***item 42 of Part 2 to Schedule 3*** removes the requirement to "enter" transhipped goods currently contained in sections 68 and 128 of the Customs Act, so as to simplify cargo processes.

However, so as to ensure Customs' control over these goods is not compromised, ***item 35 to Part 2 to Schedule 3*** adds a ***new section 68A***, which provides an officer of Customs with the power to order that particular goods not move from where they are, or to deliver them to a particular place for the purposes of examination.

To further ensure that Customs has the right to exercise powers such as the power to examine goods, ***item 28 of Part 2 to Schedule 3*** adds a ***new paragraph 30(1)(ae)*** of the Customs Act, to make clear these goods are under Customs control whilst in Australia.

Warehouse Declarations

Item 38 of Part 2 to Schedule 3 inserts a new Subdivision D to Division 4 of Part IV of the Act.

The existing provisions relating to the regulation of goods bound for warehouses licensed under Part V of the Customs Act are currently combined with provisions dealing with the entry of goods.

To assist the readability of the Act, provisions dealing with goods going to customs warehouses have been separated from provisions dealing with other goods.

The legislation imposes the same conditions and requirements on goods moving to a warehouse as those on goods that are going directly into Australian commerce.

Information that must be provided to Customs is now to be set out in a warehouse declaration. It is an approved statement made by the CEO of Customs, and can be disallowed by Parliament.

The only change is the warehoused goods declaration fee, payable under ***new section 71BA*** of the Customs Act. The current formula used to calculate the current warehoused goods fee is removed.

Instead, the legislation imposes a flat fee of $23.80 (or an amount not exceeding $34.80 as set by Regulation) for electronic declarations, and $60 (or an amount not exceeding $90, as set by Regulation) for documentary declarations.

Provision of Clearance Information

One of the products of Customs' redevelopment of its computer systems is a 'diagnostic' facility that makes it possible to provide specified persons with information relating to goods being imported into Australia.

Item 143 of Part 6 to Schedule 3 of the legislation adds a ***new section 77AA*** of the Customs Act.

Under that new section, Customs may tell a cargo reporter whether an impending arrival report made under ***new section 64*** of the Customs Act or an arrival report under ***new section 64AA*** has been made, and if so, the estimated or actual time of arrival of the ship or aircraft.

New subsection 77AA(1) provides that certain information can be released to a cargo reporter in respect of impending arrival reports and arrival reports. ***New suubsections 77AA(2) and (3)*** provide Customs may inform the owner of goods of the stage reached by Customs in deciding whether or not to give an authority to deal with goods that have been entered for import and the stage reached by Customs in considering a movement application.

New subsections 77AA(4) and (5) will allow Customs to disclose to an owner the stage reached by Customs in deciding whether or not to give an authority to deal with goods entered for export and the stage reached in preparing to give a submanifest number in respect of a submanifest.

Customs may also tell the owner of goods (as defined in section 4 of the Customs Act) the stage Customs has reached in its consideration of a request to move goods into domestic commerce, a warehouse, or to move goods under section 71E of the Customs Act.

The provision of this information is intended to aid those involved in the import/export process by allowing them to determine the status of their cargo at any point in time following provision of the necessary information to Customs.

Chapter 2 - Commercial Compliance Measures

Outline of Chapter

The purpose of the amendments detailed in this Chapter is to:

- improve compliance with the commercial obligations under the *Customs Act* in a self assessment environment;
- improve the accuracy of information that is required to be communicated to Customs in relation to imported and exported goods; and
- provide for clients who have a proven history of compliance with Customs commercial obligations to report information in a different way.

To achieve these outcomes the amendments detailed in this Chapter will amend the *Customs Act* to:

- extend the obligation to retain commercial documents to people who handle cargo imported into, or exported from Australia;
- introduce a new record keeping obligation on people who communicate information in relation to imported or exported goods;
- introduce consent based monitoring powers to assess a person's compliance with Customs-related laws, whether record keeping systems are capable of accurately recording and generating information to enable compliance with Customs-related laws, and the correctness of information communicated to Customs;
- extend the period for recovery of short paid duty from 12 months to 4 years;
- replace the existing administrative penalty system for false and misleading statements with strict liability offences with the administrative option of issuing an infringement notice for a reduced penalty in lieu of prosecting for the offence; and
- introduce the Accredited Clients Program for clients who can demonstrate that they provide accurate information to Customs.

Detailed Explanation of new law

Document Retention – Owners and Cargo Handlers

Section 240 of the *Customs Act* establishes an obligation upon owners of goods imported into, or exported from, Australia to keep commercial documents relating to the goods. In its current format this provision provides the majority of the obligations and powers considered necessary to enable a self-assessment regime based on post transaction audits to be effective. It does not, however, cover some sectors of Customs client base nor does it reflect technological change.

Who must keep commercial documents?

Item 17 of Part 6 of Schedule 1 to the Bill repeals and substitutes subsection 240(1A) of the Act. ***New subsection 240(1A)*** will ensure people retain documents relating to

all exports not only in respect goods that have been entered for export, as well as replacing the penalty in this subsection.

The amendments at ***item 18 of Part 6 of Schedule 1*** to the Bill impose a new document retention requirement on persons located in Australia who cause cargo to be imported into, or exported from, Australia or who receive cargo that is imported into, or to be exported from, Australia (***new subsection 240(1B)***). This new requirement will extend document retention obligations to persons such as freight forwarders and cargo reporters.

The documents that must be kept include all commercial documents relating to the cargo and its carriage to, or from, Australia that come into the person's possession at any time. Relevant documents are those that are necessary to assess whether the person is complying with a Customs-related law or the correctness of information communicated by, or on behalf of, the person to Customs (whether in documentary or other form). The documents are to be kept for a period of 5 years from the time when the goods were imported into, or exported from, Australia.

Manner of keeping commercial documents

The amendments at ***item 20 of Part 6 of Schedule 1*** to the Bill relate to the manner in which documents are to be kept and modernise the current requirements to take account of advances in technology and the globalisation of business. ***New subsection 240(4)*** provides that documents can be kept at any place, including a place outside Australia. ***New subsection 240 (5)*** provides that documents may be kept in any form and stored in any way (for example electronic, hardcopy, microfiche etc) provided that:

- they can readily be transformed into a document in English or translated to English; and
- they are kept in manner that enables a Collector to readily ascertain whether goods have been properly described and properly valued or rated for duty.

Persons required to keep documents are required, on request in writing by an authorised officer, to inform the officer as to the whereabouts of documents within a reasonable time (***new subsections 240(6) and (6A)***).

Offences/Penalties

Strict liability offences apply where a person:

- fails to keep the documents for the specified retention period;
- fails to inform an authorised officer the location of documents within a reasonable time;
- alters or defaces the documents (other than a notation or marking in accordance with normal commercial practice).

Penalty amounts for these offences are set at 30 penalty units. Minor amendments are also made to current ***subsections 240 (1), (1AA) and (1A)*** to change the current penalties of $2,000 to 30 penalty units in accordance with the standard level of

penalty for failure to meet document retention requirements under other Commonwealth Acts (***items 14, 16 and 17 of Schedule 1*** to the Bill refer). Current subsection 240(6) of the *Customs Act* provides for an increased fine of $5,000 in circumstances where a person has previously been convicted of a 'records offence'. This provision is being repealed by ***item 20 of Schedule 1*** to the Bill as it is inconsistent with current Commonwealth criminal law policy.

For a more detailed discussion of strict liability offences see Chapter 5 of this Explanatory Memorandum.

Production of Commercial documents

As commercial documents will now be able to be kept at a place outside Australia, the exercise of monitoring powers will not be sufficient for Customs to examine all documents for the purpose of assessing a person's compliance with a Customs-related law. ***New section 240AA*** will allow authorised officers to give written notice requiring persons to produce in Australia documents required to be kept under section 240. The amount of time specified in the notice for production of the documents is a minimum of 14 days (***new subsection 240AA(2)***). The minimum of 14 days for production will allow people who keep documents outside Australia sufficient time to obtain the document for production in Australia in accordance with the request. Note that failure to produce will be a strict liability offence under ***new section 243SB***.

Record Keeping – Communicators of Information to Customs

Many people who have reporting obligations in relation to imported or exported goods (importers, exporters, cargo handlers etc) use agents (both licensed Customs Brokers and other service providers) to communicate information on their behalf to Customs. In order to verify the content of such communications to Customs it is proposed to introduce a new record retention obligation on ***communicators*** of information to Customs (***new section 240AB***). The retention period for such records will be 12 months from the time of the communication is made (***new subsection 240AB(3)***). The 12 months retention period for communicators (compared to 5 years for commercial documents in section 240) acknowledges that the purpose of compliance audits of service providers is to verify the correctness of information that they communicate and to address any non-compliance by improving data quality in a real time context. Compliance audits of owners of imported and exported goods, on the other hand, will concentrate on confirming that the person's revenue related obligations over a longer period in relation to those goods have been met.

The provision is intended to be flexible enough to allow communicators of information to keep records in a variety of forms, for example:

- photocopies of commercial documents returned to clients;
- scanned, electronically stored copies of documents/invoices;
- by creating their own database of the information they receive; or
- notes of instructions received by phone.

The primary requirement of the record keeping obligation is that the *record verifies the content of the communication* to Customs.

Similar to the commercial document retention provisions for owners and cargo handlers, the records of communicators may be kept outside Australia (***new subsection 240AB(4)***), in any form and stored in any way provided that they can readily be transformed into a document in English or translated into English (***new subsection 240AB(5)***).

An authorised officer may give written notice requiring a person to inform the officer of the whereabouts of the records and to produce them for inspection at a place in Australia specified in the notice (***new subsection 240AB(6)***). The amount of time specified in the notice for production of the records is a minimum of 14 days (***new subsection 240AB(2)***). The minimum of 14 days for production will allow people who keep records outside Australia sufficient time to obtain the documents for production in Australia in accordance with the request. Note that failure to produce will be a strict liability offence under ***new section 243SB***.

Technical amendment

Item 22 of Schedule 1 to the Bill repeals section 240B of the *Customs Act*. This section provides that proceedings can be brought against a person for failure to keep documents under either section 240 (commercial documents in relation to imported and exported goods) or section 240A (records in relation to diesel fuel rebate applications). The section is redundant as, since amendments to the diesel fuel rebate system in 1997 (Act No. 97 of 1997), section 240A contains no offence.

Monitoring Powers

The amendments in Part 5 of Schedule 1 to the Bill amend the *Customs Act* to:

- Outline the monitoring powers;
- Outline when the monitoring powers may be exercised and by whom they may be exercised;
- Provide a modernised legislative framework in which to monitor compliance with the *Customs Act* and Customs related laws;
- Ensure that the ability to monitor and audit is in accordance with Government policy.

Item 13 of Schedule 1 to the Bill repeals the audit powers in sections 214AA, 214AB and 214AC of the *Customs Act* and substitutes new audit powers, known as 'monitoring powers'. The new powers will be used to assess -

- whether a person is complying with Customs related law;
- whether a person's record keeping, accounting, computing or other operating systems accurately record or generate information to enable compliance with a Customs related law; and
- the correctness of information communicated by a person to Customs.

These powers are intended to enable Customs to monitor compliance with both commercial and border control obligations on importers and exporters and people who cause cargo to be imported into, or exported from, Australia under the *Customs Act* and other Customs-related laws. Note that ***Customs-related law*** is defined in ***new section 4B*** (***item 11 of Schedule 1*** to the Bill) to include the *Customs Act*, the Excise Act and any other Act or regulations in so far as they relate to the importation or

exportation of goods, where the importation or exportation is subject to compliance with any condition or restriction or is subject to any tax, duty, levy or charge (however described). This broad definition of Customs-related law acknowledges that Customs performs import and export related compliance monitoring on behalf of other Commonwealth agencies, such as AQIS, the ATO and other permit issuing agencies.

The primary means of entry to premises for the purpose of exercising monitoring powers is through consent of the occupier of the premises (***new section 214AE***). Consent must be given and withdrawn in writing. Consent may also be given on a continuing basis; this form of consent may also be withdrawn. A warrant may be sought from a Magistrate either initially or where consent is refused or later withdrawn(***new section 214AF***). A monitoring officer may give to the occupier notice that the officer wishes to enter the premises and exercises monitoring powers (***new section 214AD***), but this is optional. Where notice is given, any voluntary notification after the issue of the notice will not be a defence to a statement that is false or misleading under ***new section 243T or 243U***.

