

2013-2014-2015

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS DEPOT LICENSING CHARGES AMENDMENT BILL 2015

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration and Border Protection,
the Honourable Peter Dutton MP)

CUSTOMS DEPOT LICENSING CHARGES AMENDMENT BILL 2015

OUTLINE

The purpose of Customs Depot Licensing Charges Amendment Bill 2015 (the Charges Bill) is to amend the *Customs Depot Licensing Charges Act 1997* (the Charges Act) to implement certain recommendations from the *Joint Review Of Border Fees, Charges And Taxes* (the Joint Review). In particular, the Charges Bill amends the Charges Act to impose new charges on:

- (a) an application for a warehouse licence and a customs broker licence; and
- (b) an application for a variation to a warehouse licence.

The Charges Bill also consolidates existing charges payable in relation to warehouse licences and customs broker licences into one Act. Currently, these charges are in the *Customs Act 1901* (the Customs Act) and the *Customs Regulation 2015*.

These charges are in addition to charges currently imposed under the Charges Act in relation to depot licences issued under Part IVA of the Customs Act.

Complementary amendments are also being made to Customs Act by the Customs Amendment (Fees and Charges) Bill 2015 in relation to the liability to pay these charges and the timing of payment and other related matters.

The Joint Review was commissioned prior to the 2015-16 Budget to identify and recommend to Government how charging arrangements could be improved to better support future border operations and industry outcomes. The scope of the Joint Review included changes to current fees, charges and taxes, as well as new approaches to charges levied by the Department of Immigration and Border Protection (DIBP).

For the licensing programme, the Joint Review identified that;

- (a) current customs broker charges only recover approximately 30% of the total expenditure base;
- (b) the charging framework does not support DIBP business outcomes as best as it could;
- (c) the opportunity exists to better align charges with the Australian Government Cost Recover Guidelines (AGCRG's); and
- (d) licensing business processes are very manual and require updating to make best use of electronic media.

To improve on the licensing charging arrangements, it was recommended that broker charges be increased to recover two thirds of the expenditure base, and that new broker and warehouse application charges and a new warehouse variation application charge be introduced to recover the costs associated with processing the relevant applications.

The Charges Bill implements these recommendations.

FINANCIAL IMPACT STATEMENT

The measures in this Bill, together with the measures in the Customs Amendment (Fees and Charges) Bill 2015, will generate an estimated \$1.1 million across the forward estimates from 2015-16. A delay in introducing this legislation will have a financial impact on the Budget balance of an estimated \$27, 000 per month as this revenue has already been factored into the forward estimates.

REGULATION IMPACT STATEMENT

The changes proposed to this legislation support the implementation of the outcomes of the Joint Review. The Office of Best Practice Regulation has been consulted in relation to the proposed amendments and a Regulatory Impact Statement (RIS) has been assessed to be consistent with best practice. The RIS will be published when all recommendations have been considered and finalised.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The purpose of Customs Depot Licensing Charges Amendment Bill 2015 (the Charges Bill) is to amend the *Customs Depot Licensing Charges Act 1997* (the Charges Act) to impose new charges on:

- (a) an application for a warehouse licence and a customs broker licence; and
- (b) an application for a variation to a warehouse licence.

The Charges Bill also consolidates existing charges payable in relation to warehouse licences and customs broker licences into one Act. Currently, these charges are in the *Customs Act 1901* (the Customs Act) and the *Customs Regulation 2015*.

These charges are in addition to charges currently imposed under the Charges Act in relation to depot licences issued under Part IVA of the Customs Act.

Complementary amendments are also being made to Customs Act by the Customs Amendment (Fees and Charges) Bill 2015 in relation to the liability to pay these charges and the timing of payment and other related matters.

Human rights implication

The Bill does not raise any human rights issues. The Bill introduces the new charges for the processing of applications for a warehouse licence and a customs broker licence, and for the variation of a warehouse licence (which complement charges that already apply under these two licensing regimes).

Conclusion

The Bill is compatible with human rights as it does not raise any human rights issues.

**The Minister for Immigration and Border Protection,
the Honourable Peter Dutton MP**

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NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides for the Bill, when enacted, to be cited as the *Customs Depot Licensing Charges Amendment Act 2015*.

