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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**SENATE**

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

**SUPPLEMENTARY EXPLANATORY MEMORANDUM  
(Amendments to be moved on behalf of the Government)**

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

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

## **OUTLINE**

The purpose of the amendments to the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 (the Bill) is to:

- require monitoring officers to give occupiers of premises written notice setting out the occupier's rights and obligations; and
- require the Chief Executive Officer of Customs to develop written guidelines to which he or she must have regard when exercising powers relating to infringement notices; and
- remove the specification of some offences in the Bill as strict liability offences.

## **FINANCIAL IMPACT STATEMENT**

The amendments have no financial impact.

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

## **NOTES ON AMENDMENTS**

### **Amendment (1)**

Item 13 of Part 5 of Schedule 1 to the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 (“the Bill”) proposes to introduce into the *Customs Act 1901* (“the Customs Act”) provisions relating to monitoring powers. These will be contained in new Subdivision J of Division 1 of Part XII of the Customs Act. A monitoring officer will be able to exercise monitoring powers at a premises either with the consent of the occupier of the premises or under a monitoring warrant.

Amendment (1) proposes to insert a new section into the Customs Act requiring monitoring officers to give occupiers of premises written notice setting out the occupier’s rights and obligations under new Subdivision J of Division 1 of Part XII of the Customs Act before exercising monitoring powers. This notice must be given to the occupier where monitoring powers are to be exercised with the consent of the occupier and where those powers are to be exercised under a monitoring warrant.

### **Amendment (2)**

This amendment omits proposed subsection 240(6D) of the Customs Act. This subsection provides that an offence against, or for the contravention of, section 240 is an offence of strict liability. Section 240 provides for the retention of commercial documents. The result is that an offence against, or for the contravention of, section 240 will no longer be a strict liability offence.

### **Amendment (3)**

This amendment omits proposed subsection 240AB(8) of the Customs Act. This subsection provides that an offence for the contravention of subsection 240AB(3) or (7) is an offence of strict liability. Section 240AB provides for the retention of records. The result is that an offence for the contravention of section 240AB will no longer be a strict liability offence.

### **Amendment (4)**

This amendment omits proposed subsection 243SA(2) of the Customs Act. This subsection provides that an offence for the contravention of subsection 240SA(1) is an offence of strict liability. Section 240SA relates to the failure to answer a question. The result is that an offence for the contravention of section 240SA will no longer be a strict liability offence.

### **Amendment (5)**

This amendment omits proposed subsection 243SB(2) of the Customs Act. This subsection provides that an offence for the contravention of subsection 240SB(1) is an offence of strict liability. Section 240SB relates to the failure to produce a document or record. The result is

that an offence for the contravention of section 240SB will no longer be a strict liability offence.

### **Amendments (6), (7) and (8)**

Item 6 of Schedule 2 to the Bill proposes to introduce into the Customs Act provisions allowing administrative penalties in lieu of prosecution. Subsection 243X(1) sets out the strict liability offences to which the proposed scheme allowing for administrative penalties in lieu of prosecution applies (new Division 5 of Part XIII of the Customs Act).

These amendments amend proposed subsection 243X(1) of the Customs Act by omitting references to the offences contained in proposed subsections 64AAA(9), 99(2), 114D(1), 126E(3), 126F(3), 243SA(1) and 243SB(1) of the Customs Act. The administrative penalty scheme is only intended to apply in respect of strict liability offences. As the above offences will no longer be strict liability offences, they are also to be removed from the operation of new Division 5 of Part XIII.

### **Amendment (9)**

Item 6 of Schedule 2 to the Bill proposes to introduce into the Customs Act provisions allowing administrative penalties in lieu of prosecution. Under proposed subsection 243Y(1), if the CEO has reasonable grounds to believe that a person has committed an offence, the CEO may cause an infringement notice to be served on the person in accordance with new Division 5 of Part XIII of the Customs Act.

Amendment (2) proposes to insert new section 243XA into the Customs Act requiring the Chief Executive Officer of Customs to develop written guidelines for the purposes of new Division 5 of Part XIII of the Customs Act to which he or she must have regard when exercising powers under that Division. Those guidelines will be disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **Amendment (10)**

This amendment omits proposed subsection 126E(4) of the Customs Act. This subsection provides that an offence for the contravention of subsection 126E(3) is an offence of strict liability. Section 126E relates to the failure to communicate electronically to Customs after an information system is temporarily inoperative. The result is that an offence for the contravention of section 126E will no longer be a strict liability offence.

### **Amendment (11)**

This amendment omits proposed subsection 126F(4) of the Customs Act. This subsection provides that an offence for the contravention of subsection 126F(3) is an offence of strict liability. Section 126F relates to the failure to make an electronic payment to Customs after an information system is temporarily inoperative. The result is that an offence for the contravention of section 126F will no longer be a strict liability offence.

**Amendment (12)**

This amendment omits proposed subsection 114D(2) of the Customs Act. This subsection provides that an offence for the contravention of subsection 114D(1) is an offence of strict liability. Section 114D relates to dealing with goods the subject of an export entry. The result is that an offence for the contravention of section 114D will no longer be a strict liability offence.

**Amendment (13)**

This amendment omits the reference to subsection 99(2) from proposed subsection 99(4) of the Customs Act. Subsection 99(4) provides that an offence for the contravention of subsection 99(2) or (3) is an offence of strict liability. Subsection 99(2) relates to the entry of warehoused goods for home consumption. The result is that an offence for the contravention of subsection 99(2) will no longer be a strict liability offence.

**Amendment (14)**

This amendment omits proposed subsections 64AAA(9) and (10) of the Customs Act. Subsection 64AAA(10) provides that an offence against subsection (9) is an offence of strict liability. Subsection 64AAA relates to the report of stores and prohibited goods to Customs. The result is that there will no longer be a strict liability offence for the contravention of section 64AAA.

**Amendment (15)**

This amendment omits proposed subsection 64ABAC(3) of the Customs Act. This subsection provides that an offence against subsection 64ABAC(2) is an offence of strict liability. Section 64ABAC relates to providing an explanation of shortlanded or surplus cargo. The result is that an offence for the contravention of section 64ABAC will no longer be a strict liability offence.