Where a monitoring officer is in or on premises that he or she has entered with the consent of the occupier of the premises, the monitoring officer may ask the occupier to answer questions or to provide reasonable assistance. The occupier will not have committed an offence if the occupier does not abide by either request (***new subsections 214AH(1) and 214AI(1)***).

Where a monitoring officer enters premises under a warrant issued under ***new section 214AF***, the officer may require any person on the premises to answer any questions or to provide reasonable assistance (***new subsections 214AH(2) and 214AI(2)***). Failure to answer or provide reasonable assistance when a warrant is in force will be a strict liability offence (***new section 243SA and subsection 214AI(4))***.

The monitoring powers model includes the current power to inspect and make copies of documents in or on the premises to check the accuracy of information provided to Customs (***new paragraphs 214AB(1)(d)and (e)***). This has been expanded to include 'records', to mirror the document or record keeping requirements in ***new section 240AB*** (***item 20 of Schedule 1***).

As part of the monitoring powers, a monitoring officer will have the power to inspect, examine, count, measure, weigh, gauge, test or analyse, and take samples of anything in or on the premises (***new paragraph 214AB(1)(c)***). A monitoring officer will also be able to take into or onto premises any equipment or materials that are reasonably necessary to exercise certain monitoring powers listed in the provision (***new paragraph 214AB(1)(f)***).

Advances in technology have meant that much of the information communicated to Customs is provided electronically. It is therefore necessary to be able to conduct systems audits (***new paragraph 214AB(1)(g)***). These powers will allow Customs to check the ability of those systems used to accurately generate or record information or documents.

Similarly, electronic storage of records or documents used in the communication of information to Customs will now be permitted. It will be necessary to operate and copy such equipment at the premises to check whether the information is relevant for assessing compliance with a Customs-related law, or whether the information provided to Customs is accurate (***new subsection 214AB(2)***).

In entering premises and exercising monitoring powers it may be necessary to obtain assistance (section 214AC(4)). It may, for example, be necessary for a monitoring officer to use an information technology specialist to conduct systems audits.

The power to search premises is included as a monitoring power in accordance with similar schemes in other Commonwealth legislation (***new paragraph 214AB(1)(a)***). It might be necessary to exercise this power, for example, to search for documents or records on the premises that relate to the communication of information to Customs.

In entering premises and exercising monitoring powers a monitoring officer or person assisting a monitoring officer may use force only against ***things*** as is necessary and reasonable in the circumstances (***new subsection 214AC(4)***). It might, for example, be necessary to open a filing cabinet. There is no power to use force against persons in any circumstance.

A monitoring officer, whilst exercising monitoring powers, might find evidence of the commission of an offence against a Customs related law. It is therefore necessary for a monitoring officer to have the power to secure that thing until a warrant to seize can be obtained. The power to secure the thing lapses after 72 hours if a warrant to seize has not been obtained (***new paragraph 214AB(1)(h)***).

Customs must pay reasonable compensation where damage is caused to equipment or data recorded on the equipment as a result of insufficient care either exercised by an officer in selecting the person to operate the equipment or in the monitoring officer operating the equipment (***new section 214AJ***).

New sections 214AF and 214AG set out the requirements for the issue of a warrant for the exercise of monitoring powers in accordance with Commonwealth policy in relation to monitoring powers.

Monitoring officers

Customs officers will need to be authorised by the CEO to exercise the powers of monitoring officers under Subdivision J, Division 1, Part XII of the *Customs Act*. An authorised officer must be suitably qualified - they must have the ability and experience to exercise those powers (***new subsection 214AC(2)***).

Authorised officers will be issued with an identity card by the CEO under ***new section 4C***, which must be carried at all times while exercising powers in respect of which the card was issued. It will be an offence where a person who ceases to be an authorised officer fails to return the identity card to the CEO as soon as practicable.

Recovery of Short Paid Duty

Section 165 of the *Customs Act* currently provides for the recovery of duty short levied or erroneously refunded upon a demand being made by the CEO within 12 months of the date of the short levy or refund. This 12 months time limit means that Customs cannot recover any duty when the short payment is the result of Customs error, and that is detected during an audit conducted more than 12 months after the short payment. Where the short payment arises from a misstatement to Customs, action can be taken under section 153 of the *Customs Act* with no time limit.

To make the recovery period consistent with that under the *Taxation Administration Act 1952* for GST, Luxury Car Tax and Wine Tax, ***items 6 and 7 of Schedule 1*** to the Bill amend section 165 of the *Customs Act* to allow the CEO to demand the payment of short paid duty, and the repayment of erroneously refunded duty, for up to 4 years, without any requirement for there to be fraud involved.

It is also proposed to extend the time limit for refund applications to be lodged for overpaid duty to 4 years. As the time limits for refunds are set out in the *Customs Regulations 1926* these changes will be effected by amendments to the regulations at a time corresponding with the commencement of the amendments to section 165.

Offences

Failure to answer questions - s243SA

New section 243SA of the *Customs Act* will make failure to answer a question that an officer requires a person to answer under the *Customs Act*, a strict liability offence. The maximum penalty for the offence is 30 penalty units or, alternatively, 6 penalty units if an infringement notice is issued.

Failure to produce documents or records - s243SB

New section 243SB will make failure to produce a document or record that an officer requires the person to produce a strict liability offence. This does not apply to ***new sections 71DA, 71DL or 114A*** where the consequence of failure to produce is not getting an authority to deal with goods.

The maximum penalty for the offence is 30 penalty units or, alternatively, 6 penalty units if an infringement notice is issued.

False or misleading statements resulting in loss of duty - s243T

Where the owner of goods makes to an officer a statement that is false or misleading in respect of particular goods, or omits from a statement in respect of particular goods owned by the person any matter or thing without which the statement is misleading in a material particular, which results in the loss of duty, the owner (other than a person treated as an owner by reason of being an agent of the owner) commits an offence. This offence does not apply in relation to a cargo report or outturn report nor to a person who is treated as the owner of goods by virtue of being an agent of the owner.

False or misleading statements resulting in a loss of duty include those that result in:

- the amount of duty properly payable exceeding that which is payable on the basis of the statement;
- a refund or drawback that is not payable being paid; or

- a refund or drawback that exceeds that properly payable being paid (***new subsection 243T(1)***).

Where the matter is prosecuted and a conviction for the offence is obtained then the maximum penalty is the amount of excess of duty (where ***new subparagraph (1)(b)(i)*** applies); the refund that would not have been payable or the amount of the excess (where ***new subparagraph (1)(b)(ii)*** applies); or the drawback that would not have been payable or the amount of the excess (where ***new subparagraph (1)(b)(iii)*** applies). The penalty is in addition to recovering the amount of duty shortpaid, the refund overpaid or excess of refund or the drawback overpaid or excess of drawback, as the case may be.

Alternatively, an infringement notice may be issued, where the penalty will be one fifth of the maximum amount a court may impose (s243Z(4)(b)). If an infringement notice is issued and paid, then Customs right to prosecute will be extinguished (***new section 243ZB***).

In addition to defences under the Criminal Code there are specific 2 defences to this offence. The first is voluntary notification of false or misleading statement (detailed below under a specific heading). The second defence is in similar terms to current section 243V of the Customs Act, and allows a person (whether the owner or the agent of the owner), at the time the statement is made to Customs to:

- nominate particular information included in, or an omission from, a statement of which they are uncertain and because of that uncertainty they consider that the statement might be regarded as false or misleading; and
- give reasons for their uncertainty (***new subsections 243T(5) and (6)***).

The inclusion of this defence acknowledges that even if reasonable care has been taken in preparing communications to Customs, sometimes not all relevant information in relation to goods is available. In such circumstances, provided that the person notifies their uncertainty at the time of making the statement to Customs, no penalty will apply.

False or misleading statements not resulting in loss of duty - s243U

Where a person makes to an officer a statement that is false or misleading in respect of particular goods owned by that person, or omits from a statement in respect of particular goods owned by the person any matter or thing without which the statement is misleading in a material particular that does not result in the loss of duty, the person will be guilty of an offence. This excludes a cargo report or outturn report.

The introduction of strict liability offences and infringement notices for false or misleading statements not relating to duty is intended to improve the quality of information received by Customs. This data is used for trade statistics and border control purposes and any inaccuracy in that data impinges on Customs ability to perform its functions in these areas effectively.

Where the matter is prosecuted and a conviction for the offence is obtained then the maximum penalty is an amount not exceeding 50 penalty units for each statement that is false or misleading. Alternatively, an infringement notice may be issued, where the

penalty will be ½ a penalty unit for each material particular that is false or misleading or each thing that is omitted, up to a maximum of 10 penalty units – which is 1/5 of the maximum penalty that a court might impose (***new section 243Z(4)(a)***). If an infringement notice is issued and the penalty is paid, then Customs right to prosecute will be extinguished (***new section 243ZB***).

The reference to 'statement' does not include a statement made under Part XVA (which relates to the Tariff Concession System) or Part XVB (which relates to Anti-dumping measures) of the *Customs Act* nor does it include a statement made by a passenger or the crew of a ship or aircraft. These exclusions recognise that the purpose of this new strict liability offence is to improve compliance of those persons who are in the day-to-day business of communicating information to Customs in relation imports and exports.

Electronic communications to be taken to be statements - s243W

So that statements made to Customs electronically are equally subject to these new offence provisions which relate to statements made *to an officer*, ***new section 243W*** provides that electronic communications to Customs are taken to be statements made to the CEO.

Voluntary disclosure of false or misleading statements

The defence of voluntary disclosure of false or misleading statements is a full and true disclosure of all relevant material facts. In considering whether a disclosure is voluntary or not, the timing of the disclosure is important. The defence of voluntary disclosure will not be available after the issue of a notice under ***new section 214AD*** for the making of false or misleading statements under ***new sections 243T and 243U*** . Persons who voluntarily disclose - or make a genuine attempt to disclose voluntarily - any error or breach that would be otherwise be false or misleading, before the notice will not be penalised.

The voluntary disclosure must be in writing to the officer doing duty in relation to the matter. Where:

- a person gives notice in writing to such an officer; and
- no notice has been given under ***new section 214 AD***

then the defence of voluntary disclosure is established (***new subsections 243T(4) and 243U(4)***).

Attempts to 'volunteer' errors or breaches after the issuing of a notice under ***new section 214AD*** of an intention to exercise monitoring powers, will be taken into account in determining whether an infringement notice should be issued. Such attempts or late disclosures do not constitute a defence, but the degree and timing of the disclosures made will be relevant when considering whether as a consequence, penalties are appropriate. Similarly, incomplete disclosure and the capacity of the person to make a full disclosure at the time, are matters that will also be considered.

A person who, at the time of making a statement that has duty implications, is genuinely uncertain as the accuracy of the information, and communicates that genuine uncertainty with the statement identifying the particular information and the

reasons as to the uncertainty, will not be subject to a penalty for a false or misleading statement because of the defence set out in ***new subsections 243T(5) and (6)***.

Accredited Client Arrangements

The amendments contained in Schedule 3 to the Bill that relate to people with whom the CEO may enter into information contracts will:

- allow the CEO to enter into contracts (otherwise known as information contracts) with people for the purposes of enabling those people to provide information to Customs in a different way to other clients; and

- provide for the CEO to publish business rules that must be complied with by people wishing to enter into, or who are parties to, an information contract.

Customs is introducing a new approach to compliance management for clients who can demonstrate that they provide accurate information to Customs. Rather than relying on the traditional statutory approach, the new arrangements will use a mix of legislation and contract to achieve Customs' objectives. These clients will be "accredited" by Customs.

The legal framework underpinning the accredited client arrangements, includes:

- provisions in the Bill*;*
- business rules; and
- a contract.

Business Rules

New section 273EB provides for the CEO to publish in the *Gazette*, business rules that define the qualifications to be held, and the conditions and standards that must be met, by people who wish to enter into, or who are party to, an information contract. Parliament will be able to disallow the business rules. The business rules also specify who will be eligible to carry out commencement audits for people who wish to enter into information contracts.

Information Contracts

The ***new sections 71DD and 114BB*** will allow the CEO of Customs to enter into import information contracts and/or export information contracts with people, for the purposes of enabling those people to provide information to Customs in a different way to other clients. These people will be known as accredited clients.

The CEO must not enter into an information contract with a person unless the CEO is satisfied , as a result of an audit, that the person can provide Customs with accurate information that is necessary to enable Customs to perform duties in relation to goods imported into, or exported from, Australia.