Clause 2 - Commencement

2. This clause provides that clauses 1 to 3 commence on the day on which the Bill receives the Royal Assent, and that Schedule 1 commences on 1 January 2016.

Clause 3 - Schedule(s)

3. 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. This Bill amends the *Customs Depot Licensing Charges Act 1997*.
4. 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

Customs Depot Licensing Charges Act 1997

Item 1 – Title

5. This item amends the long title of the *Customs Depot Licensing Charges Act 1997* (the Charges Act). The Charges Act currently only imposes charges in relation to depot licences that are governed by Part IVA of the *Customs Act 1901* (the Customs Act). As the Charges Act will deal with the imposition of charges in relation to warehouse licences and customs broker licences, the long title of the Charges Act is being amended to also refer to these two types of licences.

Item 2 – Before section 1

6. This item inserts a new Part heading entitled “Part 1 – Preliminary”. As the Charges Act will deal with several licensing charges, it is being divided into Parts. Part 1 contains the Short title, the Commencement section and the Definitions section.

Item 3 – Section 3

7. Section 1 of the Charges Act sets out the short title of the Act. This item amends to the short title to remove the reference to “Depot” as a result of the amendment to the title of the Act above. This item also inserts a Note under section 1 to explain the operation of section 10 of the *Acts Interpretation Act 1901* (which deals with amendments to an Act’s short title).

Item 4 – Section 3

8. Section 3 of the Charges Act sets out the definitions for the purposes of the Act. This item inserts several new definitions into the Charges Act for the purposes of the new sections imposing charges in relation to warehouse licences and customs broker licences.

Item 5 – Before section 4

9. This item inserts a new Part heading into the Charges Act, entitled “Part 2 – Depots”. This Part contains all of the existing sections that deal with the imposition of charges associated with depot licences that are granted under Part IVA of the Customs Act.

Item 6 – After section 6A

10. Item 6 inserts new Parts 3 and 4 into the Charges Act. Part 3 deals with charges in relation to warehouse licences and Part 4 deals with charges in relation to customs broker licences.
11. This time also inserts a new heading of “Part 5 – Regulations” into the Charges Act. Part 5 contains section 7, which currently contains the head of power under which the Governor-General may make regulations for the purposes of section 5, 6 and 6A of the

Charges Act. These sections deal with the imposition of charges in relation to customs depots.

Part 3 – new section 6B Imposition of charges

12. New section 6B imposes the following charges in relation to warehouse licences:
- (a) warehouse licence application charge. This charge is payable under section 80 of the Customs Act in relation to an application for a warehouse licence;
 - (b) warehouse licence charge. This charge is payable under section 85 of the Customs Act in relation to the grant and the renewal of a warehouse licence; and
 - (c) warehouse licence variation charge. This charge is payable under section 81B of the Customs Act in relation to an application to vary a warehouse licence.
13. The charges in paragraphs (a) and (c) are new charges in relation to warehouse licences. The charges in paragraph (b) are new to the Charges Act. However, fees are currently imposed in relation to these activities under the Customs Act and the *Customs Regulation 2015* (the Customs Regulation).

Part 3 – new section 6C Amount of warehouse licence application charge

14. New section 6C provides that the amount of warehouse licence application charge is \$3,000, or such other amount, not exceeding \$4,500, as is prescribed.

Part 3 – new section 6D Amount of warehouse licence charge - general

15. New subsection 6D(1) provides that the amount of warehouse licence charge payable in respect of the grant of a warehouse licence is \$4,000, or such other amount, not exceeding \$6,000, as is prescribed, where the licence comes into force on a 1 July. If the licence comes into force on another day in a financial year, the amount of the charge is a proportion of the \$4,000 determined in accordance with the following formula

$$\begin{array}{rcl} \$4,000 & \times & \frac{\text{Number of days remaining in the financial year,} \\ & & \text{starting on the day the licence comes into force}}{\text{Number of days in the financial year}} \end{array}$$

16. New subsection 6D(2) provides that the amount of warehouse licence charge payable in respect of the renewal of a warehouse licence is \$4,000, or such other amount, not exceeding \$6,000, as is prescribed.
17. New subsection 6D(3) provides that section 6D is subject to new section 6E.

