



Customs Amendment Act (No. 1) 1997

No. 3, 1997

**An Act to amend the *Customs Act 1901*, and for
related purposes**

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	2
Schedule 1—Amendment of the Customs Act 1901		3



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An Act to amend the *Customs Act 1901*, and for related purposes

[Assented to 28 February 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment Act (No. 1) 1997*.

2 Commencement

- (1) Sections 1, 2 and 3 of this Act commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsections (3) and (4), the other provisions of this Act commence on a day or days to be fixed by Proclamation.

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- (3) If a provision of this Act (other than item 12 of Schedule 1) does not commence under subsection (2) within 6 months after the day on which this Act receives the Royal Assent, it is taken to have commenced on the first day after the end of that period.
 - (4) Item 12 of Schedule 1 commences 12 months after the day on which item 10 of that Schedule commences.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Customs Act 1901

1 Subsection 4(1)

Insert:

cargo report processing charge means charge imposed by the *Import Processing Charges Act 1997* and payable as set out in section 64ABB of this Act.

2 Subsection 4(1)

Insert:

electronic in relation to a report, means transmitted to Customs by computer.

3 Subsection 4(1)

Insert:

entry processing charge means charge imposed by the *Import Processing Charges Act 1997* and payable as set out in subsection 71AA(1) of this Act.

4 Subsection 4(1)

Insert:

screening charge means charge imposed by the *Import Processing Charges Act 1997* and payable as set out in section 64ABC of this Act.

5 Subsection 4(1)

Insert:

warehoused goods entry fee means a fee payable under section 71AB on warehoused goods entered for home consumption.

6 Paragraph 17(b)

Repeal the paragraph.

7 Subsections 28(2) and (3)

Repeal the subsections, substitute:

- (2) If, at the request of a person, a Collector arranges for an officer to be available to perform a function at a place outside the hours prescribed for that function, the person must pay to Customs an overtime fee.
- (3) The overtime fee in relation to the officer is:
 - (a) \$40 per hour or part hour during which the officer performs that function and engages in any related travel, or such other rate as is prescribed; and
 - (b) any prescribed travel expense (at the rate prescribed) associated with the officer performing that function at that place.
- (4) If, at the request of a person, a Collector arranges for an officer to be available to perform a function:
 - (a) at a place that is not a place at which such a function is normally performed; and
 - (b) during the hours prescribed for that function;the person must pay to Customs a location fee.
- (5) The location fee in relation to the officer is:
 - (a) \$37 per hour or part hour during which the officer performs that function and engages in any related travel, or such other rate as is prescribed; and
 - (b) any prescribed travel expense (at the rate prescribed) associated with the officer performing that function at that place.
- (6) In this section:

related travel means travel to or from the place at which the function referred to in paragraph (3)(a) or (5)(a) is performed if that travel directly relates to the officer performing that function.

8 Application

The amendment of the *Customs Act 1901* made by item 7 applies in relation to all functions in respect of which a Collector makes an arrangement under section 28 of that Act after the commencement of that item.

9 At the end of section 64AB

Add:

- (7) A report (whether documentary or electronic) that:
- (a) would be, or would be a part of, a cargo report except that the report was communicated to Customs later than the relevant time specified in subsection (2) or (3); and
 - (b) otherwise complies with subsection (4) or (5), as the case requires;
- is, for the purposes only of sections 64ABB, 64ABC and 64ABD, taken to be, or to be a part of, a cargo report and to have been communicated to Customs in accordance with this section.

10 After section 64ABA

Insert:

64ABB Liability for cargo report processing charge

A person who communicates to Customs a documentary report:

- (a) that is, or is a part of, a cargo report; and
- (b) that provides particulars of a consignment; and
- (c) that identifies a person who has a beneficial interest in the goods in that consignment;

is liable to pay cargo report processing charge in respect of the documentary report.

64ABC Liability for screening charge

- (1) A person who communicates to Customs a report (whether documentary or electronic):
- (a) that is, or is a part of, a cargo report of goods that are intended to be, or that have been, unshipped from an aircraft at a particular airport; and
 - (b) that relates, in whole or in part, to a consignment of goods that do not require entry; and

- (c) that provides particulars of the consignment; and
- (d) that identifies a person who has a beneficial interest in the goods in that consignment;

is liable to pay screening charge, additional to any cargo report processing charge that may be payable under section 64ABB, in respect of the documentary or electronic report.

- (2) In this section:

goods that do not require entry means goods that, because they are included in paragraph 68(1)(f), are not goods to which section 68 applies.

64ABD Special arrangements for payment of cargo report processing charge or screening charge

- (1) The CEO may make an arrangement with a person under which the person agrees to pay to the Commonwealth:

- (a) within a specified interval after the end of each consecutive period specified in the arrangement (a ***liability period***); and
- (b) in the manner provided in the arrangement;

the total of all cargo report processing charge, of all screening charge, or of all of both charges, in relation to goods covered by documentary reports, for which the person becomes liable during the liability period.