The CEO can enter into information contracts with the companies specified in ***new subsection 71DD(3) and subsection 114BB(3)*** without them undertaking a commencement audit. These companies are members of a group being used by Customs to pilot the accredited client arrangements. This group was selected by Customs following an application process. To be accepted to pilot the arrangements,

these companies' import and export procedures were subject to careful consideration by Customs.

The development of individual contracts will allow the parties to tailor arrangements to meet their specific needs. The tailoring is limited to adjustments that do not require changes to legislation.

New subsections 71DD(4) and 114BB(4) state what must be included in the information contracts. For example, the goods covered by the contract, mechanisms for reporting, monitoring and auditing a person's compliance with agreed procedures and the business rules, and the power of the CEO to terminate the contract if the person fails to comply with any of the procedures or business rules.

Entering into an import or export information contact with the CEO of Customs does not affect the exercise by the CEO of any powers conferred on him or her by or under the Customs Act.

For goods covered by their information contract, people who have entered into import and/or export information contracts will be able to provide minimum information at the time of importing or exporting goods, with less time-sensitive information provided at a later date. For example, information required solely for trade statistics will not be required at the time of importation or exportation of the goods. This two-phase approach to providing information will only be available for goods covered by the contract.

The proposed changes give effect to the International Convention for the Simplification and Harmonisation of Customs Procedures (also known as the Kyoto Convention). This Convention permits people with an acceptable record of compliance with Customs requirements, and a satisfactory system for managing their commercial records, to have their goods released by providing minimum information, with other information to be provided at a later date.

For Imports

The ***new section 71DB*** will allow importers (and/or any Customs broker(s) nominated in the import information contract), who have entered into an import information contract with the CEO, to communicate minimum information to Customs using a request for cargo release (known as an RCR) when importing the goods.

As the name implies, an RCR is a request to permit goods to be released into home consumption immediately. On receipt of an RCR, the ***new section 71DE*** requires Customs to give a cargo release advice, to the effect that the goods are cleared for home consumption or that the goods require further examination or are to be held in their current location. Customs must also provide an authority to take the goods into home consumption once the goods have been cleared for home consumption. In practice, the cargo release advice and the authority will be sent by Customs simultaneously. Once an authority has been given, it may be suspended or cancelled (with reasons given) at any time before the goods have been entered.

Pursuant to ***new subsection 71DB(4)***, the RCR must contain information contained in an approved statement. This information will be sufficient to allow Customs to identify the importer, the consignment they are requesting to be released, and to determine whether a particular consignment contains goods that may pose a risk to the Australian community (for example, by identifying any permission given for the importation of goods).

The ***new section 71DF*** requires further information to be provided to Customs in a periodic declaration, for all goods for which an RCR has been submitted to Customs during a particular month. A periodic declaration must be provided to Customs by the first day of the calendar month following the month in which the RCR was submitted.

Import Screening Charges

The ***new sections 71DC and 71DG*** create an obligation for clients sending RCRs and periodic declarations to Customs, to be liable to pay processing charges. The processing charges for the RCRs reported on the periodic declaration and the processing charges for the periodic declaration, are payable when the person sends the periodic declaration to Customs.

The ***new subsection 68(3)*** makes the RCR an entry for home consumption. This means that when the client submits the RCR to Customs they become liable to pay any duty, goods and services tax or other charge or fee payable at the time of entering the goods. However, it is intended that accredited clients will be people who are allowed to defer the payment of goods and services tax and duty. To facilitate this proposal, it is intended that regulations will be made under section 132AA of the *Customs Act*, which will allow people who can defer goods and services tax to also defer the payment of duty.

For Exports

New subsection 114BB(1) provides that the CEO may enter into a contract with a person for the purpose of enabling the use of ACEANS in connection with the export of the person's goods. Other people may use ACEANS in connection with the export of the person's goods. Exporters who have entered into an export information contract with the CEO will receive a set number of accredited client export approval numbers, also known as ACEANs. Pursuant to paragraph 114BB(4)(d), each export information contract must contain a provision relating to the allocation of the ACEANs.

In the typical case, the ACEAN will be the only information relating to the goods provided at the time of exportation.

New subsection 114BA(4) provides that an ACEAN can be communicated in respect of goods if the export information contract entered into in respect of goods to which the ACEAN relates is in force.

New subsections 114BA(5) to (6) provide that an ACEAN can only be used in respect of one consignment of goods and if a person uses an ACEAN in respect of more than one consignment the use of the ACEAN is invalid and person is guilty of a strict liability offence.

It will not be necessary for a provision corresponding to ***new subsection 114(5)*** in the exportation of goods to be included for ACEANs. This is because:

- an ACEAN is only a number and will contain no other information this subsection could never be satisfied; and
- the Accredited Client Arrangement information contract will cover the necessary requirements in the information contracts.

If one or more ACEANs are used to report the exportation of goods to Customs, by the first day of the month following the use of the ACEAN/s, the person must provide more information about the goods in a declaration (section 114BC).

No processing charge will be imposed for using an ACEAN or a declaration.

Chapter 3 – Border Compliance Measures

Outline of Chapter

Part 6 of Schedule 3 to this Bill represents the final instalment of proposed legislative amendments to the *Customs Act 1901* ("the Act") announced by the Prime Minister on 2 November 1997 as part of the Government "Tough on Drugs" strategy. The objective of the proposed amendments is to provide Customs with more effective legislation in relation to the detection of illicit drugs and other prohibited goods at the border.

Customs is becoming more reliant on screening information to identify suspect consignments rather than rely predominantly on physical checking techniques. The receipt of timely information about the arrival of ships and aircraft and the cargo that is intended to be unloaded in Australia becomes critical in order to be able to detect illicit drugs and other prohibited goods.

The report of the arrival of ships and aircraft and the cargo that is intended to be unloaded is a long-standing requirement. However the level of compliance with the requirement to make these reports has reached a stage where it is affecting the ability of Customs to identify suspect shipments before they have been delivered into home consumption.

After careful deliberation it has been concluded that the introduction of offences and an associated infringement notice scheme is the appropriate way to address the problem.

It is also proposed to make it mandatory to report the arrival of certain ships and aircraft and all cargo by electronic means. The Bill provides for certain moratorium periods to enable all cargo reporters to become familiar with the new arrangements.

The Bill also recognises that there are deficiencies in the current legislation in dealing with the accounting of cargo reported on a cargo report. It is proposed to impose for the first time an obligation on stevedores and depot operators to provide Customs with timely reports about the cargo that has been unloaded. This provision is currently the sole responsibility of the cargo reporter. These amendments will, in effect, reflect commercial practice whereby stevedores and depot operators perform these functions on behalf of cargo reporters.

It is considered that these amendments will result in greater compliance with the requirement to report the arrival of ships and aircraft and their cargo in a timely manner which will enhance Customs ability to detect and prevent the entry of illicit drugs and other prohibited goods into the Australian community.

Detailed explanation of new law

Reporting the impending arrival of a ship or aircraft

The current impending arrival reporting provisions in section 64 of the Act are to be repealed and replaced.

New section 64 of the Act (***item 118 of Schedule 3***) will require the operator of a ship or aircraft coming from a place outside Australia to a port or airport in Australia to make an impending arrival report. The purpose of the provision is to provide Customs with advance notice of its arrival so that Customs can determine whether the vessel presents any risk to the border based on its past history or where it has been. With advanced knowledge of the arrival, Customs can be prepared to conduct any search of the ship or aircraft or other measures it considers appropriate in relation to the clearance of crew, passengers or cargo.

The operator of a ship or aircraft is defined as the shipping line or airline representative in Australia who is responsible for the operation of the ship or aircraft. In circumstances where there is no shipping line or airline or the shipping line or airline is not represented by a person in Australia, then the operator will be the master of the ship or the pilot of the aircraft (see definition of "operator" in ***item 107 of Part 6 of Schedule 3***).

The operator will be required to provide Customs with the estimated time of arrival of the ship or aircraft. The estimated time of arrival will be an important element in establishing the offences of late report associated with the impending arrival report, the crew report, the store and prohibited goods report, the cargo report and notification of other cargo reporters and the person engaged to unload the ship or aircraft.

For this reason the word "arrival" is defined (***item 102 of Part 6 of Schedule 3***). In relation to a ship, "arrival" is to mean the time the ship is secured for the unloading or loading of passengers, cargo or ship's stores. This recognises that ships are sometimes required to wait in a port for allocation of a berth for discharge purposes. It also takes into consideration that some ships do not discharge at conventional wharves but at buoys and other facilities. In relation to aircraft "arrival" it is to mean when an aircraft comes to a stop after landing. Airport practice recognises that an aircraft has come to a stop when blocks are placed against the wheels of the aircraft.

Provision of the impending arrival report to Customs will be either in document or electronic form (***new subsections 64(3) and (4)***). However it will be mandatory for the operator of a ship or aircraft unloading cargo to make the report electronically. This is necessary in order that the clearance status of each consignment of cargo can be transmitted electronically and promptly to the cargo reporter.

The approved form or statement on which the report is to be made will require certain information including characteristics of the ship or aircraft and its journey as well as the estimated arrival time of the ship or aircraft at the nominated port or airport in Australia.

It is proposed to allow the Chief Executive Officer (CEO) of Customs to allow the use of different approved forms or statements for different types of operators of ships and

aircraft (***new subsection 64(11)***). This recognises that Customs requires more details about certain kinds of ships and aircraft, for example, those ships and aircraft involved in commercial operations. The purpose is to minimise the collection of information where it is not necessary to collect it, for example, pleasure craft visiting Australia.

The operator of a ship or aircraft will be required to make the report within a specified time. Generally this time will be 48 hours before the estimated time of arrival of a ship and 3 hours before the estimated time of arrival of an aircraft. For journeys that take less time than the specified times, the report is to be made 24 hours prior to the estimated time of arrival of a ship or 1 hour prior to the estimated time of arrival of an aircraft (***new subsections 64(5), (6), (7) and (8)***). The regulations will be able to prescribe times for specific short haul journeys such as Port Moresby to Cairns or Dili to Darwin.

It is proposed to allow the report times to be amended by regulation to cater for instances where future electronic enhancements reduce the time required for Customs to fulfil its risk assessment and processing obligations.

It is also proposed to insert a limit as to how early a report may be given. It may not be made more than 10 days prior to the estimated time of arrival of the ship or aircraft. This is necessary to ensure the information is as accurate as possible. The further in advance such a report is made the greater the chance that modifications may be made to the original schedule (paragraphs 64 (5)(a) and 64(7)(a)).

It is proposed that a tiered scheme of sanctions with three levels will apply to offences against this section. The first tier will be a mens rea offence to be prosecuted before a court. The second tier will be a strict liability offence also to be prosecuted before a court. The third tier is an infringement notice scheme. Instead of facing prosecution in a court, the offender is given the choice of paying an infringement penalty or, in default of paying the penalty, being prosecuted.

Report of crew

Currently the requirement of an operator to report the crew for a ship or aircraft is covered by section 64AC of the Act. Because of proposed new different time limits in relation to the reporting of crew as distinct to the passenger report, it is proposed to repeal the current provision and insert separate provisions, one for passengers (***new section 64AC***) and the other for crew (***new section 64ACA***, ***item 122 of Part 6 of Schedule 3***).

It is proposed that the operator be required to make a crew report. The crew report will be able to be provided to Customs either in document or electronic form. Provision is made for the CEO of Customs to be able to approve different forms for different circumstances. The approved form or statement by which the report is to be made will require certain information about the crew including full name, date of birth, country of birth, passport number and position on the ship or aircraft (***new subsections 64ACA(2), (3), (6) (7) and (8)***).

The operator of a ship or aircraft will be required to make the report within specified times. For the operator of a ship these time limitations are the same as those for an impending arrival report. In relation to an aircraft the operator may not make the report before the aircraft leaves the last airport outside Australia. Crew are often changed at last overseas airports and the chance of incorrect crew being reported is minimised (***new subsections 64ACA(4) and (5)***).

It is expected that this report will be provided to Customs at the same time as the impending arrival report.

It is proposed that a tiered scheme of sanctions with three levels, as outlined above, will also apply to offences against this section.

Report of passengers

As previously mentioned, it is proposed to repeal the current provision and insert separate provisions, one for passengers and the other for crew.

In ***new section 64AC***, the operator is required to make a passenger report. The passenger report will be able to be provided to Customs either in document or electronic form. Provision is made for the CEO of Customs to be able to approve different forms and different statements for different circumstances. The approved form or statement by which the report is to be made will require certain information about the passengers including the number of passengers and their names (***new subsections 64AC(2), (3), (6) (7) and (8)***).