Part 3 – new section 6E Amount of warehouse licence application charge – dual licensed places

18. New section 6E sets out a lower amount of warehouse licence charge payable in respect of the grant of a warehouse licence in relation to certain licensed places. The section

replicates the operation of current section 36 of the Customs Regulation in relation to such places.

19. In 2006, arrangements were put in place under the Customs Act and the *Excise Act 1901* (the Excise Act) in relation to the use of imported excise equivalent goods that are used in the manufacture of certain excisable goods. Excisable goods are those goods that are produced or manufactured in Australia and are subject to excise duty under the *Excise Tariff Act 1921*. These goods are tobacco products, petroleum products and alcoholic products. Their imported equivalents are known as excise equivalent goods and are subject to customs duty at the same rate of excise duty that applies to their domestic equivalents. These goods are subject to high rates of excise and customs duties.
20. Under these arrangements, the manufacture of excisable goods using excise equivalent goods must occur at a place that is licensed under both the Customs Act and the Excise Act. This requirement is set out in section 105E of the Customs Act. Under the Excise Act, there is no charge attached to the granting of a manufacturer's licence, unlike a warehouse licence.
21. When the new arrangements were put in place in 2006, there was no additional administrative or cost burden on manufacturers of certain excisable goods. Since 2003, the manufacture of excisable goods using imported alcohol and tobacco products already occurred at dual-licensed places. Therefore, the new legal requirement in section 105E that was put in place in 2006 imposed no further financial burden on the manufacturers of excisable goods using those goods. However, those administrative arrangements did not extend to the manufacture of excisable petroleum products using imported petroleum products.
22. Therefore, the financial impact of the dual licensing requirement on the manufacture of petroleum products was ameliorated in 2006 by:
 - (a) prescribing a lower fee for the grant of an warehouse licence; and
 - (b) exempting licensees from the payment of the renewal fee.
23. New section 6E replicates this arrangement in relation to warehouse licence charge payable in respect of the grant of a warehouse licence and warehouse licence charge payable in respect of the renewal of a warehouse licence. These amounts are \$1,000 and \$0 respectively.

Part 3 – new section 6F Amount of warehouse licence variation charge

24. New section 6F provides that the amount of warehouse licence variation charge is \$300, or such other amount, not exceeding \$450, as is prescribed

Part 4 – new section 6G Imposition of charges

25. New section 6G imposes the following charges in relation to customs broker licences:
- (a) customs broker licence application charge. This charge is payable under section 183CA of the Customs Act in relation to an application for a customs broker licence; and
 - (b) customs broker licence charge. This charge is payable under section 183CJA of the Customs Act in relation to the grant and the renewal of a customs broker licence.
26. The charge in paragraph (a) is a new charge in relation to customs broker licences. The charges in paragraph (b) are new to the Charges Act. However, fees are currently imposed in relation to these activities under the Customs Act and the Customs Regulation.

Part 4 – new section 6H Amount of customs broker licence application charge

27. New section 6H provides that the amount of customs broker licence application charge is:
- (a) \$130, or such other amount, not exceeding \$195, as is prescribed if the applicant is a natural person who does not intend to act as a customs broker in his or her own right; and
 - (b) \$1,300 or such other amount, not exceeding \$1,950, as is prescribed, in any other case.

A natural person does not act in their own right when they act as a nominee of a licensed broker.

Part 4 – new section 6J Amount of customs broker licence charge

28. New section 6J provides that the amount of customs broker licence charge payable in respect of the grant or renewal of a customs broker licence is:
- (a) \$240, or such other amount, not exceeding \$360, as is prescribed if the applicant is a natural person who does not intend to act as a customs broker in his or her own right; and
 - (b) \$2,400, or such other amount, not exceeding \$3,600, as is prescribed in any other case.

A natural person does not act in their own right when they act as a nominee of a licensed broker.

Item 6 – Section 7

This item amends section 7 of the Charges Act to enable the Governor-General to make regulations for the purposes of the Act as a whole. This, in effect, extends this power to new sections 6C, 6D, 6F, 6H and 6J of the Charges Act.