- (2) If:

- (a) the CEO has not made an arrangement under subsection (3); or
- (b) an arrangement made under subsection (3) is terminated in the circumstances set out in subsection (6);

the person must, within 21 days after the person is notified by Customs of the total amount of all the screening charge in relation to goods covered by electronic reports for which the person becomes liable during each respective month of the year, pay to the Commonwealth that amount.

- (3) The CEO may make an arrangement with a person under which the person agrees to pay to the Commonwealth, in the manner provided in the arrangement, screening charge, in relation to goods covered by electronic reports.

- (4) An amount payable by a person:
- (a) under an arrangement made under subsection (1) or (3); or
 - (b) in accordance with subsection (2);
- may be recovered by the Commonwealth by action against the person in a court of competent jurisdiction as a debt due to the Commonwealth.
- (5) If:
- (a) a person has entered into an arrangement under subsection (1); and
 - (b) a person refuses or fails, within the specified interval after the end of a liability period referred to in that arrangement, to pay to the Commonwealth the amount of screening charge or cargo report processing charge for which the person became liable during that liability period;
- the arrangement is terminated by force of this subsection.
- (6) If:
- (a) a person has entered into an arrangement under subsection (3); and
 - (b) a person refuses or fails to pay screening charge in accordance with the arrangement;
- the arrangement is terminated by force of this subsection.

11 Application

The amendments of the *Customs Act 1901* made by items 1, 2, 4, 9, 10, 13, 14, 23 and 24 apply in relation to all cargo reports made under section 64AB of that Act after the commencement of those items.

12 Paragraph 68(1)(e)

Omit “\$1,000”, substitute “\$250”.

13 Subsection 71(2)

Omit “Where”, substitute “Subject to subsection (3), if”.

14 After subsection 71(2)

Add:

- (3) Customs must not authorise the delivery of goods of a kind referred to in paragraph 68(1)(f) into home consumption unless:

- (a) the person liable to pay screening charge in respect of those goods pays that charge; or
- (b) the person liable to pay that charge is entitled to pay that charge in accordance with subsection 64ABD(2); or
- (c) the person liable to pay that charge is entitled to pay that charge in accordance with an arrangement in force under subsection 64ABD(1) or (3).

15 Subsection 71A(1)

Repeal the subsection, substitute:

- (1) An import entry is a communication to Customs of information:
 - (a) concerning goods to which section 68 applies that are intended to be entered for home consumption, for warehousing, or for transshipment; or
 - (b) concerning warehoused goods that are intended to be entered for home consumption;that is effected:
 - (c) by document; or
 - (d) except so far as goods intended to be entered for transshipment are concerned—by computer.

16 Saving provision—entries under subsection 71A(1) of the *Customs Act 1901*

In spite of the repeal and remaking of subsection 71A(1) of the *Customs Act 1901* by item 15, any communication to Customs before that item comes into force that is an import entry within the meaning of that subsection as in force immediately before the commencement of that item is to be taken to continue to be such an entry within the meaning of that subsection as remade by that item.

17 Subparagraph 71A(2)(b)(i)

After “giving”, insert “or sending”.

18 After section 71A

Insert:

71AA Liability for entry processing charge

- (1) When an import entry (including an altered import entry) in respect of goods is, or is taken to have been, communicated to Customs under section 71A, the owner of the goods becomes liable to pay entry processing charge.
- (2) In any circumstance where one person who is an owner of goods pays entry processing charge in respect of an import entry relating to particular goods, any other person who is an owner of those goods ceases to be liable to pay charge in respect of that entry.
- (3) If an import entry is withdrawn under subsection 71F(1), or is taken, under subsection 71F(6) or section 71J, to have been withdrawn, before the issue of an authority to deal in respect of goods covered by the entry, then, despite subsection (1), the owner of the goods is not liable to pay entry processing charge in respect of that entry.
- (4) In this section:

import entry does not include an entry for transshipment.

19 Before section 71B

Insert:

71AB Warehoused goods entry fee

- (1) An owner of warehoused goods who enters the goods for home consumption is liable to pay a fee (the *warehoused goods entry fee*) for the processing by Customs of that entry.
- (2) The amount of the warehoused goods entry fee is an amount worked out using the formula:

$$FR + [LR \times \text{Number of relevant lines}]$$

where:

FR means the flat rate applicable under subsection (3) to the entry concerned.

LR means the line rate applicable under subsection (4) to each relevant line of the entry concerned.

number of relevant lines, in relation to the entry concerned, means the number of lines of the entry to which, under subsection (4), the line rate applies.

- (3) For the purposes of subsection (2), the flat rate is:
 - (a) \$5.00, or such other amount as is prescribed, for a computer import entry; and
 - (b) \$26.75, or such other amount as is prescribed, for a documentary import entry.
- (4) For the purposes of subsection (2), the line rate is:
 - (a) \$0.20, or such other amount as is prescribed, for each line of a computer import entry after the tenth line of the entry; and
 - (b) \$0.80, or such other amount as is prescribed, for each line of a documentary import entry after the first line of the entry.
- (5) In any circumstance where one person who is the owner of warehoused goods pays the warehoused goods entry fee for an entry relating to those goods, any other person who is an owner of those goods ceases to be liable to pay the fee for that entry.
- (6) In this section:

line, in relation to an import entry, means the part of the import entry that constitutes a description of particular goods covered by the entry that fall to a single tariff classification to which a duty rate attaches (whether or not the import entry contains descriptions of other goods covered by the entry and falling to the same tariff classification or to another tariff classification).

warehoused goods includes goods that may be treated as if they are warehoused goods by virtue of section 100.