The operator of a ship or aircraft will be required to make the passenger report within a specified time. Generally this time will be 48 hours before the estimated time of arrival of a ship and 3 hours before the estimated time of arrival of an aircraft. For journeys that take less time than the specified times, the report is to be made 24 hours prior to the estimated time of arrival of a ship or 1 hour prior to the estimated time of arrival of an aircraft.

It is proposed that these times will be able to be changed by regulation in the event that Customs makes an assessment that it requires a lesser time to fulfil its obligations under the Act. The regulations will be able to prescribe times for specific short haul journeys such as Port Moresby to Cairns or Dili to Darwin (***new subsections 64AC (4) and (5)***).

It is expected that this report will be provided to Customs at the same time as the impending arrival report.

It is proposed that a tiered scheme of sanctions with three levels, as outlined above, will also apply to offences against this section.

Reporting the Arrival

The current arrival reporting provisions in section 64AA of the Act are to be repealed and replaced (***item 118 of Part 6 of Schedule 3***). It is proposed that the new provisions relate solely to the arrival of a ship or aircraft.

The operator is to report to Customs the particulars of the arrival of a ship or aircraft and the actual arrival time of the ship or aircraft at the port or airport. In relation to a ship, this report is to be made within 24 hours of the ship's arrival or before the issue of a clearance certificate whichever occurs first. In relation to an aircraft, the report must be made within 3 hours of the arrival of the aircraft or before the issue of a clearance certificate, whichever occurs first (***new subsections 64AA(2) and (3)***). These time limits are the same as current provisions.

While the arrival report will be able to be made either in document or electronic form, it is proposed that operators who intend unloading cargo at a port or airport will be required to make their arrival report electronically (***new subsections 64AA(4) and (5)***).
This is necessary to give effect to an electronic cargo reporting environment which will enhance Customs ability to detect and prevent the entry of illicit drugs and other prohibited goods into the Australian community.

The report is to be made in an approved form or approved statement. It is proposed to allow the CEO to make different approved forms or statements for different types of operators of ships and aircraft. This recognises that Customs requires more details about certain kinds of ships and aircraft, for example, those ships and aircraft involved in commercial operations. The purpose is to minimise the collection of information where it is not necessary to collect it, for example, in relation to pleasure craft visiting Australia (***new subsections 64AA(6), (7,) and (8)***).

It is proposed that a tiered scheme of sanctions with three levels, as outlined above, will also apply to offences against this section.

Reporting stores and prohibited goods

The operator of a ship or aircraft is currently required to make a report of stores carried by the ship or aircraft as well as any prohibited goods such as medications and firearms. This report is made as part of the arrival report in ***current section 64AA***. It is proposed to make this requirement a separate provision in ***new section 64AAA***. The reason for this change is that certain operators will be required to make an electronic arrival report.

Ship's and aircraft's stores are defined by section 130C of the Act and means stores for the use of the passengers and crew of a ship or aircraft or for the service of the ship or aircraft. Prohibited goods means all imported goods that are subject to prohibition or a restriction by a law of the Commonwealth.

The requirements of the provision will be similar to those for reporting the arrival of a ship or aircraft. In circumstances where a person is making the report using documents, it is expected that the report will be made in conjunction with the arrival report.

It is proposed that a tiered scheme of sanctions with three levels, as outlined above, will also apply to offences against this section.

Notification of cargo reporters

It is proposed to insert a new provision to require an operator of a ship or aircraft or a cargo reporter to notify Customs of any other person with whom they have entered into an arrangement to carrying cargo on the other person's behalf (***new section 64AAB***). Persons notified by the operator or other cargo reporters will in turn be required to make a cargo report for their part of the cargo being carried on a particular voyage or flight.

A cargo reporter means an operator or charterer of a ship or aircraft or a slot charterer of a ship or a freight forwarder.

The provision is necessary to ensure Customs knows from whom to expect a cargo report. The necessity for the provision has arisen as a result of changes to commercial practices related to the sharing of ships and aircraft by shipping lines and airlines and the major role that freight forwarders now play in the transportation of cargo.

The notification is to be made electronically in accordance with an approved statement (***subsection 64AAB(3)***). The notification is to be made within certain times which are the same as the time requirements for the making of a cargo report (***new subsection 64AAB(4)***).

In practice the notification will be made in conjunction with the cargo report.

It is proposed that there is to be strict liability offence for failing to comply with the provision, with the option of paying an infringement penalty.

Notification of persons engaged to unload cargo

It is proposed to insert a new provision requiring the operator of a ship or aircraft to notify Customs about the person who is to unload the ship or aircraft (***new section 64AAC***). This provision is necessary to identify the person who will be responsible to account for the cargo that is unloaded. Custom will expect to receive an outturn report from this person identifying cargo that is not unloaded in accordance with the cargo report or that is landed but does not appear on the cargo report. In addition, this information is necessary so that Customs will know where to send the electronic messages in relation to the cargo that is unloaded.

In relation to sea cargo the operator of the ship will be required to nominate the stevedore who unloads containers and non containerised cargo. In relation to air cargo the operator of an aircraft will be required to nominate the depot operator who first receives the cargo after it has been unloaded.

The notification must be made electronically in accordance with an approved statement (***new subsection 64AAC(3)***). In practice the notification will be made in conjunction with the impending arrival report. The notification is to be made within the same time requirements for the making of a cargo report (***new subsection 64AAC(4)***).

It is proposed to create a strict liability offence for failing to comply with the provision, with the option of paying an infringement penalty.

Reporting cargo

The current cargo reporting provisions in section 64AB of the Act are to be repealed and replaced (***item 118 of Part 6 of Schedule 3***).

The proposed new provision allows cargo reporters more time to provide a cargo report to Customs. It does not substantially alter cargo reporting requirements. The provision has primarily been remade to take account of the fact that offences will now be imposed under the provision for non compliance.

There will be a general requirement for a cargo reporter to make a cargo report to Customs. As a result of the notification of cargo reporters to Customs by the operator of a ship or aircraft or another cargo reporter, Customs will know from whom to expect a cargo report. The cargo report, in relation to a particular voyage or flight, is to provide a list of all goods intended to be unloaded at a particular port or airport in Australia (***new subsection 64AB(2)***).

The accompanied baggage of the crew of the ship or aircraft or its' passengers and the stores carried by the ship or aircraft will not be required to be reported. The stores will be reported as part of the stores and prohibited goods report. Accompanied baggage will be declared to Customs by the passenger or crew member who owns it.

A cargo reporter will be required to include in the cargo report cargo that has been loaded at another Australian port or airport. In order to be able to identify the imported cargo Customs needs to be aware of other cargo that may be unloaded from the ship or aircraft at the same time. Such avenues have the potential to introduce a new element of risk for Customs in relation to substitution of cargo and insertion of prohibited goods into such cargo.

It is proposed that the report must be provided to Customs electronically in an approved statement (***new subsection 64AB(4)***). The approved statement will require certain information about each consignment of cargo including the consignor and consignee names and addresses. This information is particularly important in assisting Customs to identify suspect shipments.

However the terms “consignor” and “consignee” have various commercial connotations. It is therefore necessary to define them for purposes of the approved statement (***new subsection 64AB(5)***). The intention of the definitions is to identify the supplier of the goods (consignor) and the ultimate recipient of them (consignee). By way of further explanation, if a person orders goods from another person and that person arranges to send the goods to the person ordering the goods, then the person ordering the goods is the consignee and person supplying the goods consignor. Intermediaries such as persons involved in the transporting or distribution of the goods (ie. freight forwarders) are not consignors or consignees for the purpose of these definitions.

A cargo reporter who is registered as a special reporter under the Act for the purposes of reporting high volume, low value cargo may report minimal information. This is permitted on the basis that Customs will have electronic access to the consignment

details that would normally be required to be reported as part of the approved statement on the cargo reporter's electronic system (***new subsection 64AB(7)***).

It is proposed to allow the CEO to make different approved forms or statements for different types of operators of ships and aircraft. This will allow the CEO to approve a statement to accommodate special reporters if other certain circumstances arise.

The operator of a ship or aircraft will be required to make the cargo report within a specified time. Generally this time will be 24 hours before the estimated time of arrival of a ship and 2 hours before the estimated time of arrival of an aircraft. Customs requires this time to screen the information in the cargo report and to make appropriate arrangements to examine targeted consignments. Although it would be desirable for Customs to have the same time limit for air as for sea cargo, the logistics of air transportation do not permit such a time limitation.

It is proposed that there be regulations to prescribe times for specific short haul journeys such as Port Moresby to Cairns or Dili to Darwin (***new subsection 64AB(8)***). It is also proposed to allow these report times to be changed by regulation where future electronic enhancements reduce the time required for Customs to fulfil its risk assessment obligations.

It is proposed that a tiered scheme of sanctions with three levels, as outlined above, will also apply to offences against this section.

Provision for a moratorium

It is proposed to make it mandatory for a cargo reporter to make an electronic cargo report. Currently there a number of cargo reporters who do not report their cargo electronically. It is recognised that these cargo reporters will be required to make arrangements so that they can report their cargo electronically.

It is therefore proposed to insert a provision that will provide a six month moratorium period during which time such cargo reporters will be able to continue to make their reports in a documentary form (***new subsection 64AB(3)***). Also, no cargo reporter will be subject to prosecution for the offence of not making the cargo report within the specified times (***new subsection 64AB(12)***).

It is further proposed to insert a provision that will enable the CEO of Customs to further extend the moratorium for a period of up to 2 years where, despite the best endeavours of the cargo reporter, the cargo reporter is unable to make an electronic cargo report (***new subsections 64AB(14)***).

The outturn report

The purpose of an outturn report is to identify cargo that has been unloaded from a ship or aircraft that is not on the cargo report and to identify cargo that has not been unloaded that is on the cargo report.

Section 64ABA of the Act, which currently deals with outturn reports is to be repealed and replaced with ***new section 64ABAA***. The current provision places an obligation on the cargo reporter to make the outturn report. In relation to sea cargo,

the commercial practice is that the person who has been contracted by the operator of the ship to unload and deliver cargo from the wharf, also makes an account of the cargo to Customs. In relation to air cargo the commercial practice is for the person who has been contracted by the operator of the aircraft to check in the cargo after unloading to make an account of it. In cases where a cargo reporter has contracted a depot operator to unpack and deliver cargo then the depot operator will make an account of the cargo.

The intention of the proposed amendment is to reflect the commercial practice as much as possible. Consequently, for the first time the provision places an obligation to make an outturn report to Customs on certain operators of Customs places. A Customs place is defined under subsection 183UA of the Act. For the purposes of this provision, the operator of a Customs place will primarily relate to a stevedore and the operator of Customs licensed depot. It will not include the licensee of a Customs licensed warehouse.

As previously described, the operator of a ship will notify Customs of the person engaged to unload cargo. In the case of air cargo the operator of the aircraft will notify Customs of the person who will first receive the cargo after unloading from the aircraft. It is proposed that in relation to the unloading of containers and non containerised cargo from a ship, the stevedore will be required to make an outturn report to Customs (***new subsection 64ABAA(2)***).

In relation to cargo that is unloaded from an aircraft, the depot operator who first receives the cargo after it has been unloaded will be required to make an outturn report to Customs. The depot operator may be located on the airport or away from the airport (***new subsection 64ABAA(1)***).

Where sea containers or air cargo are further moved under Customs control for unpacking, deconsolidation and delivery, the operator of the Customs place will be required to make an outturn report to Customs (***new subsection 64ABAA(3) and (4)***).

It is proposed that all outturn reports will be required to be made to Customs electronically on an approved statement (***new subsection 64ABAA(5)***).

It is proposed to allow the CEO to make different approved statements for different kinds of cargo and for stevedores and operators of Customs places. This is necessary because the characteristics of some kinds of cargo require it to be accounted for in a different manner. Some operators of Customs places will not be able to complete the same outturn report because the terms of their commercial contractual arrangements will limit the amount of information they have about certain kinds of consignments.

It is proposed that a tiered scheme of sanctions with three levels, as outlined above, will also apply to offences against this section.

When the outturn report is to be communicated to Customs

New section 64ABAB will set out the time within which an outturn report will be required to be made to Customs. Customs needs to be aware of containers and cargo that have been unloaded but are not on the cargo report as these containers and cargo are considered high risk. It is necessary for the information to be supplied as soon as possible for Customs to conduct risk assessment for prohibited goods and to ensure compliance with Customs requirements including revenue liabilities.

In relation to containers and cargo that is not unloaded but was on the cargo report, Customs needs to know about such containers and cargo particularly in circumstances where they are suspected to contain prohibited goods. It is possible that they could subsequently be unloaded at another Australian port or airport and evade Customs scrutiny.

