

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AMENDMENT (EXPORT CONTROLS AND OTHER MEASURES) BILL
2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Home Affairs,
the Honourable Brendan O'Connor MP)

**CUSTOMS AMENDMENT (EXPORT CONTROLS AND OTHER MEASURES)
BILL 2011**

OUTLINE

1. The purpose of this Bill is to amend the *Customs Act 1901* (the Customs Act) and the *Customs Depot Licensing Charges Act 1997* (the Charges Act) to strengthen the extent of Customs controls over export cargo and ensure consistent depot and warehouse licence conditions.
2. In particular, the Bill will:
 - a) allow Customs to give directions relating to goods in the export environment;
 - b) allow Customs to seek additional information in relation to goods being exported;
 - c) ensure continued Customs control of goods at a prescribed place for export;
 - d) ensure depot operators do not breach licence conditions when complying with a direction of the Secretary of the Department of Infrastructure and Transport;
 - e) allow Customs to impose new conditions on depot and warehouse licences at any time;
 - f) address breaches of the conditions of a depot or warehouse licence;
 - g) strengthen the powers of officers to give directions to depot licence holders;
 - h) allow the Chief Executive Officer of Customs (the CEO) to suspend or cancel depot licences;
 - i) set out the timeframes within which the CEO must decide whether or not to grant a warehouse licence;
 - j) allow the CEO to vary the place covered by a warehouse licence;
 - k) refund the warehouse licence fee on cancellation of a warehouse licence;
 - l) remove references to redundant provisions, and
 - m) remove the requirement to make a report of cargo in certain circumstances concerning lost or wrecked ships or aircraft.
3. A reference to 'Customs' in this Explanatory Memorandum means the agency continued in existence under subsection 4(1) of the *Customs Administration Act 1985*.

FINANCIAL IMPACT STATEMENT

4. The Bill has no financial impact.

CUSTOMS AMENDMENT (EXPORT CONTROLS AND OTHER MEASURES) BILL 2011

NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides for the Bill, when enacted, to be cited as the *Customs Amendment (Export Controls and Other Measures) Act 2011*.

Clause 2 - Commencement

2. Subclause (1) provides that each provision of this Act specified in column 1 of the table in that subclause commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table. This subclause also provides that any other statement in column 2 of the table has effect according to its terms.
3. Item 1 of the table provides that sections 1 to 3 and anything in this Act not elsewhere covered by the table will commence on the day on which the Customs Act receives the Royal Assent.
4. Item 2 of the table provides that Schedule 1 and 2 commence on a day to be fixed by Proclamation, and if any of the provisions do not commence within 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.
5. Item 3 of the table provides that Schedule 3 commences on the 28th day after this Act receives the Royal Assent.

Clause 3 - Schedule(s)

6. 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 Act and the Charges Act.
7. 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 – CONTROL OF EXPORT GOODS

Part 1 – Goods no longer for export

Customs Act 1901

Background

8. Section 30 of the Customs Act sets out the circumstances in which goods are subject to the control of the Customs (Customs control). If goods are subject to Customs control, officers of Customs can exercise various powers in respect of such goods, for example the power to examine the goods. In addition, under section 33 of the Customs Act, it is an offence to move, alter or interfere with goods subject to Customs control except as authorised under the Customs Act.
9. Under paragraph 30(1)(d) of the Customs Act, goods for export that were made or prepared in, or brought into, any prescribed place for export, such as a wharf or airport, are subject to Customs control until exported or, in the case of excisable goods that are not exported, returned to an excise licensed premises. However, as soon as such goods are 'no longer for export', they cease to be subject to Customs control. If these goods are not subject to Customs control, a person may remove the goods from an airport or wharf without Customs approval. In addition, officers of Customs can no longer examine the goods.
10. Goods can become no longer for export under several circumstances. These include where an export declaration that has been communicated under section 114 of the Customs Act is withdrawn for change of mind, or where an authority to deal granted in relation to an export declaration is suspended or cancelled under section 114C of the Customs Act.
11. To increase the level of security in the export cargo environment, the Bill strengthens Customs control over goods when they become no longer for export, by introducing a new regime whereby such goods can only be moved, altered or interfered with in accordance with Customs permission.

Item 1 At the end of subsection 30(1)

12. This item amends the Customs Act by inserting new paragraph 30(1)(e). Section 30 of the Customs Act sets out the circumstances in which goods are subject to Customs control.
13. New paragraph (e) applies to goods made or prepared in, or brought into, a prescribed place for export that are no longer for export. Customs control commences from the time the goods are made or prepared in, or brought into the prescribed place until the goods are moved from the place in accordance with a permission given under new section 119AC. Item 8 below inserts new section 119AC.

Item 2 At the end of section 33

14. This item inserts an additional note at the end of section 33. As mentioned above, section 33 contains the offence relating to moving, altering or interfering with goods subject to Customs control except as authorised under the Customs Act.
15. New Note 3 states that for permissions to move, alter or interfere with goods that are no longer for export, refer to sections 119AB and 119AC.