20 Paragraph 71B(4)(b)

Repeal the paragraph, substitute:

- (b) a payment is made of any duty, sales tax, entry processing charge, warehoused goods entry fee or other charge or fee payable at the time of entry of, or in respect of, the goods covered by the import entry advice;

21 Subsection 71B(4A)

Repeal the subsection.

22 Application

The amendments of the *Customs Act 1901* made by items 3, 5, 12, 15, 17, 18, 19, 20 and 21 apply in relation to all import entries (including altered import entries) transmitted or given to Customs under section 71A of that Act after the commencement of those items.

23 Paragraphs 74A(b) and (c)

Repeal the paragraphs, substitute:

- (b) in respect of some or all of the goods covered by the report:
 - (i) cargo report processing charge has been paid; or
 - (ii) the person liable to pay that charge is entitled to pay it in accordance with an arrangement in force under subsection 64ABD(1); and
- (c) a permit to unship the goods in respect of which that charge has been paid or that arrangement is in force has been issued under section 74 (whether before or after the payment of that charge); and
- (d) an officer of Customs doing duty in relation to cargo is satisfied that there is no reason why the goods in respect of which that charge has been paid or that arrangement is in force cannot be released for home consumption or warehousing;

24 Section 74A

After “authorising the goods”, insert “on which that charge was paid or that arrangement was in force”.

25 After Part IV

Insert:

Part IVA—Depots

77F Interpretation

- (1) In this Part:

Australia Post means the Australian Postal Corporation.

depot, in relation to a depot licence, means the place to which the licence relates.

depot licence means a licence granted under section 77G and includes such a licence that has been renewed under section 77T.

depot licence application charge means the depot licence application charge imposed by the *Customs Depot Licensing Charges Act 1997* and payable as set out in section 77H.

depot licence charge means the depot licence charge imposed by the *Customs Depot Licensing Charges Act 1997* and payable as set out in section 77M or 77U.

insolvent under administration means a person who:

- (a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
- (b) under the law of an external Territory or the law of a foreign country, has the status of an undischarged bankrupt;

and includes:

- (c) a person any of whose property is subject to control under:
 - (i) section 50 or Division 2 of Part X of the *Bankruptcy Act 1966*; or
 - (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or
- (d) a person who has, at any time during the preceding 3 years, executed a deed of assignment or a deed of arrangement under:
 - (i) Part X of the *Bankruptcy Act 1966*; or
 - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country; or
- (e) a person whose creditors have, within the preceding 3 years, accepted a composition under:
 - (i) Part X of the *Bankruptcy Act 1966*; or
 - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.

International Mail Centre means a place approved in writing by the CEO under this section as a place for the examination of international mail.

place includes an area, a building and a part of a building.

receptacle means a shipping or airline container, a pallet or other similar article.

Tribunal means the Administrative Appeals Tribunal.

- (2) A reference in this Part to a conviction of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to a person in respect of an offence.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

- (3) Nothing in this Part affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).

77G Depot licences

- (1) Subject to this Part, the CEO may, on an application made by a person or partnership in accordance with section 77H, grant the person or partnership a licence in writing, to be known as a depot licence, to use a place described in the licence for any one or more of the following purposes:
- (a) the holding of imported goods that are subject to the control of the Customs under section 30;
 - (b) the unpacking of goods referred to in paragraph (a) from receptacles;
 - (c) the holding of goods for export that are subject to the control of the Customs under section 30;
 - (d) the packing of goods referred to in paragraph (c) into receptacles;
 - (e) the examination of goods referred to in paragraph (a) or (c) by officers of Customs.

- (2) A depot licence may be granted:
 - (a) in relation to all the purposes referred to in subsection (1) or only to a particular purpose or purposes referred to in subsection (1) as specified in the licence; and
 - (b) in relation to goods generally or to goods of a specified class or classes as specified in the licence.

77H Application for a depot licence

- (1) An application for a depot licence to cover a place must be made by a person or partnership who would occupy and control the place as a depot if the licence were granted.
- (2) The application must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be signed in the manner indicated in the form; and
 - (e) subject to subsection (3), be accompanied by a depot licence application charge.
- (3) If Australia Post makes an application under this section for the whole or a part of an International Mail Centre to be covered by a depot licence, it is not liable to pay the depot licence application charge under subsection (2).

77J CEO may require applicant to supply further information

- (1) The CEO may, by written notice given to an applicant for a depot licence, require the applicant to supply further information in relation to the application within the period that is specified in the notice.
- (2) The CEO may extend the specified period if the applicant, in writing, requests the CEO to do so.
- (3) If the applicant:
 - (a) fails to supply the further information within the specified period, or that period as extended under subsection (2); but
 - (b) supplies the information at a subsequent time;

the CEO must not take the information into account in determining whether to grant the depot licence.