It is proposed that in relation to containers that are unloaded from a ship the stevedore is to provide an outturn report every 3 hours from the time the first container is unloaded until the final container is unloaded at which time a final outturn is to be provided to Customs (***new subsection 64ABAB(2)***).

In relation to non containerised cargo that is unloaded from a ship the stevedore is to provide an outturn report within 5 days after the unloading of the ship has been completed. The outturn report must state the time when unloading was completed (***new subsection 64ABAB(3)***).

In relation to cargo that is unloaded from an aircraft the depot operator who first receives the cargo after unloading is to provide Customs with an outturn report within 24 hours of the time of arrival of the aircraft as reported to Customs (***new subsection 64ABAB(1)***).

In relation to sea containers and air cargo that are further moved under Customs control for unpacking, deconsolidation and delivery, the operator of the Customs place will be required to make an outturn report depending on the circumstances of the cargo.

If the container is an empty container or is not to be unpacked at that Customs place, the operator of the Customs place must provide an outturn report within 24 hours after arrival of the container at the Customs place. If the container is to be unpacked at that Customs place the operator of the Customs place must provide Customs with an outturn report within 24 hours after the container is unpacked. If the cargo is not in a container the operator of the Customs place must provide Customs with an outturn report the day after receiving the cargo at that place (***new subsection 64ABAB(4)***).

The obligation to provide an explanation about outturn reports

The operator of a Customs place will report on the factual state of cargo by making an outturn report. However, as the operator of a Customs place was not responsible for arranging the transportation of the goods, this person is unable to explain why cargo on the cargo report did not arrive or why cargo arrived that was not on the cargo report. Only the cargo reporter will be able to ascertain such facts.

For this reason ***new section 64 ABAC*** proposes to require the cargo reporter to give an explanation in relation to any cargo shortage or surplus when requested to do so by a Customs officer. It will be an strict liability offence not to comply with such a request, with the option of paying an infringement penalty.

Amendment of provisions related to special reporters

The special reporter scheme is covered by Subdivision D of Division 3 of Part IV of the Act. It enables cargo reporters involved in reporting certain kinds of low value, high volume cargo to register as a special reporter. Being registered as a special reporter enables the special reporter to make an abbreviated cargo report, provided the special reporter electronically stores all the information that would normally be required to be made as part of a cargo report. The special reporter is required to make such information available to Customs on request so that Customs can undertake functions as if all the information had been reported to Customs.

In developing the new electronic cargo reporting arrangements, it has been concluded there will no longer be any benefit for special reporters who are registered to report low value cargo that are reportable documents to remain registered under the scheme. Consequently it is proposed to delete references to low value cargo of a kind comprising reportable documents from the scheme (proposed amendments to section 63A, ***items 116 and 117 of Part 6 of Schedule 3***).

As a result of experience gained in the operation of the scheme, it is proposed to relax the threshold requirements to become registered as a special reporter of mail order consignments from 5000 consignments per month to 1000 consignments per month (***new subsection 67EB(2)***, ***item 128 of Part 6 of Schedule 3***).

In meeting this requirement, it is proposed that an applicant will be required to demonstrate to Customs by the production of evidence such as a contract, that the applicant will be able to meet the requirement of reporting 1000 consignments per month. Under the present requirement the applicant must first have reported 5000 consignments for the three months prior to applying for registration. The threshold limits are also to be reflected in the requirements related to the renewal of registration, which occurs 2 years after first being registered.

Movement of goods under Customs control

Section 71E of the Act enables the owner of goods that are under Customs control to make application to Customs to move those goods. The definition of ‘owner’ in the Act can include a cargo reporter, a stevedore or depot operator. Therefore such persons are able to make application to move goods under Customs control.

Cargo reporters make such applications to move their cargo from wharves and airports to other wharves and airports as well as depots. Because of feeder port concepts applied by the shipping and airline industries, these wharves, airports and depots may be anywhere in Australia.

Due to the high volume of applications made by cargo reporters and the administrative costs associated with such applications it is proposed to streamline the procedure and the provision in relation to those applications first made on arrival of

the cargo in Australia. In such circumstances the cargo reporter will be able to specify in a cargo report the proposed movement of goods from one Customs place to another. Where this occurs, this will be taken to be a movement application made under section 71E (***new subsection 71E(3C)***, ***item 140 of Part 6 of Schedule 3***). Cargo reporters, stevedores and depot operators will still be required to make a separate application in relation to any subsequent movements.

It is proposed that cargo reporters make all their applications to move goods under Customs control electronically (***new subsection 71E(2B)***, ***item 138 of Part 6 of Schedule 3***). This requirement is necessary if Customs is to have current and effective control of cargo. Cargo reporters are already complying with this requirement.

It is also proposed that only an operator of a ship or aircraft, a cargo reporter, a stevedore or depot operator who has possession of the goods may make an application to move goods under Customs control that have not been entered (***new subsection 71E(2A), item 138 of Part 6 of Schedule 3***). The proposal underpins a fundamental principle of Customs that an importer cannot have access to the importer's goods until they have first been entered.

Customs direction power

It is proposed to insert a new power in ***new section 74*** (***item 141 of Part 6 of Schedule 3***) to enable a Customs officer to give direction about the storage and movement of certain cargo. In circumstances where a Customs officer has reasonable grounds to suspect that particular cargo has not been reported, or has been incorrectly reported on the cargo report, or where the officer has reasonable grounds to suspect that particular cargo contains prohibited goods, then the officer may give directions about the storage and movement of the cargo. The purpose of the proposed provision is to ensure the secure storage of such cargo until the cargo is properly reported or until Customs has had an opportunity to examine the cargo for the suspected prohibited goods, whichever the case may be.

A direction given by a Customs officer must be in writing and may subsequently be cancelled. It is proposed that a tiered scheme of sanctions with three levels, as outlined above, will also apply to offences against this section.

Monitoring powers

It is proposed that the monitoring powers referred to Chapter 2 of this Explanatory Memorandum will be used to check compliance with the reporting provisions described in this part.

The ship, aircraft cargo and outturn provisions are intended to operate in a real time environment. In this environment Customs officers are checking the information from the reports for the purpose of identifying cargo while it remains under Customs control and before it is delivered into home consumption. Once the cargo has been delivered into home consumption a number of the compliance checks can no longer been undertaken. It is during this time that Customs needs to locate and hold any consignment that has been identified as suspected of containing prohibited goods. Such activities occur routinely everyday.

In this environment Customs will be seeking to obtain a continuing consent to exercise monitoring powers with cargo reporters, stevedores and depot operators thereby minimising any delays.

Amendments to depot licensing provisions

It is proposed to amend the provisions related to the licensing of a depot under the Act. Under Part IVA of the Act, the CEO of Customs may grant a depot licence to a person for a particular place to deal with imported goods and goods for export.

When making an application for such a licence, a person must pay a depot licence application charge of $3000 under the *Customs Depot Licensing Charges Act 1997*. This is a cost recovery charge representing the cost of processing a licence application. The largest component of this charge is attributed to costs associated with conducting checks related to the company and its personnel. The remaining components relate to examining the premises proposed to be licensed and the preparation of the report.

From time to time Customs receives applications from depot licensees wishing to make changes to the area that has been licensed by either varying the current licensed area or by moving to new premises. The current provisions do not permit such changes without a completely new application being made.

It is proposed to insert new provisions to simplify the procedure (***new section 77LA***, ***item 146 of Part 6 of Schedule 3***). Under the proposed amendments a depot licensee seeking to vary an existing licensed area or to move to new premises will only be required to provide such information related to the variation of existing licensed area or information related to the new premises. The licensee will not be required to provide details about the company or personnel in such circumstances.

Because the processing of such an application will require less resources it is also proposed to impose a $300 fee for such applications (see Customs Depot Licensing Charges Amendment Bill 2000).

In addition, it is proposed to amend one of the conditions related to a depot licence (***items 148 and 149 of Part 6 of Schedule 3***). One of the current conditions of a depot licence is that a depot licensee must notify the CEO of Customs of a substantial change affecting the security of the depot or of a substantial change to the record keeping arrangements. The licensee must advise the CEO of Customs within 30 days of the occurrence of the event.

It is proposed to amend these provisions so that the licensee must advise the CEO of Customs 30 days before such changes are to occur. The purpose of the proposed amendment is to enable Customs to consider the impact of such changes in relation to the control over goods that are under Customs control held by the licensee in the depot.

Interference with goods under Customs control

Section 33 of the Act makes it an offence for a person to move, alter or interfere with goods under Customs control unless authorised by the Act. It is proposed to replace section 33 (***item 3 of Part 1 of Schedule 1***). ***New section 33*** contains a range of offences reflecting the different persons who may become involved in an offence of moving, altering or interfering with goods under Customs control. ***New subsections 33(1) and (2)*** relate to the general offence of moving, altering or interfering with goods under Customs control. ***New subsection 33(3)*** recognises that an employee may be following instructions in moving, altering or interfering with goods under Customs control. ***New subsections 33(5) and (6)*** create offences in circumstances where a person directs or permits another person to move, alter or interfere with goods under Customs control.

The new three level approach to sanctions as explained in Chapter 5 has also been adopted in respect of the offences contained in section 33. The first level is the mens rea offences which must be prosecuted before a court (***new subsections 33(1) and (5)***). The second level is the strict liability offences which must also be prosecuted before a court (***new subsections 33(2), (3) and (6)***). The third level is where an infringement notice is issued instead of prosecution for a strict liability offence (new Division 5 of Part XIII of the Act). Instead of facing prosecution in a court, the offender is given the choice of paying an infringement penalty. If they do not pay that penalty Customs may prosecute them for the strict liability offence.

Consequential amendments

As a result of these proposals, a number of consequential amendments will be necessary.

It is proposed to repeal section 74. This provision is the current power for ensuring compliance with reporting requirements. It has not been successful in achieving significant compliance. The provision permits Customs to stop the unloading of cargo from a ship or aircraft until there is compliance all the cargo reporting requirements. In reality the application of the provision would cause significant disruption and cost to industry and has consequently rarely been applied, leaving Customs with no effective instrument to encourage compliance with cargo reporting requirements.

It is also proposed to repeal Section 74A together with section 71B(3A) because the three existing electronic systems for processing air and sea cargo reports, and Customs entries will be replaced by the new single electronic system the provisions referring to the existing systems will be made redundant.

Chapter 4 – Exports Measures

Outline of Chapter

The Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000 includes amendments to improve Customs capacity to ensure requirements in relation to exported goods are complied with. The purpose of the amendments is to enable Customs to more effectively perform its role of preventing the export of prohibited exports and monitoring compliance with the GST law in relation to the GST-free status of supplies of goods for export. To achieve these outcomes the Bill amends the Customs Act to:

- allow Customs officers to examine goods for export prior to being subject to Customs control;
- tighten Customs control over customable/excisable goods for export;
- ensure that Customs is aware of goods delivered to a Cargo Terminal Operator (CTO) for export by requiring CTO operators to report export cargo to Customs;
- allow shipping companies and airlines to report outward manifests to Customs up to three days after departure;
- require an export entry for all goods the export of which requires a permission under an Act or instrument made under an Act;
- align the export entry threshold to $2000 for all cargo, with the exception of goods requiring an export licence or permit; and
- introduce strict liability offences for export reporting offences.

Detailed Explanation of the New Law

Examination of goods for export

The power to examine goods for export is considered crucial to the control of exports, for the detection of prohibited exports and the prevention of evasion of excise duty or GST liability by diversion of goods into the domestic market. The general power of Customs to examine goods in section 186 of the Act applies to goods that are 'subject to the control of Customs'.

The difficulty is that not all goods for export are subject to Customs control, while others that are subject to Customs control cannot be examined at places where they come under that control (such as a wharf or airport or licensed Customs depot) either because of the limited time that they are located there, or the way in which they have been packaged for export. It is therefore proposed to extend Customs control to **all** goods for export and to extend the powers of examination beyond the current prescribed places to overcome logistical and time sensitivity problems.

Item 1 of Schedule 1 to the Bill will amend paragraph 30(1)(d) of the Act to remove the requirement that goods for export must be protected objects or subject to conditions or restrictions under an Act or regulation for them to be subject to Customs control. This means that **all** goods for export will now come under Customs control

from the time that they are brought to a prescribed place for export, giving Customs the power to examine them.