Items 3 and 4 Subparagraph 114D(1)(b)(ii) and paragraph 117AA(3)(b)

16. These items amend subparagraph 114D(1)(b)(ii) and paragraph 117AA(3)(b) respectively.
17. Sections 114D and 117AA both deal with restrictions on dealing with goods for export, except in certain circumstances. These items amend these sections by inserting an additional exception, which includes where permission to move, alter or interfere with goods has been given under new section 119AC (see below).

Items 5, 6 and 7 Subsections 119AA(3), 119AA(4) and 119AA(6)

18. Section 119AA sets out the circumstances in which permission can be sought and granted to move, alter or interfere with goods for export that have been entered for export and in relation to which an authority to deal is in force. Currently under this section, such an application can only be made electronically.
19. Item 5 amends subsection 119AA(3) to also allow such an application to be made by document. The documentary application must:
 - (a) be communicated to Customs by sending or giving it to an officer of Customs doing duty in relation to export entries:
 - (b) be in an approved form; and
 - (c) contain such information as is required by the form and
 - (d) be signed in a manner specified in the form.

These requirements are similar to the requirements that apply to other approved forms under the Customs Act.

20. Item 6 amends subsection 119A(4) to also allow the CEO to approve different forms for documentary applications in different circumstances or by different classes of persons (in the same way that the CEO can currently approve different statements for electronic applications).
21. Item 7 amends subsection 119AA(6) to extend the means by which an officer can send a message informing an applicant that the permission has been given or has

been refused. Currently this message can only be sent electronically. This item amends subsection 119AA(6) to also allow this message to be given by document.

Item 8 After section 119AA

22. This item amends the Customs Act by inserting new sections 119AB and 119AC. These sections set out the circumstances in which permission can be sought and granted to move, alter or interfere with goods that are subject to Customs control and are no longer for export. This regime is similar to the regime under section 119AA (as amended above) that applies to goods for export that have been entered for export and in relation to which an authority to deal is in force.
23. Under section 119AB, an application for such permission can be made by document or electronically. The documentary application is subject to the same requirements as set out in subsection 119AA(3) (see above), and an electronic communication must communicate such information as is set out in an approved statement. Similar to section 119AA, the CEO can approve different forms and statements for applications in different circumstances or by different classes of persons.
24. Under section 119AC, if an application is made under section 119AB, an officer may direct the applicant to ensure that the goods to which the application relates are held in the place where they are currently located until a decision is made on the application. This direction power is the same as the direction power in subsection 119AA(6). Under subsection 119AC(2), an applicant can be:
 - (a) given permission to move, alter or interfere with the goods in accordance with the application, either unconditionally or subject to the conditions specified in the message conveying that permission has been given; or
 - (b) refused permission to move, alter or interfere with the goods - in this circumstance, the message conveying this decision must set out the reasons for the refusal.
25. Under subsection 119AC(3), if a person moves, alters or interferes with goods otherwise than in accordance with the permission, that movement is taken not to have been authorised by the Customs Act for the purposes of paragraph 229(1)(g) of the Customs Act. Under paragraph 229(1)(g), all goods subject to the control of the Customs that are moved, altered or interfered with except as authorised by the Customs Act are forfeited to the Crown.

Item 9 Subsection 119D(3)

26. This item amends the Customs Act by repealing and substituting subsection 119D(3).
27. Section 119D sets out the various circumstances in which communications in relation to goods for export can be sent to Customs, and when such

communications are taken to have been communicated to Customs. In particular, subsection 119D(3) provides that an electronic application under section 119AA (see above) is taken to have been communicated to Customs when an acknowledgement of the application is communicated by Customs electronically to the person who sent the application.

28. New subsection 119D(3) extends this deeming provision to the new documentary application under section 119AA, and to the new documentary and electronic applications under new section 119AB. In relation to documentary applications, the application is taken to have been communicated to Customs when an acknowledgement of the application is given by Customs to the person who sent the application. In relation to electronic applications, the application is taken to have been communicated to Customs when an acknowledgement of the application is sent by Customs to the person who sent the application.
29. The Note to this item provides that the heading to section 119D is altered by inserting a reference to 'applications'.

Items 10, 11 and 12 Subsection 122H(3)

30. Section 122H of the Customs Act sets out the circumstances in which an authorised officer may enter premises where goods intended for export are, or have been and examine goods. However, these powers are only to be exercised in relation to such goods before the goods become subject to Customs control and therefore are not currently exercisable on or in premises which are prescribed for the purposes of paragraph 30(1)(d) of the Customs Act. Any goods that are brought into such prescribed premises for export become subject to Customs control.
31. Item 10 amends subsection 122H(3) to include a reference to premises prescribed of the purposes of new paragraph 30(1)(e). As referred to above, goods brought into such prescribed premises for export but which are no longer for export are also subject to Customs control. Therefore, these premises on which these goods are on or in will also not be subject to section 122H.
32. Items 11 and 12 amend the current Note to subsection 122H(3) and inserts a new Note, as a consequence of item 10. Item 11 renumbers the existing Note as 'Note 1' and item 12 inserts a new Note stating that paragraph 30(1)(e) of the Customs Act subject to the control of Customs goods made or prepared in, or brought into, a prescribed place for export that are no longer for export.