77K Requirements for grant of depot licence

- (1) The CEO must not grant a depot licence if, in the CEO's opinion:
 - (a) if the applicant is a natural person—the applicant is not a fit and proper person to hold a depot licence; or
 - (b) if the applicant is a partnership—any of the partners is not a fit and proper person to be a member of a partnership holding a depot licence; or
 - (c) if the applicant is a company—any director, officer or shareholder of a company who would participate in the management or control of the place proposed to be covered by the licence (the *proposed depot*) is not a fit and proper person so to participate; or
 - (d) an employee of the applicant who would participate in the management or control of the proposed depot is not a fit and proper person so to participate; or
 - (e) if the applicant is a company—the company is not a fit and proper company to hold a depot licence; or
 - (f) if the applicant is a natural person or a company—the applicant would not be in a position to occupy and control the proposed depot if the licence were granted; or
 - (g) if the applicant is a partnership—none of the members of the partnership would be in a position to occupy and control the proposed depot if the licence were granted; or
 - (h) the physical security of the proposed depot is not adequate having regard to:
 - (i) the nature of the place; or
 - (ii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the proposed depot if the licence were granted; or
 - (i) the records that would be kept in relation to the proposed depot would not be suitable to enable Customs adequately to audit those records.
 - (2) The CEO must, in deciding whether a person is a fit and proper person for the purposes of paragraph (1)(a), (b), (c) or (d), have regard to:
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- (a) any conviction of the person of an offence against this Act committed within the 10 years immediately before that decision; and
 - (b) any conviction of the person of an offence against another law of the Commonwealth, or a law of a State or of a Territory, that is punishable by imprisonment for one year or longer, being an offence committed within the 10 years immediately before that decision; and
 - (c) whether the person is an insolvent under administration; and
 - (d) any misleading statement made under section 77H or 77J in relation to the application for the licence by or in relation to the person; and
 - (e) if any such statement made by the person was false—whether the person knew that the statement was false.
- (3) The CEO must, in deciding whether a company is a fit and proper company for the purposes of paragraph (1)(e), have regard to:
 - (a) any conviction of the company of an offence against this Act committed within the 10 years immediately before that decision and at a time when any person who is presently a director, officer or shareholder of the company was a director, officer or shareholder of the company; and
 - (b) any conviction of the company of an offence against another law of the Commonwealth, or a law of a State or of a Territory, that is punishable by a fine of \$5,000 or more, being an offence committed within the 10 years immediately before that decision and at a time when a person who is presently a director, officer or shareholder of the company was a director, officer or shareholder of the company; and
 - (c) whether a receiver of the property, or part of the property, of the company has been appointed; and
 - (d) whether the company is under administration within the meaning of the Corporations Law; and
 - (e) whether the company has executed under Part 5.3A of that Law a deed of company arrangement that has not yet terminated; and
 - (f) whether the company has been placed under official management; and
 - (g) whether the company is being wound up.

- (4) The CEO may refuse to grant a depot licence if, in the CEO's opinion, the place in relation to which the licence is sought would be too remote from the nearest place where officers of Customs regularly perform their functions for Customs to be able to conveniently check whether the Customs Acts are being complied with at the place.
- (5) If the place in relation to which the application for a depot licence is sought (the ***proposed depot***) is proposed to be used as a depot for imported goods, the CEO must not grant the licence if:
 - (a) in the case of a proposed depot for imported goods arriving in Australia by sea—the applicant is not a registered user of the Sea Cargo Automation System; or
 - (b) in the case of a proposed depot for imported goods arriving in Australia by air—the applicant is not a registered user of the Air Cargo Automation System; or
 - (c) in the case of a proposed depot for imported goods arriving in Australia by sea or air—the applicant is not a registered user of both the Sea Cargo Automation System and Air Cargo Automation System.

77L Granting of a depot licence

- (1) Subject to subsection (3), the CEO must decide whether or not to grant a depot licence within 60 days after:
 - (a) if paragraph (b) does not apply—the receipt of the application for the licence; or
 - (b) if the CEO requires further information relating to the application to be supplied by the applicant under section 77J and the applicant supplied the information in accordance with that section—the receipt of the information.
- (2) If the CEO has not made a decision whether or not to grant a depot licence within 60 days under subsection (1), the CEO is taken to have refused the application.
- (3) This section does not apply to an application made before 1 July 1997 in relation to a place that was an appointed place under paragraph 17(b) of this Act immediately before the commencement of this Part.

