

Customs Regulations (Amendment) 1997 No. 128

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 128

Issued by the Authority of the Minister for Small Business and Consumer Affairs

Customs Act 1901 (C'th)

Customs Regulations (Amendment)

Section 270 of the *Customs Act 1901 (C'th)* (the Act) provides in part that the GovernorGeneral may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed for giving effect to the Act.

The Regulation amends the Customs Regulations in three unrelated amendments (A, B and C) as follows.

A- New definition of 'Customs place' for the purposes of determining the circumstances for which an overtime fee may be levied

The table in regulation 19 prescribes the working days and hours of business for Customs operations, and prescribes places where those operations may be performed. The table provides the basis for levying the overtime and location fees which are prescribed under section 28 of the Act.

Regulation 3 inserts for use in the table in regulation 19 a new definition of 'Customs place' for the purposes of determining the circumstances for which a section 28 location fee maybe levied. 'Customs places' are places were Customs ordinarily performs its functions, (for example, places owned and occupied by Customs, licensed warehouses, licensed depots and boarding stations). This regulation replaces the previously existing definition which was provided by a note which has been omitted.

The previously existing definition of 'Customs place' was unsuitable because it included nonproclaimed airports and ports. The new definition for the table in regulation 19 does not include non-proclaimed airport or ports. Non-proclaimed airports and ports were removed from the definition of 'Customs place' because non-proclaimed airports and ports are places were Customs does not ordinarily perform its functions.

B- Annual increase in warehouse licence fees

Section 85 of the Act provides in part that such fees as are prescribed are payable in respect of warehouse licences and subsection 85(2) provides that the Regulations may prescribe annual fees.

The fees are charged in order to recover the costs of administering the warehouse licensing system. The warehouse licence fees are payable annually according to a scale of fees as prescribed in regulations 50 and 52 of the Customs Regulations.

The fees are reviewed annually.

Regulation 4 prescribes the warehouse licence fees for 1997-98 financial year.

The fees have been increased and are consistent with the increase in the Consumer Price Index from December 1995 to December 1996.

C - Technical amendments resulting from the Customs Excise and Bounty Legislation Amendment Act 1995- Act 85 of 1995

Regulations 5, 6 and 7 are technical amendments resulting from the Customs Excise and Bounty Legislation Amendment Act 1995. The regulations replace the now obsolete references to the Comptroller-General of Customs, the Comptroller-General, the Comptroller, or the Collector of Customs for a State or Territory with references to the CEO or Regional Directors (as appropriate).

The amendments are explained in greater detail in the Attachment.

Regulations 3, 5, 6, and 7 commenced on gazettal.

Regulation 4 commenced on 1 July 1997.

ATTACHMENT

Regulation 1 - Commencement

Regulation 1 provides that regulations 3, 5, 6, and 7 are to commence on gazettal and provides that regulation 4 is to commence on 1 July 1997.

Regulation 2 - Amendment

Regulation 2 provides that the Customs Regulations are amended as set out in the Regulations.

Regulation 3 - Regulation 19 (Working days and hours of business)

Regulation 3 inserts a new definition of 'Customs place' in subregulation 19(2) and omits the note after subregulation 19(1) which contains the current definition of 'Customs place'.

The new Customs cost recovery regime allows for the levying of charges for overtime work or work performed in a nonCustoms place. The occasions on which the overtime and location fee, prescribed under section 28 of the Act, can be levied are based on the hours of business prescribed for the performance of the Customs functions found in the table in regulation 19. The table in regulation 19 prescribes the working days and hours of business for Customs operations and places where those operations may be performed. The two

new charges apply where work is done outside of those hours, or at places where such functions are not normally performed.

Customs had envisioned charging the section 28 location fee in places where customs functions are not ordinarily performed including non-proclaimed airports and ports, that is, subsection 58(2) places.

Paragraph 183UA(1)(b) deems subsection 58(2) non-proclaimed airports and ports to be 'Customs places' for the purposes of the search and seizure provisions of the Act. The subsection 183UA(1) definition was used to define the 'Customs places' for the purposes of the table in regulation 19 which prescribes the circumstances under which the section 28 location fee may be levied. As a result subsection 58(2) non-proclaimed airports and ports were deemed to be 'Customs places' for the purposes of the section 28 location fee. Customs therefore could not levy the section 28 location fee at subsection 58(2) non-proclaimed airports or ports.

Regulation 3 inserts in regulation 19 a new definition of 'Customs place' for the purposes of determining the circumstances when a section 28 location fee may be levied. The new definition removes subsection 58(2) non-proclaimed airports and ports from the definition of 'Customs place', thus allowing Customs to charge the section 28 location fee for the work done at non-proclaimed airports and ports.

Regulation 4 - Regulation 50 (Fees in respect of warehouse licences)

Regulation 4 amends regulation 50 by omitting the current warehouse licence fee and substituting the new fees.

Section 85 of the Act provides in part that such fees as are prescribed are payable in respect of warehouse licences and subsection 85(2) provides that the Regulations may prescribe annual fees.

The warehouse licence fees are payable annually according to a scale of fees as prescribed in regulations 50 and 52 of the Customs Regulations. The fees are reviewed annually in order to recover the costs of administering the warehouse licensing system. Regulation 4 prescribes the warehouse licence fees for 1997-98.

The fees in regulation 4 represent an increase consistent with increases in the Consumer Price Index from December 1995 to December 1996. In particular:

- * the amendment of subregulation 50(2) of the Customs Regulations increases the prescribed base fee for the grant of a warehouse licence from \$9815 to \$9962; and
- * the amendment of subregulation 50(2B) of the Customs Regulations increases the prescribed base fee for the renewal of a warehouse licence from \$7665 to \$7780.

Regulation 5 - Regulation 194 (Permits to carry firearms)

Regulation 6 - Further amendments

Regulation 7 - Schedule 1 (Forms)

Regulation 5 omits from regulation 194 'Comptroller-General' and substitutes 'CEO'.

Subregulation 6.1 omits 'Collector of Customs' from subregulation 3 (2) and substitutes 'Regional Director'.

Subregulation 6.2 omits 'Comptroller' from the Regulations and substitutes 'CEO'.

Regulation 7 omits 'Collector of Customs' and 'Collector' from the Regulations and substitutes 'Regional Director.'

The *Customs, Excise and Bounty Legislation Amendment Act 1995* (the CEBLA Act) provided in subsection 18(1) that a reference to the Comptroller-General of Customs, the ComptrollerGeneral or the Comptroller was to be taken on and after 1 July 1995 (the date of Royal Assent of the CEBLA Act) to be a reference to the Chief Executive Officer of Customs.

Further, it was provided in subsection 19(1) that a reference to the Collector of Customs for a State or Territory (however described) was to be taken on or after 1 July 1995 (the date of Royal Assent of the CEBLA Act) to be a reference to the Regional Director for that State or Territory.

Regulations 5, 6 and 7 replace each reference to the Comptroller-General of Customs, the Comptroller-General or the Comptroller in the Regulations with a reference to the CEO (which is defined in section 4 of the Act as meaning the Chief Executive Officer of Customs) and replace each reference to the Collector of Customs for a State or Territory (however described) in the Regulations with a reference to the Regional Director for a State or Territory (as appropriate).