Part 2 – Power to give directions

Customs Act 1901

Background

33. Division 2 of Part VI of the Customs Act outlines the procedures for the entry and clearance of goods for export.

34. Most goods that are to be exported from Australia must be reported to Customs (entered for export) on an export declaration under section 113AA of the Customs Act before they can be exported. Such goods cannot be loaded onto a ship or aircraft in which they are to be exported unless an authority to deal ('ATD') with them is in force. Once an ATD has been granted (which is usually granted shortly after an export declaration is made), the goods can be loaded for export.
35. When goods are brought to a prescribed place for export (usually a wharf or airport or customs licensed depot), they become subject to Customs control and can be examined by Customs. However, Customs currently does not have the power to give directions to owners of such goods, wharf operators, airport operators or persons engaged to load cargo at wharfs or airports as to the movement or storage of goods for export. Such directions may need to be given, for example, for the purposes of examination of those goods by Customs after an ATD has been granted.
36. The amendments in this Part amend the Customs Act to allow Customs to give written directions about the movement and storage of goods for the purpose of ensuring compliance with the Customs Acts and other legislation prescribed by the regulations, or for the protection of the revenue. The Bill also inserts two new offences – one containing fault elements and one a strict liability offence. Because of the higher degree of culpability, the maximum penalty for the fault-based offence is greater than that for the strict liability offence. The Bill also extends the existing infringement notice scheme in the Customs Act to the new strict liability offence.

Item 13 At the end of section 77Y

37. Section 77Y of the Customs Act authorises a Collector to give written directions in relation to goods in a depot licensed under section 77G that are subject to Customs control. These goods can include goods that are intended for export.
38. This directions power may overlap with the new directions power that is to be inserted by this Bill (as new section 112C). Therefore, this item inserts new subsection 77Y(6) which provides that section 77Y does not limit the directions that a Collector may give under section 112C. New section 112C also includes a reciprocal provision.

Item 14 After Division 1 of Part VI

39. This item amends the Customs Act by inserting new Division 1A of Part VI, which is entitled 'Directions in relation to goods for export etc. that are subject to Customs control'. New Division 1A comprises sections 112C and 112D.

New section 112C

40. New subsection 112C(1) provides that a Collector may give a written direction to move or not move, or about the storage of, goods that are subject to Customs control under paragraph 30(1)(b), (c) (d) or (e) if the direction is:
- (a) for the protection of the revenue; or
 - (b) for the purpose on ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations, or a law of a State or Territory prescribed by the regulations.

The goods referred to in paragraph 30(1)(b) are goods in respect of which a drawback claim has been made before exportation – these goods are subject to Customs control from the time the claim is made until they are exported, the claim is withdrawn or disallowed, whichever happens first. The goods referred to in paragraph 30(1)(c) are goods that are subject to export duty – these good are subject to Customs control from the time they are brought to any port or place for exportation until the payment of the duty.

The goods referred to in paragraphs 30(1)(d) and (e) are explained in detail above in relation to Part 1.

41. Subsection 112C(2) sets outs to whom a direction can be given, being:
- (a) the person who made the export declaration in relation to the goods;
 - (b) the owner of the goods;
 - (c) if the goods are in a place prescribed for the purposes of paragraph 30(1)(d) or (e) - the person in charge of the place, or part of such a place. Currently, for paragraph 30(1)(d), a wharf or airport appointed under section 15 of the Customs Act and a depot licensed under section 77G of the Customs Act are some of the places prescribed. Similar places are expected to be prescribed for new paragraph 30(1)(e);
 - (d) a person who takes delivery of the goods at a wharf or airport; or
 - (e) a person engaged to load the goods on a ship or aircraft.

These persons are all of the persons who may be involved with goods that are for export once the goods have become subject to Customs control.

42. Subsection 112C(3) provides that section 112C does not limit the directions that a Collector my give under section 77Y (in relation to depots). This is the reciprocal provision to new subsection 77Y(6), as mentioned above.

New section 112D

43. New section 112D establishes new offences for refusing or failing to comply with a direction given under new section 112C. One offence has fault elements and the other is a strict liability offence. Because of the higher degree of culpability, the maximum penalty for the fault-based offence is greater than that for the strict liability offence. These offences are necessary to bolster the integrity of the regulatory regime.
44. New subsection 112D(1) establishes the fault-based offence providing that a person commits an offence if:
- (a) the person is given a direction under new section 112C; and
 - (b) the person intentionally refuses or fails to comply with the direction.