77M Transitional provisions for former paragraph 17(b) places

- (1) On and after this Part's commencement, a place that was an appointed place under paragraph 17(b) of this Act immediately before that commencement ceases to be so appointed.
- (2) A person occupying and controlling such a place (the *operator*) may, before 1 July 1997, apply for a depot licence to cover that place.
- (3) If the CEO has not made a decision whether or not to grant the licence before 1 October 1997, the CEO is taken to have refused the application.
- (4) If the operator does not apply for the depot licence before 1 July 1997:
 - (a) for the purposes of this Part, the place is taken to be covered by a depot licence for the period starting from this Part's commencement and ending at the end of 30 June 1997; and
 - (b) for the purposes of this Part, the operator is taken to be the holder of such a licence for that period; but
 - (c) in spite of any provisions in this Part, the operator is not liable to pay depot licence charge for that period.
- (5) If:
 - (a) the operator applies for the depot licence before 1 July 1997; and
 - (b) the CEO refuses, or is taken to have refused, the application before 1 October 1997 and:
 - (i) the operator does not apply for a review of that decision within 28 days of that decision; or
 - (ii) the operator applies for such a review and the Tribunal affirms the CEO's decision;then:
 - (c) for the purposes of this Part, the place is taken to be covered by a depot licence for the period starting from this Part's commencement and ending:
 - (i) if subparagraph (5)(b)(i) applies—28 days after the CEO's decision; or
 - (ii) if subparagraph (5)(b)(ii) applies—on the day of the Tribunal's decision; and

- (d) for the purposes of this Part, the operator is taken to be the holder of that licence for that period; but
- (e) in spite of any provisions in this Part, the operator is not liable to pay depot licence charge for that period.

(6) If:

- (a) the operator applies for the depot licence before 1 July 1997; and
- (b) the application is successful (whether or not subsequent to an application by the operator to the Tribunal);

then:

- (c) the licence granted to the operator must cover the period starting from this Part's commencement and ending at the end of 30 June 1998; and
- (d) the operator must pay Customs depot licence charge within 30 days of the granting of the licence.

Note: Section 77S provides the general rule that each grant of a licence is for a period of not more than 12 months. Subsection (6) of this section is an exception to that general rule.

- (7) If Australia Post would, apart from this subsection, be required to pay under this section an amount of depot licence charge in respect of the whole or a part of an International Mail Centre, it is not liable to pay that amount.

77N Conditions of a depot licence—general

- (1) A depot licence is subject to the conditions set out in subsections (2) to (10).
- (2) The holder of a licence must, within 30 days after the occurrence of an event referred to in any of the following paragraphs, give the CEO particulars in writing of that event:
 - (a) a person not described in the application for the licence as participating in the management or control of the depot commences so to participate;
 - (b) in the case of a licence held by a partnership—there is a change in the membership of the partnership;
 - (c) in the case of a licence held by a company:
 - (i) the company is convicted of an offence of a kind referred to in paragraph 77K(3)(a) or (b); or

- (ii) a receiver of the property, or part of the property, of the company is appointed; or
 - (iii) an administrator of the company is appointed under section 436A, 436B or 436C of the Corporations Law; or
 - (iv) the company executes a deed of company arrangement under Part 5.3A of that Law;
 - (d) a person who participates in the management or control of the depot, the holder of the licence or, if a licence is held by a partnership, a member of the partnership, is convicted of an offence referred to in paragraph 77K(2)(a) or (b) or becomes an insolvent under administration;
 - (e) there is a substantial change in a matter affecting the physical security of the depot;
 - (f) there is a substantial change in the keeping of records kept in relation to the depot.
- (3) The holder of the licence must pay to Customs any prescribed travelling expenses payable by the holder under the regulations in relation to travelling to and from the depot by a Collector for the purposes of the Customs Acts. For that purpose, the regulations may prescribe particular rates of travelling expenses in relation to particular circumstances concerning travelling to and from a depot by a Collector for the purposes of the Customs Acts.
- (4) The holder of the licence must stack and arrange goods in the depot so that authorised officers have reasonable access to, and are able to examine, the goods.
- (5) The holders of the licence must provide authorised officers with:
- (a) adequate space and facilities for the examination of goods in the depot; and
 - (b) secure storage space for holding those goods.
- (6) The holder of the licence must, when requested to do so, allow an authorised officer to enter and remain in the depot to examine goods:
- (a) which are subject to the control of the Customs; or
 - (b) which an authorised officer has reasonable grounds to believe are subject to the control of the Customs.

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- (7) The holder of the licence must, when requested to do so, provide an authorised officer with information, which is in the holder's possession or within the holder's knowledge, in relation to determining whether or not goods in the depot are subject to the control of the Customs.
- (8) The holder of the licence must retain all commercial records and records created in accordance with the Customs Acts that:
- (a) relate to goods received into a depot; and
 - (b) come into the possession or control of the holder of the licence;
- for 5 years beginning on the day on which the goods were received into the depot.
- (9) The holder of the licence must keep the records referred to in subsection (8) at:
- (a) the depot; or
 - (b) if the holder has notified Customs in writing of the location of any other places occupied and controlled by the holder where the records are to be kept—those other places.
- (10) At any reasonable time within the 5 years referred to in subsection (8), the holder of the licence must, when requested to do so:
- (a) permit an authorised officer:
 - (i) to enter and remain in a place that is occupied and controlled by the holder and which the officer has reasonable grounds to believe to be a place where records referred to in subsection (8) are kept; and
 - (ii) to have full and free access to any such records in that place; and
 - (iii) to inspect, examine, make copies of, or take extracts from any such records in that place; and
 - (b) provide the officer with all reasonable facilities and assistance for the purpose of doing all of the things referred to in subparagraphs (a)(i) to (iii) (including providing access to any electronic equipment in the place for those purposes).
- (11) The holder of the licence is not obliged to comply with a request referred to in subsection (6), (7) or (10) unless the request is made by a person who produces written evidence of the fact that the person is an authorised officer.
-