Item 5 of Schedule 1 inserts new Division 3A into Part VI of the Act to confer powers on authorised officers to enter premises and examine goods that are reasonably believed to be intended for export. Before being authorised to exercise powers under this Division, the CEO must be satisfied that the officer is suitably qualified - they must have the ability and experience to exercise those powers (***new section 122F(4)***).

The powers are exercisable before the goods become subject to the control of Customs and are conferred for the purpose of enabling officers to assess whether the goods meet the requirements of the Customs Act relating to exports. The powers are exercisable only with the consent of the occupier of the premises at which goods are situated (***new section 122H***). This consent may be withdrawn by the occupier of the premises at any time (***new section 122J***).

Once an authorised officer has been given consent to enter a premises, the officer may:

- search the premises for export goods and related documents (***new section 122K***);
- examine export goods (***new section 122L***);
- draw samples of the export goods (***new section 122L***);
- examine and make copies of documents that relate to export goods (***new section 122M***);
- question the occupier of the premises in relation to the export goods (***new section 122N***);
- bring equipment into the premises to search for or examine goods or related documents (***new section 122P***);

If a person's property is damaged as a result of the action taken by the Customs officer exercising these powers, the person is entitled to reasonable compensation.

Customs control over customable/excisable goods for export

Certain customable and excisable goods are stored under Customs control in licensed Customs warehouses. In particular, high duty rate items such as alcohol and tobacco are stored under Customs control until they are delivered for home consumption or exportation.

It has become apparent that goods are being released from warehouses when the licensee is presented with either false or altered export documentation and some or all of those goods are never exported but rather diverted into the domestic market without the duties having been paid to Customs. Customs effectively loses control of the goods between their departure from the warehouse until they are delivered to a prescribed place for export. It is during this time that dutiable goods are diverted into the domestic market and are not brought to account, resulting in a significant loss of government revenue and commercial disadvantage to legitimate operators.

New section 102A will require Customs to be notified if goods are released from a warehouse for export (subsection (2)) and if goods previously released from a warehouse for export are returned (subsection (3)) (***item 97A of Schedule 3***).

This notification requirement only applies to the holder of a warehouse licence in respect of prescribed goods or prescribed classes of goods.

The notification must:
- be made electronically;
- be made within the period prescribed by the regulations;
- state that the goods have been released/returned; and
- give such particulars to the release/return as are required by an approved statement.

It is an offence to contravene ***new subsections 102A(2) or (3)*** with a penalty not exceeding 60 penalty units. An offence is an offence of strict liability.

Subsection 113(1) of the Act provides that the owner of goods intended for export must enter the goods for export and must not allow the goods to leave the place of export (if the goods are not going to be exported on a ship or aircraft) or be loaded on the ship or aircraft without an authority to deal. The goods may be loaded if they are or are included in a class of goods prescribed in the regulations. The section is being amended because of a grammatical and formatting errors in the current provision. ***New subsection 113(1A)*** makes an offence against new subsection 113(1) an offence of strict liability.

Amendments to section 99 of the Customs Act by ***item 97 of Schedule 3*** makes it an offence for a warehouse operator to permit warehoused goods to be removed from the warehouse for export unless they have been entered for export and an authority to deal is in force. If the goods are prescribed goods the operator must ascertain those two things from information made available by Customs (***new subsection (99)(3)***). ***New section 117AA*** (***item 62 of Schedule 3***) will require that customable/excisable goods may only be consolidated for export at a licensed depot, and that when they are delivered for consolidation, and subsequently released, these movements are reported to Customs.

This will mean that Customs will be made aware of the movements of customable/excisable goods for export by warehouse and depot operators, allowing Customs to have a greater degree of control over these high revenue goods.

The definition of "***authority to deal***" in subsection 4(1) of the Customs Act is amended to take into account that it is proposed that, where an ACEAN is communicated to Customs in respect of an accredited client's goods, an authority to deal with the goods will not have to be sought from Customs and the ACEAN constitutes the authority to deal.

New subsection 114C(1) makes it clear that Customs has to only give an export entry advice in respect of goods that are entered for export by the making of an export declaration. Section 114C currently applies to all export entries . However, goods

entered for export by the use of an ACEAN will not be subject to an export entry advice. Instead the ACEAN will itself be the authority to deal with the goods (***new subsection 114C(4B)).***

New subsections 114C(3A),(4A) and 114D(3) make special provision in relation to the export of excisable goods. These provisions take account of amendments to current sections 114C and 114D of the Act proposed in the Taxation Laws Amendment (Excise Arrangements) Bill 2000, which is expected to commence before this Bill.

Reporting of Cargo by Cargo Terminal Operators

The information reported on outward manifests by carriers is presented to Customs within sometimes as little as one hour prior to departure. This is not a sufficient amount of time for Customs to locate, verify and, if need be, examine goods that are subject to GST compliance or are suspected of being prohibited exports

New section 114E (***item 62 of Schedule 3***) will require persons delivering goods for export to a wharf or airport to provide the operator of the wharf or airport with details of the goods, including the particulars of the authority to deal if one is required. If no authority to deal has been obtained, the operator of the wharf or airport may lodge an export entry and obtain an authority to deal. Persons delivering goods to a wharf or airport for which an authority to deal is not required, ie those exempt from export entry requirements, must also provide details relating to the goods to the operator of the wharf or airport.

New section 114E makes it an offence to deliver to a wharf or airport all goods for export unless certain conditions have been met.

New section 114E will provide that it is not an offence to deliver goods that are required to be entered for export to a wharf or airport without entry if the goods are prescribed by the regulations. In those circumstances, the details of the prescribed goods must be given to the person receiving the goods in the prescribed manner. The deliverer can give the details by giving to the operator the submanifest number given to the deliverer by Customs under ***new subsection 117A(3).***

New section 114F (***item 62 of Schedule 3***) will require the operator of the wharf or airport to report the details to Customs of the goods delivered to or removed from (other than for export) the wharf or airport within a prescribed time of delivery. ***New section 114F*** applies to all persons who take delivery of goods for export at a wharf or airport other than those wharfs and airports that are not excluded by the regulations. This is because at some wharfs and airports there will be no facilities to meet these obligations.

New subsection 114F(1A) provides that the person taking delivery of the goods must give notice to Customs stating that they received the goods.

New subsection 114F(1B) contains the obligation to notify Customs if goods are removed from a wharf or airport otherwise than for the purpose of being loaded onto a ship or aircraft for export.

These notices must:

- be given electronically
- given within the period prescribed in the regulations;
- state that the goods have been received/removed; and
- give such particulars of the receipt/removal as are required by an approved statement.

Failure to meet these new obligations will constitute strict liability offences which may, in lieu of prosecution, be dealt with by an infringement notice. See Chapter 5 of this memorandum for a detailed discussion of the new infringement notice system for strict liability offences.

These amendments will mean that Customs will know where goods for export have been delivered, this facilitating their verification.

New section 116 provides that if goods are entered for export by the making of an export entry and if some or none of the goods are exported in accordance with the entry within the period of 30 days after the intended day of exportation notified in the entry, the authority to deal with the goods is taken to have been revoked.

New section 116A provides that if goods are entered for export using an ACEAN and the goods have not been exported within 30 days after the day that the ACEAN was communicated, the entry is taken to have been withdrawn and the ACEAN cannot be used to enter those goods or any other goods for export.

New subsection 117A(1) of the Customs Act provides that the person in charge of the place at which a consolidation of goods is carried out must communicate to Customs a submanifest of goods which have been consolidated. Customs then sends a submanifest number to the person for inclusion in the outward manifest.

Post-departure Reporting of Manifests

Current industry practice is to provide Customs with the outward manifest immediately prior (ie, one hour) to the departure of the vessel or aircraft. This affords industry with as much time as possible to compile the necessary information while still conforming as closely as possible with the requirements of the Act.

This manifest has a dual function for Customs purposes. First, as export entries may be lodged any time prior to exportation, the manifest is used as the confirmation that the goods are to be actually exported and to identify where the goods are located to facilitate their potential examination and prevent the exportation of prohibited exports. Second, the manifest is used by Customs, the Australian Bureau of Statistics (ABS) and other government departments and agencies to identify which goods have been exported from Australia for statistical and cargo control purposes.

As the first of these functions will be redundant following the amendments described above requiring cargo terminal operators to report the arrival of export goods at the wharf or airport, the main purpose of the outward manifest will be the provision of accurate export statistics. ***New section 119*** of the Customs Act (***item 62 of Schedule***

3) will allow shipping companies and airlines to report outward manifests to Customs up to three days after departure. This will allow them to collect all of the necessary information for the manifest so that the manifest that they report to Customs is complete and correct.

Entry of goods subject to export permission

Subsection 113(2) of the Customs Act exempts certain goods (primarily passenger and crew baggage and lower value goods) from the requirement to lodge an export entry. These exemptions apply even if the exportation of the goods requires a permission under Customs or other commonwealth legislation, significantly reducing the amount of information Customs receives in relation to such goods and hence its ability to monitor controlled exports. To address this problem, the amendment proposed at ***item 4 of Schedule 1*** to the Bill will insert ***new subsection 113(2A)*** to provide that the exemptions in subsection 113(2) do not apply to goods that require a permission under an Act, or an instrument under an Act, before they can be exported.

Alignment of Export Entry Thresholds

There are currently two different value thresholds for the lodgement of an export entry with Customs. Goods exported via Australia Post require an export entry if the consignment is valued at over $2000, while goods exported as air or sea cargo require an export entry if the goods are valued at over $500.

Item 56 of Schedule 3 will repeal paragraphs 113 (2)(b) and (c) of the Customs Act and replace them with a standard export entry threshold of $2000 for goods for export, regardless of mode of export. This will standardise the export entry threshold across all modes of export and simplify export entry requirements for the export industry.

New Penalties for Export-related Offences

Many of the problems with export data accuracy stem from a lack of effective penalties for non-compliance with Customs requirements. The introduction of strict liability offences with the option of issuing an infringement notice in lieu of prosecution is intended to provide incentive to improve compliance in relation to exports where other avenues for compliance improvement have been unsuccessful. See Chapter 5 of this Memorandum for a detailed discussion of the new penalty system.

Chapter 5 – New Penalty System

Outline of Chapter

Schedule 2 of the Bill amends the Customs Act to:

- Modernise the current penalty provisions of the Customs Act to provide for common and consistent sanctions across the entire range of Customs cargo reporting and commercial activities; and
- Introduce a 3-level sanction regime for particular new offences.

Detailed explanation of new law

Background to the penalty regime

An integral part of Customs approach to cargo management is reliance on a self assessment system whereby industry is required to accurately report cargo in a timely manner and pay the correct amount of duty owing. An appropriate penalty regime is an important part of this self-assessment system as it supports compliance by the use of pecuniary penalties, to ensure the provision of accurate information and the calculation and payment of the correct amount of duty.

In order that Customs can meet its responsibilities to prevent the movement into Australia of illicit drugs and other prohibited imports it is imperative that it is able to identify high risk cargo ahead of arrival. This approach has been endorsed by the Government's National Illicit Drugs Strategy. At present there are no provisions where a penalty can be applied for the reporting of cargo out of time or where reports are incomplete, other than the use of section 74 of the Customs Act to prevent the unloading of cargo which is not properly reported. However, commercial realities dictate that this approach is not feasible as it can also delay cargo which has been properly reported on that vessel/aircraft, thus leading to delays and costs to industry.

In relation to exports, the penalties reflect current government policy requirements for a tougher stance on the control of prohibited and restricted goods, diversion of underbond goods into the domestic market, and for accurate data on goods exported. This is particularly important with the introduction of the New Tax System providing GST-free status to supplies of goods for export.

The current administrative penalty provisions in sections 243T and 243U of the Customs Act do not reflect best practice in relation to penalties issued for errors made under self-assessment regimes. The current administrative penalties are not available for errors on export entries or drawback applications, nor for late or inaccurate cargo reports or unauthorised movement of goods. The new penalty regime will address those issues.

The structure of the new penalty regime

There will be a three tier approach under which sanctions will be applied for a range of breaches of the Customs Act. The first tier is the mens rea offence - Customs may elect to prosecute under section 234 of the Customs Act. The highest level of penalty will apply to this tier of offence. The second tier is where Customs may prosecute for a strict liability offence where it is considered that an infringement notice is not appropriate or where the person elects not to pay an infringement notice where one is issued. The third tier is where an infringement notice has been issued in lieu of prosecution for a strict liability offence. This will attract the lowest level of penalty, one fifth (1/5) of the maximum that a court can impose if the matter were prosecuted. Those offences that attract the third tier, namely the infringement notice, are listed in ***new subsection 243X(1)*** at ***item 6 of Schedule 2*** to the Bill.