This offence is punishable by a maximum penalty of 120 penalty units. A penalty unit is currently equal to \$110.

45. New subsection 112D(2) establishes the strict liability version of the offence, which is punishable by a maximum penalty of 50 penalty units. The Note after subsection 112D(2) points the reader to section 6.1 of the *Criminal Code* for further information about the operation of strict liability.
46. In developing these offences, consideration was given to both the Senate Standing Committee for the Scrutiny of Bills Sixth Report of 2002 on *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* and the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

Item 15 - Subsection 243X(1)

47. This item inserts in subsection 243X(1) of the Customs Act a reference to new subsection 112D(2). The inclusion of the new subsection 112D(2) in subsection 243X(1) means that Division 5 of Part XIII of the Customs Act, which provides for infringement notices to be issued in lieu of prosecution, applies to this new strict liability offence. The extension of the infringement notice scheme to this offence provides Customs with greater flexibility to deal with non-compliance.

Part 3 – Suspension of an authority to deal with export goods

Customs Act 1901

Background

48. Currently, section 114A of the Customs Act allows Customs to seek additional information relating to goods being exported. This information is required for risk assessment purposes. Officers of Customs currently have the power to seek this additional information by asking questions or providing information in writing in

respect to goods being exported to verify the particulars of goods reported in an export declaration, but only before an ATD has been granted.

49. In the majority of situations, officers will not have the opportunity to make a request for additional information for risk assessment purposes, because an ATD is granted almost immediately after an export declaration is lodged. Accordingly, officer cannot perform an adequate risk assessment. However, the need to perform this risk assessment function still exists up until the time that goods for export are actually exported from Australia.
50. Section 114C of the Customs Act allows an officer of Customs to suspend an ATD if the officer has reasonable grounds to suspect that the goods to be exported have been dealt with in contravention of a Customs-related law. However, this section cannot be utilised in the majority of situations where an officer is risk assessing export goods as the officer will not have reasonable grounds to suspect that the goods have been dealt with in contravention of a Customs-related law until the officer has been able to obtain further information and has been able to risk assess the goods.
51. Sections 240AA and 240AC of the Customs Act also allow an authorised officer of Customs to require a person to produce commercial documents or records within fourteen days of the request. In the majority of situations in which information relating to export goods is requested under the Customs Act, the goods will have been exported prior to Customs receiving the information. This means an adequate risk assessment of goods being exported may not be able to be conducted before the goods are exported.
52. To address these issues, the amendments in this Part insert new provisions to enable an officer of Customs to suspend an ATD, at any time before goods authorised to be dealt with are so dealt with, in order the verify particulars of goods shown in an export declaration. This new power is in addition to the power to suspend an ATD under section 114C.

Item 16 – After section 114C

53. This item amends the Customs Act by inserting new sections 114CA, 114CB and 114CC

New section 114CA

54. New subsection 114CA(1) provides that an officer of Customs may, at any time before goods authorised to be dealt with in accordance with an export entry advice are so dealt with, suspend the ATD for a specified period in order to verify particulars of the goods shown in an export declaration. Similar to section 114A, this verification may be done by reference to information in commercial documents relating to the goods previously provided to Customs, or by reference to other written information given to Customs.

55. If an ATD is suspended in relation to a documentary export declaration, under new subsection 114CA(2) the officer must sign a notice to this effect, setting out the reasons for the suspension, and serve a copy of the notice on either the person who made the declaration or the person in possession of the goods. The suspension has effect from the time when the notice is served.
56. If a notice is suspended in relation to an electronic declaration or an Accredited Client Export Approval Number (ACEAN), under new subsection 114CA(3) the officer must electronically send a message to the person who made the declaration or the ACEAN to this effect, setting out the reasons for the suspension. The suspension has effect from the time when the message is sent.

New section 114CB

57. Under new subsection 114CB(1), an officer must revoke a suspension under section 114CA if, during the period of suspension, the officer verifies the particulars of the goods shown in the relevant export declaration.
58. Under new subsection 114CB(2) and (3), the officer must send a notice notifying that the suspension has been revoked to the same person who was originally notified that the ATD had been suspended (under new subsections 114CA(2) and (3)).

New section 114CC

59. New section 114CC sets out the powers of an officer of Customs to seek information in relation to goods that are the subject of an export declaration where the ATD has been suspended under new section 114CA.
60. Under subsection 114CC(2), an officer may require the owner of such goods to deliver certain commercial documents or other written information that will assist the officer to verify the particulars in an export declaration to the officer. The commercial documents can only relate to the goods and must be in the owner's custody and control. The other written information can only be information that is within the knowledge of the owner or as the owner is reasonably able to obtain.
61. Under subsection 114CC(2), a documentary requirement to deliver documents or information must be in an approved form, and be communicated to the person who communicated the export declaration to Customs, or on whose behalf it was communicated.
62. Under subsection 114CC(3), an electronic requirement to deliver documents or information must be in an approved statement, and be sent electronically to the person who made the export declaration to Customs.
63. Under subsection 114CC(5), in addition to the power in subsection 114CC(2), an officer may also ask any questions relating to the goods the subject of an export

declaration. The officer may ask questions of the owner of the goods, or if another person made the export declaration on behalf of the owner, the other person.