77P Conditions of a depot licence—imported goods

- (1) If imported goods were received into a depot during a particular month, it is a condition of the licence that the holder of the licence must:
 - (a) if paragraph (b) does not apply—cause the removal of those goods into a warehouse before the end of the following month; or
 - (b) if the CEO, on written request by the holder made before the end of that following month, grants an extension under this section—cause the removal of the goods into a warehouse within 30 days after the end of that following month.
- (2) In this section:

month means month of a year.

77Q The CEO may specify other conditions of a depot licence

- (1) The CEO may, for the purpose of:
 - (a) ensuring compliance with the Customs Acts; or
 - (b) protecting the revenue;specify conditions in a depot licence that are additional to the conditions set out in sections 77N and 77P.
- (2) The CEO may, by written notice to the holder of the licence, vary conditions specified under subsection (1) in relation to that licence.
- (3) Variation of the conditions cannot take effect before the end of 30 days after the giving of the notice under subsection (2).

77R Breach of conditions of depot licence

- (1) The holder of a depot licence must not breach a condition of the licence set out in section 77N or 77P or conditions specified in the licence under section 77Q.

Penalty: 50 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.

77S Duration of depot licences

Subject to this Part, a depot licence:

- (a) comes into force on a date specified in the licence; and
- (b) remains in force until the end of the 30 June next following the grant of the licence;

but may be renewed under section 77T.

Note: Section 77M provides that, in certain circumstances, a depot licence may be taken to have been granted for a certain period. It also provides that, in relation to certain applicants, an initial depot licence is to be granted for a period that exceeds 12 months. In addition, section 77T provides that a licence may continue to be in force for a further period of 90 days after the 30 June referred to in this section under certain circumstances. Another provision that might affect the operation of this section is section 77V (revocation of licence).

77T Renewal of depot licences

- (1) The CEO must, before the end of a financial year, notify each holder of a depot licence of the terms of this section.
- (2) If the holder pays a depot licence charge for the renewal of the licence before the end of the financial year, the licence is renewed for another period of 12 months at the end of the financial year.
- (3) If the holder fails to pay the charge before the end of the financial year, a Collector may, until the charge is paid or the end of 90 days immediately following the end of the financial year (whichever occurs first), refuse to permit goods that are subject to the control of the Customs to be received into the depot.
- (4) If the holder pays the charge within 90 days immediately following the end of the financial year, the licence is taken to have been renewed for another period of 12 months at the end of the financial year.
- (5) If the holder fails to pay the charge within 90 days immediately following the end of the financial year, the licence expires at the end of that period of 90 days.
- (6) A depot licence that has been renewed may be further renewed.

77U Licence charges

- (1) Subject to section 77M, a depot licence charge is payable in respect of the grant of a depot licence by the person or partnership seeking the grant.
- (2) A person liable to pay a depot licence charge for the grant of a depot licence must pay the charge within 30 days of the decision to grant that licence.
- (3) A depot licence charge in respect of the renewal of a depot licence is payable by the holder of the licence in accordance with section 77T.
- (4) Australia Post is not liable to pay a depot licence charge under this section in respect of each grant or renewal of a depot licence that covers the whole or a part of an International Mail Centre.

77V Revocation of a depot licence

- (1) The CEO may give notice of intention to revoke a depot licence to the holder of the licence if:
 - (a) the CEO is satisfied that:
 - (i) the physical security of the depot is no longer adequate having regard to the matters referred to in paragraph 77K(1)(h); or
 - (ii) if the licence is held by a natural person—the person is not a fit and proper person to hold a depot licence; or
 - (iii) if the licence is held by a partnership—a member of the partnership is not a fit and proper person to be a member of a partnership holding a depot licence; or
 - (iv) if the licence is held by a company—a director, officer or shareholder of the company who participates in the management or control of the depot is not a fit and proper person so to participate; or
 - (v) an employee of the holder of the licence who participates in the management or control of the depot is not a fit and proper person so to participate; or
 - (vi) if the licence is held by a company—the company is not a fit and proper company to hold a depot licence; or