The new penalty regime will only apply to transactions/reports occurring on or after the commencement of the new legislation. Where the new penalty regime replaces the existing section 243T (Customs Act) penalties, the new regime will be applied from the date of Proclamation.

Where infringement notices are to be applied for late cargo reports, there will be a six month moratorium on the imposition of penalties in instances where the offence is committed because the report is made late to give industry sufficient time to adjust to the new requirements from the commencement of the legislation (***new subsections 64AB(12) and (13)***).

Issuing an infringement notice

New subsection s243X(1) lists those strict liability offences for which an infringement notice may be issued, as an alternative to prosecuting the offence.

Generally, infringement notices for the offences proposed in Schedule 2 may be issued up to twelve months from the date of the offence, with the exception of breaches involving false or misleading statements that become apparent during the exercising of monitoring powers. Where the breach is for a false or misleading statement, an infringement notice may be issued within 12 months of the detection of the alleged offence, up to a maximum of 4 years after the statement was made. This acknowledges that in a self-assessment compliance regime that such breaches may only be detected during the course of a post transaction audit. Furthermore it is not possible to audit the huge numbers of importers and exporters within 12 months, and therefore the time period for issuing an infringement notice for false or misleading statements needs to reflect that fact (***new section 243Y***).

Prosecution of the strict liability offences must commence within five (5) years from the time the offence is committed, as is currently the case for prosecuting all Customs offences (current section 249 of the Customs Act).

Under ***new section 243Z*** certain particulars must be specified in the infringement notice. This includes specifying the penalty amount for the alleged offence under the infringement notice and the amount that a court may impose (***new subsections 243Z(4) and (1)*** respectively). Where the infringement notice is issued for an offence under s243T, and there is unpaid duty or unrepaid refund or drawback of duty, the

obligation to pay the duty, or repay the refund or drawback, continues despite the service of the infringement notice (***new paragraph 243Z(1)(d)***).

It is proposed that once an infringement notice is issued, a period of 28 days be allowed in which to pay (***new subsection 243Z(1)(f)***). The CEO may extend this period (***new section 243ZE***).

Where a person who has been served a notice in respect of an offence under ***new subsection 243T(1)*** and that person applied under section s273GA for a review of the amount of duty payable on the goods, then the time period of that dispute is not taken into account in working out the period of 28 days for payment of the penalty amount specified in the notice (***new subsection 243Z(2)***). This only applies to the person or entity that is a direct party to the dispute. It does not apply to persons or entities that merely have an interest in the outcome.

The person who receives the infringement notice may write to the CEO seeking the withdrawal of the notice (***new susbsection 243ZA(1)***). The CEO may have regard to a number of matters (***new subsection 243ZA(3)***) when determining whether to withdraw the notice whether written representations have been made or not (***new subsection 243ZA(2)***). Where the CEO decides to withdraw the notice and the penalty has already been paid within the time period for payment of the penalty, then the CEO must refund the amount paid (***new subsection 243ZA(4)***).

Should the infringement notice remain unpaid after the 28 days (or other period in which to pay as extended by the CEO - ***new section 243ZE***), Customs may elect to prosecute for the offence with possible higher penalties being imposed by a court. In the case of shortpayment of duty Customs will also take action to recover the correct amount of duty payable, irrespective of whether or not an infringement notice has been issued (***new paragraph 243Z(1)(d)***).

In both the above situations it should be noted that where the amount in the infringement notice is paid within the time frame specified, Customs will not have the right to pursue the original offence through prosecution (***new section 243ZB***). Where the amount in the infringement notice is not paid, Customs may prosecute the strict liability offence.

There will be no remission of the amounts set out in infringement notices issued under the new penalty regime.

There will be no formal avenue to the Administrative Appeals Tribunal (AAT) to seek review of the decision to apply a penalty. If the recipient of an infringement notice wishes to dispute the decision to issue that notice, then they may refuse to pay the amount owing and defend a prosecution in court for the strict liability offence for which the infringement notice was issued.

Penalties in section 234 Customs Act

Item 1A of Schedule 2 repeals paragraph 234(1)(g) of the Customs Act. Paragraph 234(1)(g) provides that a person shall not refuse or fail to answer questions or

produce documents. The penalty for an offence against that paragraph is an amount not exceeding $1,000.

Item 5 of Schedule 2 inserts into the Customs Act two new strict liability offences for failing to answer questions or produce documents. The penalties for those offences are 30 penalty units, ie $3,300.

Since the new strict liability offences will have greater penalties than the offence contained in paragraph 234(1)(g) it is proposed to repeal paragraph 234(1)(g).

Item 1B of Schedule 2 changes the penalty for making a false or misleading statement from $5,000 to 100 penalty units. Again this is because the Bill proposes to insert into the Customs Act similar strict liability offences that have penalties greater than the current offence.

Item 1C of Schedule 2 replaces paragraph 234(1)(d) of the Customs Act. Paragraph 234(1)(d) currently provides that in the case of an offence against paragraph 234(1)(g) or (h) the penalty is an amount not exceeding $1,000. New paragraph 234(1)(d) removes the reference to the offence in paragraph 234(1)(g) as it is being repealed and converts the monetary penalty into penalty units.

Savings provisions for current sections 243T, 243U and 243V

Item 5A of Schedule 2 makes it clear that current sections 243T, 243U and 243V of the Act continue to apply to statements made before those sections are repealed. The Bill contains a new regime under which infringement notices may be issued in respect of false or misleading statements. This new regime will only apply to statements made after the commencement of the relevant provisions.

Chapter 6 – Cost recovery

Outline of Chapter

The Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000 ('the Bill') with the Import Processing Charges Bill 2000 and Customs Depot Licensing Charges Amendment Bill 2000 propose a number of changes to the charges and fees that are collected by Customs.

The *Import Processing Charges Act 1997* will be repealed by the Bill and replaced by the Import Processing Charges Bill 2000.

Detailed explanation of new law

Refund application fees

It is proposed to remove the fees that are payable upon the making of a refund application fee. Hence, subsections 163(1B), (1C) and (1D) of the Customs Act will be repealed (***item 43, Part 2, Schedule 3*** to the Bill).

Import processing charges

Section 68 of the Customs Act provides that certain goods are required to be entered and they must be either entered for home consumption or for warehousing.

Entry for home consumption

Under the amendments proposed by the Bill an entry of goods for home consumption can be made by communicating to Customs either an **import declaration** in respect of the goods or a **request for cargo release (RCR)** in respect of the goods (***new subsection 68(3A)*** of the Customs Act).

Import declarations

The *Import Processing Charges Act 1997* sets out six charges payable in respect of import entries relating to goods to which section 68 of the Customs Act applies. The different charges depend on whether the import entry is made by computer or document and whether the goods are imported by air, sea or through the post. The charges consist of a flat rate and a line rate that is charged per line of the entry if the entry has more than a certain number of lines.

For the charges that will apply in respect of import declarations there will no longer be a distinction in the manner in which the goods are imported, that is the charge will be the same for goods imported by air, sea or through the post. Further, there will only be a flat rate of charge and no line rate.

The owner of goods will become liable to pay import declaration processing charge when an import declaration in respect of goods is, or is taken to have been, communicated to Customs (***new section 71B*** of the Customs Act). The new charges are set out below.

The amount of import declaration processing charge is:

- for an electronic import declaration that relates to goods to which section 68 of the Customs Act applies if the value of those goods is more than $250 (or such other amount as is prescribed) but not more than $1,000 (or such other amount as is prescribed) -$23.20 or, if another amount (not exceeding $34.80) is prescribed by the regulations, the amount so prescribed (subparagraph 5(3)(a)(i) of the Import Processing Charges Bill 2000);
- for an electronic import declaration that relates to goods to which section 68 of the Customs Act applies if the value of those goods is more than $1,000 (or such other amount as is prescribed) - $29.25 or, if another amount (not exceeding $43.85) is prescribed by the regulations, the amount so prescribed (subparagraph 5(3)(a)(ii) of the Import Processing Charges Bill 2000);
- for a documentary import declaration that relates to goods to which section of the Customs Act applies $60.00 or, if another amount (not exceeding $90.00) is prescribed by the regulations, the amount so prescribed (paragraph 5(3)(b) of the Import Processing Charges Bill 2000).

Requests for cargo releases (RCR) and periodic declarations

A RCR contains less information than an import declaration but can only be made by a person who has entered into an import information contract or by a customs broker nominated in the contract to make communications on behalf of the person (***new subsection 71DB(3)***). If a person makes RCRs the person must lodge a **periodic declaration** not later than the first day of the month following the one in which the RCR was made.

The RCR processing charge and periodic declaration charge are new charges that will be payable by persons who enter into import information agreements.

A person who has entered into an import information agreement becomes liable to pay RCR processing charge when they send a RCR to Customs. However, RCR processing charge is not payable until the person sends to Customs a periodic declaration in respect of goods to which the request relates. If a RCR is withdrawn or is taken to be withdrawn before an authority to deal is issued, the person is not liable to pay the RCR processing charge in respect of the request (***new section 71DC***).

The amount of RCR processing charge is $9.40 or, if another amount (not exceeding $14.10) is prescribed by regulation, the amount so prescribed (subclause 5(5) of the Import Processing Charges Bill 2000).

A person becomes liable to pay periodic declaration processing charge when the person sends to Customs a periodic declaration (***new section 71DG*** of the Customs Act).

The amount of periodic declaration processing charge is $1,275 or, if another amount (not exceeding $1,912.50) is prescribed by regulation, the amount so prescribed (subclause 5(4) of the Import Processing Charges Bill 2000).

Warehoused goods

An import declaration can also be made in respect of warehoused goods that are intended to be entered for home consumption (***new subsection 71A(1)*** of the Customs Act).

The owner of warehoused goods who makes an import declaration in respect of those goods is liable to pay a fee (the warehoused goods entry fee) for the processing by Customs of that declaration (***new section 71BA*** of the Customs Act).

The amount of that fee is:

- for an electronic import declaration in respect of warehoused goods - $23.20 or, if another amount (not exceeding $34.80) is prescribed by the regulations, the amount so prescribed (***new paragraph 71BA(2)(a)*** of the Customs Act); and
- for a documentary import declaration in respect of warehoused goods - $60.00 or, if another amount (not exceeding $90.00) is prescribed by the regulations, the amount so prescribed (***new paragraph 71BA(2)(b)*** of the Customs Act).

Entry of goods for warehousing

An entry of goods for warehousing is made by communicating to Customs a **warehouse declaration** in respect of the goods (***new subsection 68(3B)*** of the Customs Act).

The owner of goods becomes liable to pay warehouse declaration processing charge when a warehouse declaration in respect of goods is, or is taken to have been communicated to Customs (***new subsection 71DI(1)*** of the Customs Act). The charge is also payable on altered declarations.

If one person who is the owner of goods pays the charge relating to particular goods, then any other person who is also the owner of the goods ceases to be liable to pay the charge (***new subsection 71DI(2)*** of the Customs Act).

If the warehouse declaration is withdrawn or taken to have been withdrawn, before an authority to deal with the goods is issued, then the owner is not liable to pay the warehouse declaration processing charge in respect of that declaration (***new subsection 71DI(3)*** of the Customs Act).

The amount of the warehouse declaration processing charge is:

- for an electronic warehouse declaration that relates to goods whose value is more than $250 (or such other amount as is prescribed) but not more than $1,000 (or such other amount as is prescribed) - $23.20 or, if another amount (not exceeding $34.80) is prescribed by the regulations, the amount so prescribed (subparagraph 5(6)(a)(i) of the Import Processing Charges Bill 2000);
- for an electronic warehouse declaration that relates to goods whose value is more than $1,000 (or such other amount as is prescribed) - $29.25 or, if another amount (not exceeding $43.85) is prescribed by the regulations, the amount so prescribed (subparagraph 5(6)(a)(ii) of the Import Processing Charges Bill 2000); and

- for a documentary warehouse declaration - $60.00 or, if another amount (not exceeding $90.00) is prescribed by the regulations, the amount so prescribed (paragraph 5(6)(b) of the Import Processing Charges Bill 2000).