64. Subsection 114CC(6) merely restates the position that an officer of Customs may require an owner to verify the particulars shown in an export declaration either by producing documents, or making a declaration.
65. Under subsection 114CC(7), if a person delivers a commercial document to an officer of Customs under section 114CC, the officer must deal with the document and return it to the person. This requirement is subject to section 215 of the Customs Act, which allows Customs to retain or impound certain documents in certain circumstances. If that occurs, the person entitled to such a document is instead entitled to a certified copy of the document.

SCHEDULE 2 – STRENGTHENING OF SECURITY MEASURES AT DEPOTS AND WAREHOUSES

PART 1 – DEPOT LICENCES

Customs Act 1901

Background

66. Currently, under Part IVA of the Customs Act, a person can be licensed to operate a depot. Such licensed depots are used to store imported goods and goods for export subject to Customs control until the goods are entered for home consumption and the duty is paid or the goods are exported. Storage of goods in depots is short term only. Depots can be used for the unpacking and deconsolidation of imported goods while still under Customs control. They are also used to consolidate goods for export. While there are many similarities in the administration of licensed warehouses and depots, there are differences in a number of the statutory requirements that govern the regimes. The amendments in this Part strengthen depot controls and provide greater consistency with the legislative scheme for warehouses.

Items 1 and 2 – Subsection 20(8)

67. These items amend subsection 20(8) of the Customs Act by repealing the inclusion of a place appointed under paragraph 17(b) of the Customs Act from the definition of 'waterfront area'. Section 20 of the Customs Act provides powers exercisable by Customs officers in a waterfront area. These amendments are consequential upon the repeal of paragraph 17(b) by the *Customs Amendment Act (No. 1) 1997*, and which were not made at that time.

Item 3– Subsection 77F(1) (definition of *depot licence charge*)

68. This item omits the reference to section 77M in subsection 77F(1) of the Customs Act, as a consequence of the repeal of section 77M by item 6 below.

Items 4 and 5 – Section 77L

69. These items amend section 77L of the Customs Act as a consequence of the repeal of paragraph 17(b). Section 77L sets out provisions relating to the granting of a depot licence and, when originally enacted, this section was not intended to apply in relation to any outstanding applications to appoint a place under paragraph 17(b) of the Customs Act. As paragraph 17(b) was repealed 14 years ago, there is no longer a continuing need for this exemption, which is set out in subsection 77L(3). Therefore, subsection 77L(3) is to be repealed.

Item 6 – Section 77M

70. This item repeals section 77M. This section sets out the transitional provisions for places that were appointed under paragraph 17(b). Again, as paragraph 17(b) was

repealed 14 years ago, there is no longer a continuing need for these transitional provisions. Therefore section 77M is to be repealed.

Item 7 – Subsection 77Q(1)

71. This item repeals subsection 77Q(1) and substitutes new subsections 77Q(1), (1A) and (1B). This item also replaces the heading to section 77Q with ‘The CEO may impose additional conditions to which a depot licence is subject’ and inserts a subheading to subsection 77Q(1) of ‘Imposition of additional conditions’ and to subsection 77Q(2) of ‘Variation of imposed conditions’.
72. Under Part IVA of the Customs Act, the CEO of Customs may grant a depot licence for a place, described in the licence, to be used for holding, unpacking or examining imported goods that are subject to Customs control or for holding, packing or examining goods for export that are subject to Customs control. Sections 77N and 77P of the Customs Act impose several statutory conditions upon a depot licence. In addition, the CEO of Customs may specify conditions upon a depot licence under 77Q of the Customs Act, which are in addition to the conditions imposed by sections 77N and 77P. The CEO may also vary such specified conditions. A breach of a condition of the depot licence is an offence under section 77R of the Customs Act.
73. Under current section 77Q, the CEO is restricted to specifying conditions that are for the purpose of protecting the revenue or for ensuring compliance with the Customs Act. The CEO cannot specify conditions to ensure compliance with other Commonwealth and State or Territory laws. For example, Customs is not fully able to support export air cargo security initiatives because the CEO does not have the ability to impose depot licence conditions for the purpose of ensuring compliance with the *Aviation Transport Security Act 2004* and the *Aviation Transport Security Regulations 2005*.
74. In addition, section 77Q does not clearly indicate that the CEO may specify additional licence conditions at any time after the initial granting of a depot licence (as opposed to varying existing conditions). This means that Customs cannot confidently impose additional conditions on existing depot licences in order to respond to emerging risks to cargo security, risks to the revenue or for community protection purposes.
75. The Bill amends the CEO’s powers under section 77Q to extend the circumstances in which the CEO may specify additional conditions to address these concerns.
76. New subsection 77Q(1) provides that the CEO may, *at any time*, impose additional conditions to which a depot licence is subject if the CEO considers the conditions to be necessary or desirable:
 - (a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*; or

(c) for any other purpose.