- (vii) a condition to which the licence is subject has not been complied with; or
 - (viii) a licence charge payable in respect of the grant of the depot remains unpaid more than 30 days after the grant of the licence; or
 - (b) the CEO is satisfied on any other grounds that the revocation is necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.
- (2) In deciding whether a person is a fit and proper person for the purposes of subparagraphs (1)(a)(ii) to (v), the CEO must have regard to:
- (a) whether or not the person is an insolvent under administration; and
 - (b) any conviction of the person of an offence against this Act, or of an offence against another law of the Commonwealth, or a law of a State or of a Territory, punishable by imprisonment for one year or longer, that is committed:
 - (i) if the licence has not been renewed previously—after the grant of the licence or within 10 years immediately before the grant of the licence; or
 - (ii) if the licence has been renewed on one or more occasions—after the renewal or latest renewal of the licence or within 10 years immediately before that renewal; and
 - (c) any misleading statement made under section 77H or 77J in relation to the application for the depot licence by or in relation to the person; and
 - (d) if any such statement made by the person was false—whether the person knew that the statement was false.
- (3) In deciding whether a company is a fit and proper company for the purposes of subparagraph (1)(a)(vi), the CEO must have regard to:
- (a) the matters referred to in paragraphs 77K(3)(c) to (g); and
 - (b) any conviction of the company of an offence against this Act or of an offence against another law of the Commonwealth, or a law of a State or of a Territory, punishable by a fine of \$5,000 or more, that is committed:

- (i) if the licence has not been renewed previously—after the grant of the licence or within 10 years immediately before the grant of the licence; or
 - (ii) if the licence has been renewed on one or more occasions—after the renewal or the latest renewal of the licence or within 10 years immediately before that renewal;
- and at a time when a person who is presently a director, officer or shareholder of the company was a director, officer or shareholder of the company.
- (4) The notice of intention to revoke a depot licence must:
 - (a) specify the ground or grounds for the intended revocation; and
 - (b) state that the CEO may decide to revoke the licence at any time within the 14 days following the end of 30 days after the notice is given if the ground or at least one of the grounds exists at that time; and
 - (c) invite the holder of the licence to provide written statements to Customs within the 30 days to explain why, in the holder's opinion, the licence should not be revoked.
- (5) At any time within the 14 days referred to in paragraph (4)(b), the CEO may, by notice in writing, decide to revoke the licence if, having regard to any statements made by the holder of the licence in response to the notice, the CEO is satisfied that the ground or at least one of the grounds specified in the notice exists at that time.
- (6) If the CEO decides to revoke the depot licence within the 14 days, the depot licence is revoked:
 - (a) if paragraph (b) does not apply—28 days after the CEO's decision; or
 - (b) if the holder of the licence applies to the Tribunal for a review of the CEO's decision—when the Tribunal affirms the CEO's decision.
- (7) The CEO must, by notice in writing, revoke a depot licence if the CEO receives a written request by the holder of the licence that the licence be revoked on and after a specified day.

- (8) If a depot licence is revoked under this section, the CEO must, by notice published in a newspaper circulating in the locality in which the depot is situated, inform the owners of goods in the depot of that fact and the date of the revocation.
- (9) If a depot licence is revoked under this section, the person or partnership who held the licence before the revocation must return the licence to Customs within 30 days after the revocation.
- (10) A notice under subsection (1), (5) or (7) must be served:
 - (a) either personally or by post, on the holder of the depot licence; or
 - (b) personally on a person who, at the time of service, apparently participates in the management or control of the depot.
- (11) In spite of the fact that a notice under subsection (1) or (5) has been given in relation to the revocation of a depot licence, nothing in this Part prevents:
 - (a) the CEO giving a notice under subsection 77T(1) in relation to the renewal of the licence; or
 - (b) the holder of the licence obtaining a renewal of the licence by paying a depot licence charge in accordance with section 77T.

Note: Depot licence charge paid in the circumstances described in subsection (11) may be refunded under section 77W.

77W Refund of depot licence charge on revocation of a depot licence

- (1) If:
 - (a) a depot licence is revoked before the end of a financial year (the *financial year*); and
 - (b) the person or partnership (the *former holder*) who held the licence before its revocation has paid the depot licence charge for that year;

the former holder is entitled to a refund of an amount worked out using the formula:

$$\text{Annual rate} \times \frac{\text{Post - revocation days}}{\text{Days in the year}}$$

where:

annual rate means the amount of \$4,000, or, if another amount is prescribed under subsection 6(1) of the *Customs Depot Licensing Charges Act 1997*, that other amount.

post-revocation days means the number of days in the financial year during which the licence is not in force following the revocation of the licence.

days in the year means:

- (a) if paragraph (b) does not apply—365; or
 - (b) if the financial year in which the licence is in force is not constituted by 365 days—the number of days in that financial year.
- (2) If the former holder has paid the depot licence charge in respect of the renewal of the licence for the following financial year, the former holder is entitled to a refund of the full amount of that charge.

