

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**CUSTOMS AMENDMENT (EXTENSION OF IMPORT CUT-OVER TIME) BILL
2005**

EXPLANATORY MEMORANDUM

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

CUSTOMS AMENDMENT (EXTENSION OF IMPORT CUT-OVER TIME) BILL 2005

OUTLINE

1. The purpose of this Bill is to amend the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004* (the Application Act) to delay the import cut-over and turn-off times that have been specified in sections 5 and 6, respectively, of the Application Act. The import cut-over time determines which computer system a person must use to communicate electronically with the Australian Customs Service (Customs). The turn-off time is the time that the current computer systems used by Customs will be turned off (except for internal Customs usage).

FINANCIAL IMPACT STATEMENT

2. An extension of the transition period is expected to reduce revenue from cost recovery measures contained in the *Import Processing Charges Act 2001* by \$1.39m in the 2005/06 financial year. The impact is due to the continued use of Customs existing legacy systems and the related charges levied under the application of the *Import Processing Charges Act 1997*.

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NOTES ON CLAUSES

Clause 1 – Short title

3. This clause provides for the Bill, when enacted, to be cited as the Customs Legislation (Extension of import cut-over time) Act 2005.

Clause 2 - Commencement

4. Clause 2 provides that the Act commences on the day on which it receives the Royal Assent.

Clause 3 - Schedule(s)

5. This clause is the formal enabling provision for the Schedule to the Bill, providing that each Act specified in a Schedule is amended in accordance with the applicable items of the Schedule. In this Bill the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004* is being amended.
6. The clause also provides that the other items of the Schedules have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation.

SCHEDULE 1 - AMENDMENTS

7. The *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (the ITM Act) amended the *Customs Act 1901* (the Customs Act) to, amongst other things, create the legal foundations for communicating electronically with the Australian Customs Service (Customs) using a new computer system known as the Integrated Cargo System (the ICS). In order to allow people who want to communicate electronically with Customs time to prepare the relevant systems, the amendments in the ITM Act have been proclaimed to commence progressively.
8. The amendments relating to the importation of goods and the arrival of ships and aircraft in Australia (the ITM import amendments) commenced on 19 July 2005.
9. Section 7 of the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004* (the Application Act) provides, in part, that the ITM import amendments apply to reports relating to the impending arrival, arrival and unloading of goods from a ship or aircraft if the ship or aircraft is due to arrive at its first port or airport in Australia at or after import cut-over time. This includes the requirement to use the ICS to make electronic reports to Customs. A ship or aircraft that is due to arrive at its first port or airport in Australia before import cut-over time is subject to the requirements in the Customs Act before the ITM import amendments commence (the unamended Customs Act).
10. Similarly, section 8 of the Application Act provides, in part, that the ITM import amendments apply to imported goods that are on board a ship or aircraft that is due to arrive at its first port or airport in Australia from a place outside Australia at or after the import cut-over time. This covers for example, the requirement to enter goods for home consumption or warehousing. Again, the unamended Customs Act will continue to apply to goods on board a ship or aircraft that is due to arrive at its first port or airport in Australia from a place outside Australia before the import cut-over time. If however, such a ship or aircraft does not actually arrive until at or after turn-off time, the ITM import amendments will apply.
11. As required under section 5 of the Application Act, the Chief Executive Officer of Customs (the CEO) has specified that the import cut-over time is 2am in the Australian Capital Territory on 28 August 2005. This date will be varied by this Bill.
12. The unamended Customs Act requires electronic reports relating to imports and the arrival of ships and aircraft to be made using the Sea Cargo Automation System (SCA), the Air Cargo Automation System (ACA) and COMPILE.
13. The turn-off time is the time that these systems will no longer be able to be used by importers, cargo reporters, operators of ships and aircraft etc to make these reports.

14. Under section 6 of the Application Act, the CEO has specified that the turn-off time is 2am in the Australian Capital Territory on 7 October 2005. This is the latest possible day that the CEO could specify. The 40 day gap between import cut-over time and turn-off time will enable processes started in SCA, ACA and COMPILE to be completed in those systems. This is because these systems will not be compatible with the ICS.
15. It is a strongly held view of the importing community and their agents that they will not have the systems in place in time to communicate using the ICS in relation to ships and aircraft (or goods on board them) arriving on or after 2am in the Australian Capital Territory on 28 August 2005. This situation would result in severe disruption at all major ports and airports that deal with import cargo as well as having a major impact on Australian business and manufacturing dependent on imports.
16. This Bill delays the import cut-over and turn-off times to allow the relevant computer systems to be finalised. The amendments are in accordance with the Minister for Justice and Customs' press release on 5 July 2005.

Item 1 - Section 4 (definition of *import cut-over time*)

17. Item 1 makes a technical amendment to the definition of import cut-over time in section 4 of the Application Act to reflect new section 5 of the Application Act under which the import cut-over time may not necessarily be specified by the CEO.

Item 2 - Sections 5 and 6

18. Item 2 repeals and substitutes sections 5 and 6 of the Application Act.
19. New subsection 5(1) provides that import cut-over time is 2am by legal time in the Australian Capital Territory on 12 October 2005 or a later time specified by the CEO by legislative instrument.
20. New subsection 5(2) makes it clear that the CEO may specify the import cut-over time more than once, but if the CEO does make it a second time, the CEO must do so before the first specified time.
21. New subsection 5(3) provides that if the CEO does specify a later time, it must be before the end of 7 November 2005. This would apply to both a time specified under new subsection 5(1) or (2).
22. It is expected that the CEO would only specify a later time if there was an operational situation in the ICS which required a short period to fix.
23. New subsection 6(1) provides that the CEO must, by legislative instrument, specify a time not more than 40 days (including Sundays and holidays) after the import-cut over time as the turn-off time. The 40 day limitation in the turn-off time is the same

as current section 6. If the CEO specifies the import cut-over time under new paragraph 5(b), the turn-off time must be within 40 days of that specified import cut-over time.

24. New subsection 6(2) makes it clear that the CEO may change the turn-off time but the CEO must do that before the first turn-off time and it must not be more than 40 days (including Sundays and holidays) after the import cut-over time. The CEO may need to specify a second turn-off time if the import cut-over time is delayed.