These additional conditions can be imposed at the time the depot licence is granted or at any time after the initial granting of the licence, thereby giving the CEO the ability to respond to emerging risks to cargo security, risks to the revenue or for community protection purposes.

77. New subsection 77Q(1A) states that if the CEO imposes a condition under subsection (1), the condition must be specified in the licence.
78. New subsection 77Q(1B) states that if the CEO imposes conditions under subsection (1) after the depot licence has been granted, the CEO must, by notice in writing, notify the holder of the licence of the new conditions. In addition, the conditions cannot take effect before the end of 30 days after such notice is given. However, if the CEO considers that it is necessary for the conditions to take effect earlier, they will take effect at the end of the shorter period specified in the notice. This enables the CEO to respond in circumstances that may require urgent action, such as dealing with a significant security incident.

Item 8 – Subsection 77Q(2)

79. This item makes a technical amendment to substitute the reference to ‘specified with ‘imposed’, as a consequence of new subsection 77Q(1).

Item 9 – Subsection 77Q(3)

80. This item repeals and substitutes subsection 77Q(3). This subsection sets out the timeframe for the taking effect of a condition on a depot licence that is varied under subsection 77Q(2). Currently, such a variation cannot take effect before the end of 30 days after notice of the variation is given to the holder of the licence. Consistent with new subsection 77Q(1) in relation to the imposition of additional conditions, under new subsection 77Q(3) a variation can now also take effect at the end of the shorter period specified in the notice, if the CEO considers that it is necessary for the conditions to take effect earlier. Similar to subsection 77Q(1B), this is to enable the CEO to respond in circumstances that may require urgent action, such as dealing with a significant security incident.

Items 10 and 11 – Section 77R(1)

81. Section 77R of the Customs Act establishes a strict liability offence for breaching conditions imposed on a depot licence under sections 77N, 77P and 77Q. Item 10 amends subsection 77R(1) to clarify that section 77R applies to a condition varied

under section 77Q, as well as conditions imposed under section 77Q. Item 11 inserts a Note after subsection 77R(2), to point the reader to section 6.1 of the *Criminal Code* for further information about the operation of strict liability.

Item 12 – At the end of section 77R

82. This item inserts new subsection 77R(3) into the Customs Act.
83. Section 44C of the *Aviation Transport Security Act 2004* (the ATSA) establishes the regulated air cargo agent scheme (RACA). RACAs are required to operate under a transport security program and to comply with directions given by the Secretary of the Department of Infrastructure and Transport.
84. A RACA may also be the holder of a depot licence granted under Part IV of the Customs Act. Therefore, it is possible that in complying, or attempting to comply, with a direction of the Secretary of the Department of Infrastructure and Transport, a RACA that is also a holder of a depot licence may breach a condition of the depot licence and commit an offence under section 77R of the Customs Act. For example, in accordance with subsection 77N(2A) of the Customs Act, it is a condition of a depot licence that the holder of the depot licence must not cause or permit a substantial change in the physical security of the depot or the keeping of records unless the holder has given Customs 30 days notice prior to the change. In the event of a heightened security alert, the Secretary may give a special security direction concerning physical security for immediate action. Any depot licence holder that complied with the security direction would be in breach of their depot licence conditions.
85. To address this potential issue, new subsection 77R(3) provides that section 77R does not apply if:
 - (a) the holder of a depot licence breaches a condition of the licence referred to in subsection 77R(1); and
 - (b) the breach occurred only as a result of the holder's compliance, or attempted compliance, with a direction given under section 21 of the ATSA, or a special security direction (within the meaning of section 9 of the ATSA), that applies to the holder.
86. A Note to this new subsection indicates that, in accordance with subsection 13.3(3) of the *Criminal Code*, the defendant bears the evidential burden in relation to the matters in new subsection 77R(3).

Item 13 – Section 77S (note)

87. This item repeals and substitutes the Note to section 77S (which deals with the duration of depot licences). This Note currently refers to section 77M of the Customs Act, which is to be repealed by item 6 above. Therefore, this Note is being

amended so that it no longer refers to section 77M. This Note is also being amended to refer to new section 77VC as the section under which depot licences are cancelled (see below) as opposed to current section 77V, which is being amended (see below also).

Item 14 – Subsection 77U(1)

88. This item amends subsection 77U(1), which deals with the depot licence charges, to omit the reference to section 77M, as a consequence of the repeal of section 77M by item 6 above. Section 77U is otherwise unchanged.