77X Collector's powers in relation to a place that is no longer a depot

- (1) This section applies in relation to a place if:
- (a) the place ceases to be covered by a depot licence because the period during which the licence was taken to be in force under subsection 77M(4) or (5) has expired; or
 - (b) the place otherwise ceases to be covered by a depot licence.
- (2) If this section applies to a place, a Collector may:
- (a) permit goods that are subject to the control of the Customs to be received into the place during a period of 30 days after the place ceased to be covered by a depot licence; and
 - (b) permit imported goods to be unpacked from receptacles in the place; and
 - (c) permit goods for export to be packed into receptacles in the place; and
 - (d) permit examination of goods that are subject to the control of the Customs (the **controlled goods**) by officers of Customs in the place; and
 - (e) permit removal of any controlled goods from the place to a depot covered by a depot licence or to a warehouse; and

- (f) by notice in writing to the person who was, or who was taken to be, the holder of the licence (the **former holder**) covering that place, require the former holder to remove any controlled goods to a depot covered by a depot licence or to a warehouse; and
 - (g) while controlled goods are in the place, take such control of the place as may be necessary for the protection of the revenue or for ensuring compliance with the Customs Acts; and
 - (h) by notice in writing to the former holder, require the former holder to pay to Customs, in respect of the services of officers required in relation to any controlled goods as a result of the licence ceasing to be in force (including services relating to the supervision of activities in relation to the place, the stocktaking of goods in the place or the reconciliation of records relating to such goods), such fees as the CEO determines having regard to the cost of the services; and
 - (i) if the former holder fails to comply with a requirement under paragraph (f) in relation to any controlled goods, remove the goods from the place to a depot covered by a depot licence or a warehouse; and
 - (j) if goods have been removed under paragraph (i), by notice in writing to the former holder, require the former holder to pay to Customs in respect of the cost of the removal such fees as the CEO determines having regard to that cost.
- (3) If an amount that a former holder is required to pay in accordance with a notice under paragraph (2)(h) or (j) is not paid, that amount may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

77Y Collector may give directions in relation to goods subject to Customs control

- (1) A Collector may, for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, give written directions under this section to:
- (a) the holder of a depot licence; or

- (b) a person participating in the management or control of the depot;
in relation to goods in the depot that are subject to the control of the Customs (the *controlled goods*).
- (2) A direction under subsection (1) must be a direction:
 - (a) to move, or not to move, controlled goods within a depot; or
 - (b) about the storage of controlled goods in the depot; or
 - (c) to move controlled goods to another depot or a warehouse; or
 - (d) about the unpacking from receptacles of imported goods that are controlled goods; or
 - (e) about the packing into receptacles of goods for export that are controlled goods.
- (3) A Collector may, for the purpose of:
 - (a) preventing interference with controlled goods in a depot; or
 - (b) preventing interference with the exercise of the powers or the performance of the functions of a Collector in respect of a depot or of controlled goods in a depot;give directions, in relation to the controlled goods, to any person in the depot.
- (4) A person who has been given a direction under subsection (1) or (3) must not refuse or fail to comply with the direction.

Penalty: 50 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

77Z Licences cannot be transferred

- (1) Subject to subsection (2), a depot licence cannot be transferred to another person.
- (2) A depot licence may be transferred to another person in the circumstances prescribed by the regulations.

77ZA Service of notice

For the purpose of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a notice under this Part on a person or partnership who holds or held a depot licence,

if the notice is posted as a letter addressed to the person or partnership at the address of the place that is or was the depot, the notice is taken to be properly addressed.

26 Subsections 163(1C) and (1D)

Repeal the subsections, substitute:

(1C) If a person makes an application for refund of duty paid in respect of goods in accordance with regulations made under paragraph (1)(b), the person is liable to pay a fee (the *refund application fee*) for the processing by Customs of that application.

(1D) The amount of refund application fee is:

- (a) if the application is transmitted to Customs via a prescribed computer system—\$45.00, or, if another amount is prescribed, that other amount; or
- (b) if the application is made in an approved form—\$65.00, or, if another amount is prescribed, that other amount.

Note: Regulations made under paragraph (1)(b) may provide that under certain circumstances a person is entitled to a refund of duty without the need to make an application. In those cases an application fee is therefore not payable under subsection (1C).

27 Application

The amendment of the *Customs Act 1901* made by item 26 applies in relation to all applications for a refund of duty made after the commencement of that item.

28 Subsection 183UA(1) (before paragraph (a) of the definition of *Customs place*)

Insert:

- (aa) a place owned or occupied by Customs; or

29 Subsection 183UA(1) (paragraph (d) of the definition of *Customs place*)

Repeal the paragraph, substitute:

- (d) a place described in a depot licence that is granted under section 77G; or

30 After paragraph 273GA(1)(aap)

Insert:

- (aaq) a decision by the CEO under section 77G not to grant a depot licence;
- (aar) a decision by the CEO under section 77J not to extend the period within which further information concerning a depot licence application is to be supplied;
- (aas) a decision by the CEO under section 77P not to grant an extension of time;
- (aat) a decision by the CEO under section 77Q to vary the conditions of a depot licence;
- (aau) a decision by the CEO under section 77V to revoke a depot licence;

*[Minister's second reading speech made in—
House of Representatives on 7 November 1996
Senate on 25 November 1996]*

(167/96)

I HEREBY CERTIFY that the above is a fair print of the Customs Amendment Bill (No. 1) 1997 which originated in the House of Representatives as the Customs Amendment Bill (No. 2) 1996 and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
February 1997