Goods not requiring entry – self-assessed clearance declarations

Section 71 of the Customs Act provides that the owner of the following goods must, in any circumstances specified in the regulations, provide such information at such time and in such manner and form as the regulations specify:

- goods that are accompanied or unaccompanied personal or household effects of a passenger, or a member of a crew, of a ship or aircraft (paragraph 68 (1)(d) of the Customs Act);
- goods, other than prescribed goods that are included in a consignment consigned through the Post Office by one person to another and that have a value not exceeding $1,000 or such other amount as is prescribed (paragraph 68 (1)(e) of the Customs Act);
- goods, other than prescribed goods that are included in a consignment consigned other than by post by one person to another, that are all transported to Australia in the same ship or aircraft and that have a value not exceeding $250 or such other amount as is prescribed (paragraph 68 (1)(f) of the Customs Act); and
- goods that, under the regulations, are exempted from section 68 (paragraph 68(1)(i) of the Customs Act).

The owner of goods that fall into the first category will still be required to provide information about those goods in accordance with the regulations.

In respect of goods in the remaining three categories the owner or a person on their behalf must make a self-assessed clearance declaration in respect of the goods (***new subsection 71(2)*** of the Customs Act).

The amount of the self-assessed clearance declaration charge is:
- for a declaration made by a cargo reporter; and
- for a declaration made in respect of reportable documents where there are 21 or more reportable documents in the declaration
- $45.00 or, if another amount (not exceeding $67.50) is prescribed by the regulations, the amount so prescribed (paragraph 5(2)(a) of the Import Processing Charges Bill 2000).

The amount of the self-assessed clearance declaration charge for all other declarations is $2.15 or such other amount (not exceeding $3.23) as is prescribed (paragraph 5(2)(b) of the Import Processing Charges Bill 2000).

The CEO may enter into arrangements with people for the payment of this charge under which the person must agree to pay the charge to the Commonwealth in the manner provided in the arrangement (***new subsection 71AAB(2)*** of the Customs Act). If there is no arrangement in place the person must, within 21 days after the person is notified by Customs of the charge for which the person becomes liable during each month, pay that amount to the Commonwealth (***new subsection 71AAB(1)*** of the Customs Act).

Further, the Regulations will be able to prescribe those people who will not be liable to pay self-assessed clearance charge (***new paragraph 71AAA(3)(b)*** of the Customs Act).

Cargo report processing charge

Section 64AAB of the Customs Act currently provides that a person who communicates to Customs a documentary cargo report will be liable to pay cargo report processing charge. Since the Bill will amend the Customs Act to provide that all cargo reports must be made electronically the charge is no longer necessary. Hence, section 64AAB of the Customs Act will be repealed (***item 118, Part 6, Schedule 3*** to the Bill).

Screening charge

Paragraph 7(a) of the *Import Processing Charges Act 1997* provides that the amount of screening charge payable in respect of documentary or electronic report that is, or is a part of, a cargo report is $2.40 for each line that relates to a consignment of goods except if the report is made by a special reporter or if in accordance with subsection 64ABC (1A) of the Customs Act. Under the amendments proposed in the Bill and the Import Processing Charges Bill 2000, this charge will no longer be payable.

Special reporters are people who import high volumes of:

- reportable documents;
- mail-order house goods; or
- other prescribed goods
- where those documents or goods are low value.

Special reporters are registered under Subdivision C, Division 3 of Part IV of the Customs Act. Under paragraphs 7(b), (c), (d) of the *Import Processing Charges Act 1997* the amount of screening charge payable by special reporters is $45 for each report relating to low value cargo or such other amount, not exceeding $67.50, as is prescribed. No other amount has been prescribed.

The Bill will amend the Customs Act to provide that an importer of reportable documents will no longer be able to be registered as a special reporter.

The Import Processing Charges Bill 2000 sets out the amount of screening charge for an abbreviated cargo report (subclause 5(1) of the Import Processing Charges Bill 2000).

The amount of that charge will not be changed, that is, $45 for the report or such other amount, not exceeding $67.50, as is prescribed.

A special reporter who pays screening charge who also makes a self-assessed clearance declaration in respect of those goods will not be liable to pay self-assessed clearance declaration charge in respect of those goods (***new paragraph 71AAA(3)(a)*** of the Customs Act).

Depot licensing

Under ***new section 77LA*** of the Customs Act the CEO may vary a depot licence by:
omitting the description of a place that is currently described in the licence and substituting a description of another place; or
altering the description of a place that is currently described in the licence (***item 146*** of the Bill).

If a holder of a depot licence applies to have their licence varied in this manner they will be liable to pay a depot licence variation charge. The Customs Depot Licensing Charges Amendment Bill 2000 provides that the amount of that charge is $300 or, if another amount, not exceeding $450, is prescribed, that other amount.

Chapter 7 - Disclosure of Protected Information

Outline of the Chapter

The Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000 includes amendments to improve Customs capacity to communicate with Commonwealth and State agencies, agencies and instrumentalities of foreign countries, and international organisations. The purpose of the amendments is to address shortcomings in the operation of section 16 of the *Customs Administration Act 1985* (the Customs Administration Act'), which concerns the recording and disclosure of protected information by Customs officers and people working in and for Customs. To achieve this outcome the Bill amends the Customs Administration Act to:

- enable Customs to disclose personal information to the Australian Bureau of Statistics;
- enable Customs to disclose information to the Norfolk Island Customs Service and other Norfolk Island agencies;
- enable Customs to disclose personal information where the individual concerned has consented to that disclosure;
- resolve certain technical inconsistencies and minor typographical errors;
- delete the parts of section 16 which allow Customs to disclose cargo reports and import declarations to AQIS, and
- delete the part of section 16 which allows Customs to disclose cargo reports to port authorities.

In addition, the Bill amends the Customs Act to allow Customs to disclose cargo reports to port authorities, including privatised port authorities.

Detailed explanation of the New Law

Amendments to section 16 of the Customs Administration Act

Australian Bureau of Statistics

Presently, section 16 of the Customs Administration Act ('section 16') does not permit Customs to provide personal information to the Australian Bureau of Statistics – this potentially compromises the Bureau's ability to independently verify data. A paragraph in ***new subsection 16(9)*** concerning collection and verification of statistics will allow the CEO to authorise the disclosure of information that includes personal information to the ABS for the purpose of the collection and verification of statistics (***new paragraph 16(9)(ea)***).

Authorised disclosures to Norfolk Island

Section 16 does not presently allow the CEO to authorise the disclosure of information to Norfolk Island agencies and instrumentalities – this prevents Customs from communicating with the Norfolk Island Customs Service in some instances. The definition of ***State*** in subsection 16(1A) is repealed and replaced, to include Norfolk Island.

CEO's authorisation – consent

Currently, section 16 does not allow Customs to disclose information in circumstances where the individual or body concerned has consented. This limits the capacity of Customs to communicate effectively with government agencies and others. In the case of personal information, this is inconsistent with what is permitted under the *Privacy Act 1988*.

New subsection 16(3G) provides that if the CEO is satisfied that the principal officer of, or a person authorised to act on behalf of, a body corporate has consented to the disclosure of information or a class of information (not including personal information) concerning that body, to a person, then the CEO may authorise, in writing, the disclosure of that information to that person.

On this basis, information may be disclosed to any person where the body corporate that is the subject of the information, has consented.

New subsection 16(3H) provides that if the CEO is satisfied that a Commonwealth agency, State agency, a foreign country, an agency or instrumentality of a foreign country or an international organisation has consented to the disclosure to a person, of information or a class of information (not including personal information) concerning that body, then the CEO may authorise, in writing, the disclosure of that information to that person.

As ***new subsections 16(3G) and (3H)*** do not operate in relation to personal information, they are not expressed as being subject to subsections 16(7), (8) and (10).

Paragraph 16(3)(b) will be amended to make reference to these new provisions.

For personal information, subsection 16(7) is to be repealed and substituted in similar terms with the addition of ***new paragraph 16(7)(c)***. The effect of ***new paragraph 16(7)(c)*** is to provide that, where the individual concerned has consented to the disclosure of personal information, the disclosure need not comply with subsection 16(8) or (10).

Minor, technical and consequential amendments

Section 16 contains a number of technical inconsistencies and minor typographical errors.

It is proposed to make the following amendments.

Section heading

The present section heading is misleading as section 16 no longer concerns breaches of confidence. It is proposed to substitute a new section heading, which indicates that the section is concerned with the recording and disclosure of protected information.

Subsection 16(1) – Overview

The present Overview is repealed and substituted, to incorporate changes made elsewhere in the section, and to remove cross-references to other parts of the section.

New subsection 16(1) establishes that the section prohibits the unauthorised recording and disclosure of certain information held by the Australian Customs Service, provides for exceptions in relation to that prohibition, and makes particular provision in relation to the authorised disclosure of personal information.

subsection 16(1A) - Definitions

The present definition of ***authorised person*** identifies persons to whom section 16 applies. The definition of ***authorised person*** will be deleted and ***new subsection 16(1AA)*** will set out the persons to whom section 16 applies.

New subsection 16(1AA) will be substantially similar to the definition of ***authorised person***, save for the following:

paragraph (e) of the definition of ***authorised person*** in subsection 16(1) referred to "a person authorised by the CEO to exercise a power or function *of the CEO*". The CEO does not authorise persons to perform *his* powers or functions – rather, they are powers and functions of officer of Customs, or 'an authorised officer'.

The words "of the CEO" will not appear in paragraph 16(1AA)(e), to ensure that section 16 applies to persons who have been authorised by the CEO of Customs to exercise powers or perform functions under a law of customs or excise.

The effect of this is that any person appointed as an officer of Customs will be subject to section 16.

References to an "authorised person" elsewhere in section 16 will be omitted and substituted with references to a person to whom section 16 applies.

Subsection 16(7) - Disclosure of personal information

The reference in paragraph 16(7)(a) to recording information (ie paragraph 16(2)(a)) is a nullity, as none of the mentioned provisions permit the recording of information. The words "(a) or" in paragraph 16(7)(a) are omitted.

Paragraph 16(7)(b) makes an unnecessary reference to disclosures to "a person *or to a body*". The words "or to a body" are omitted from that paragraph.

subsection 16(9) – Permissible purposes

The references in paragraphs 16(9)(f) and (g) to the "collection" of the public revenue may exclude the disclosure of information for a purpose that, for example, relates to an entitlement to a rebate or a grant. References to "collection of the public revenue" are replaced with "protection of the public revenue". This is consistent with the equivalent provision in the *Privacy Act 1988.*

Paragraph 16(9)(i) refers to "border control between Australia *or* another country". This should read "*and* another country". The word "or" is omitted and the word "and" is inserted in this paragraph.

Disclosure of information to AQIS and port authorities

Currently, section 16 contains specific exceptions to the general prohibition on the disclosure of protected information, permitting the disclosure of cargo reports and import declarations to the Australian Quarantine and Inspection Service (see generally subsection 16(4)). As such disclosures can now be authorised in writing by the CEO of Customs under subsection 16(3A), it is not necessary for this exception to remain in section 16.

Section 16 also presently allows the disclosure of cargo reports to port authorities (paragraph 16(4)(b)). However, disclosures of personal information under paragraph 16(4)(b) to port authorities cannot be approved where a port authority has been privatised, because there is no relevant permissible purpose under paragraph 16(9) on which the CEO may base his approval. Moreover, a number of port authorities have been or will be privatised. Privatised port authorities may not be covered by the present definition of port authority in subsection 4(1) of the Customs Act.

Provision will be made in the Customs Act to permit such disclosures to port authorities. It is therefore not necessary for this exception to remain in section 16, as the disclosures will be expressly authorised by law.

The definitions of ***AQIS***, ***authorised officer of AQIS***, and ***food*** in subsection 16(1A) are deleted, as the parts of section 16 that use these terms are to be deleted.

Subsections 16(4), 16(5) and 16(6) are to be deleted, and references to these provisions are deleted from the other parts of section 16.

Amendments to the Customs Act

The definition of ***port authority*** in subsection 4(1) of the Customs Act is repealed and substituted, to reflect the fact that a port authority may not be an agency of a State or Territory. The new definition of ***port authority*** extends the definition to include any body that administers the business carried on at a port or ports in a State or Territory.

New section 64ADA of the Customs Act authorises the CEO or a Customs officer to disclose cargo reports to port authorities for the purpose set out in ***new subsection 64ADA(1)***. ***New subsection 64ADA(2)*** establishes that it is an offence for the port authority to use the information for other purposes, or to disclose the information to any other person unless it is for the purposes set out in ***new subsection 64ADA(1)***. ***New subsection 64ADA(3)*** establishes that 'disclosure' includes providing electronic access to information. ***New section 64ADA*** is in substantially similar terms to the relevant parts of repealed subsections 16(4), (5) and (6) of the Customs Administration Act.

Index

Index of sections of the Customs Act –as proposed to be amended or inserted by this Bill