Item 15 – Subsection 77V(1)

89. Section 77V of the Customs Act provides that the CEO may give notice of intention to revoke a depot licence in certain circumstances. Section 77V also sets out the CEO's power to revoke a depot licence in certain circumstances. However, unlike the regime that governs warehouse licences, the CEO currently does not have the ability to suspend a depot licence. The only option available to the CEO to respond to non-compliance under the current legislation is to revoke the licence. The former licence holder would then be required to re-apply for a depot licence. Suspension of the licence would provide an opportunity to address matters that may be able to be dealt with and which would enable the suspension to be lifted.
90. The possibility of the suspension of a depot licence would provide a greater incentive for industry to comply with the depot licensing requirements. It is therefore proposed to amend section 77V so that it allows for the suspension of a depot licence, in the same circumstances under which a depot licence can currently be revoked as set out subsection 77V(1). It is also proposed to create a new section 77VC which sets out the circumstances in which a depot licence can be cancelled. In this new section, the term 'cancelled' is used in place of the current term 'revoked' in order to align the terminology with that used in relation to warehouse licences.
91. This item amends subsection 77V(1) to remove the reference to the intention to revoke a depot licence under section 77V in the notice given to the holder of a depot licence under this provision. A notice will still be given to the holder under subsection 77V(1), but it will be in different terms (see new subsection 77V(4) below).

Items 16 and 17 – Paragraph 77V(1)(b)

92. Paragraphs 77V(1)(a) and (b) set out the circumstances in which a notice of intention to revoke can be given by the CEO to the holder of a depot licence under section 77V. Under paragraph (b), the CEO can give notice if satisfied on grounds other than those set out in paragraph (a) that the revocation is necessary for the protection of the revenue or for ensuring compliance with the Customs Act.

93. Item 17 amends paragraph (b) so that it extends to ensuring compliance with any other law of the Commonwealth prescribed by the regulations, or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*. Item 16 also amends paragraph (b) to replace the reference to 'revocation' with 'cancel' so that the terminology is consistent with new section 77VC (below).

Item 18 – Subsection 77V(4) to (11)

94. This item repeals existing subsections 77V(4) to (11) and substitutes new subsections 77V(4) to (11), which set out the details in relation to a notice given by the CEO to the holder of a licence under subsection 77V(1).
95. Under new subsection 77V(4), the notice must be in writing and served on the holder of the licence, either personally or by post. Alternatively, the notice can be served on a person who, at the time of service, apparently participates in the management or control of the depot.
96. New subsection 77V(5) sets out the matters that are to be included in the notice. The notice *must* state that, if the holder of the licence wishes to prevent the licence being cancelled he or she may give a written statement to the CEO showing cause why the licence should not be cancelled. This statement must be given within 7 days of the notice under subsection (1) being served.
97. The notice *may* also state that the licence is suspended, if it appears necessary to the CEO to suspend the licence:
- (a) for the protection of the revenue; or
 - (b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations - similar to provisions set out above, these laws would be prescribed in the *Customs Regulations 1926*.
98. New subsection 77V(6) provides that the suspension of a depot licence is effective on and from the service of the notice under subsection 77V(1).
99. Section 77T of the Customs Act sets out provisions relating to the renewal of a depot licence. Under subsection 77T(1), the CEO must notify each licence holder of the terms of section 77T before the end of each financial year (which is also the end of the term of a depot licence). Under subsections 77T(2) and (4), a licence holder can obtain automatic renewal of a depot licence if the holder pays the depot licence charge. New subsection 77V(7) provides that despite the giving of a notice under subsection 77V(1), nothing in Part IV otherwise prevents the events under section 77T occurring. For example, the CEO is still required to give the notice in accordance with subsection 77T(1) even if the current depot licence is suspended.

100. The Note to subsection 77V(7) provides that a depot licence charge may be refunded under section 77W of the Customs Act.

Item 19 – After section 77V

101. This item inserts new sections 77VA, 77VB and 77VC into the Customs Act.

New section 77VA

102. New subsection 77VA(1) sets out a new offence in relation to suspended depot licences. The new offence provides that if a depot licence is suspended under section 77V, a person must not use the depot for a purpose referred to subsection 77G(1). This subsection sets out the Customs Activities that the CEO may specify in a licence that can take place in a depot. This new offence contains fault elements and is subject to a maximum penalty of 50 penalty units.
103. However, new subsection 77VA(2) sets out the Customs Activities that a Collector can authorise in relation to a depot where a depot licence has been suspended. For example, a Collector may allow particular activities to take place in a depot while the licence is suspended to avoid inconveniencing other parties. If the Collector authorises an activity, a person does not commit the new offence in subsection 77VA(1) if an activity takes place in accordance with this authority. Subsection 77VA(2) also sets out other actions that a Collector may undertake in relation to a depot where a depot licence has been suspended.
104. Under section 77VA(2), a Collector may:
- (a) permit imported goods, or goods for export, that are subject to the control of Customs to be held in the depot; and
 - (b) permit the unpacking or packing of such goods; and
 - (c) permit the removal of such goods from the depot, including the removal of such goods to another depot;
 - (d) by notice in a prescribed manner to the owner of such goods, require the owner to remove the goods to another depot, or to a warehouse, approved by the Collector; and
 - (e) take such control of the depot, or all or any goods in the depot, as may be necessary:
 - (i) for the protection of the revenue; or
 - (ii) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations (in the *Customs Regulations 1926*); and

(f) by notice in writing to the holder of the licence, require the holder to pay to Customs, in respect of the services of officers required as the result of the suspension, such fee as the CEO determines having regard to the cost of the services.

105. A Note to this new subsection indicates that, in accordance with subsection 13.3(3) of the *Criminal Code*, the defendant bears the evidential burden in relation to the matters in new subsection 77VA(2).
106. New subsection 77VA(3) sets out some of the services referred to in paragraph 2(f) in respect of which a Collector may require that a fee is payable. These include services relating to the enforcement of the suspension (such as the attendance of officers of Customs at the premises to prevent unauthorised removal of goods from the premises while the licence is suspended) and services relating to the supervision of activities permitted by a Collector under subsection 77VA(2).
107. New subsection 77VA(4) provides that if a fee is payable under paragraph 2(f) and the fee is not paid, the amount may be recovered as a debt due to the Commonwealth in a court of competent jurisdiction.

New section 77VB

108. New section 77VB sets out provisions dealing with the revocation of a suspension of a depot licence under new subsection 77V(5). The CEO may, at any time revoke this suspension. In addition, if the licence is not cancelled (in accordance with new section 77VC below) within 28 days after the day on which the licence is suspended, the CEO *must* revoke the suspension.

New section 77VC

109. New section 77VC sets out provisions relating to the cancellation of a depot licence.
110. New subsection 77VC(1) provides that the CEO may, by notice in writing, cancel a depot licence if not satisfied of any matter mentioned in subparagraphs 77V(1)(a)(i) to (viii), or of any matter mentioned in paragraph 77V(1)(b) in relation to the licence.
111. Subparagraphs 77V(1)(a)(i) to (viii), and paragraph 77V(1)(b) set out several matters in relation to a depot licence that the CEO may consider as grounds for issuing a notice under subsection 77V(1) (see above). For example, the CEO may issue a notice of intention to cancel the licence if he is satisfied that the physical security of the depot is no longer adequate, or if a licence holder is no longer a fit and proper person to hold a depot licence. Therefore, if the CEO is satisfied that a licence holder is no longer a fit and proper person to hold a depot licence, the CEO may cancel the licence.
112. Under new subsection 77VC(2), the CEO must, by notice in writing, cancel a licence if the CEO receives a written request from the holder of the licence that it be

cancelled on and after a specified day. A licence holder might make such a request if, for example, the business is closing and they wish to cancel in order to receive a refund of their charges.

113. Both of these notices must be served on the holder of the licence, either personally or by post. Alternatively, the notices can be served personally on a person who, at the time of service, apparently participates in the management or control of the depot.
114. Under new subsection 77VA(4), if a depot licence is cancelled, 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 the cancellation and the date of the cancellation. This requirement is the same as the current requirement under subsection 77V(8) in relation to the revocation of depot licences.
115. Under new subsection 77VC(5), the person or partnership who held the depot licence before its cancellation must return the hard copy of the depot licence to Customs within 30 days after the cancellation. This requirement is the same as the current requirement under subsection 77V(9) in relation to the revocation of depot licences.

Item 20 – Subsection 77W(1)

116. This item repeals and substitutes subsection 77W(1). Subsection 77W(1) currently sets out the formula for the refund of the depot licence charge after its revocation. New subsection 77W(1) and (1A) restate this formula in terms of the cancellation of a depot licence.
117. Under new subsection 77W(1), a former licence holder is entitled to a refund of the depot licence charge where a licence is cancelled before the end of a financial year. This refund is of course only payable if the depot licence charge for the financial year has been paid at the time the licence is cancelled.
118. The pro-rata formula to work out the amount of the refund of the depot licence charge is:

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

119. The 'annual rate' is \$4,000 or such other amount prescribed under subsection 6(2) of the Charges Act. No other amount has been prescribed as of 2011. This amendment also corrects an incorrect cross-reference to subsection 6(1) of the Charges Act in the current definition of 'annual rate'.
120. The 'days in the year' are 365, unless a financial year is not 365 days, in which case the days are the Customs Actual number of days. The 'post-cancellation days' are

the remaining number of days of the financial year following the cancellation of the licence.

Item 21 – Subsection 77X(1)

121. This item repeals subsection 77X(1). Section 77X sets out the Collector's powers in relation to a depot that ceases to be covered by a depot licence. Current subsection 77X(1) sets out the places to which section 77X applies and includes a reference to the transitional provisions under section 77M that applied to places that were appointed under paragraph 17(b). As set out above, section 77M is to be repealed. As a consequence of the repeal of section 77M, subsection 77X(1) is to be repealed and its remaining provisions are to be incorporated into subsection 77X(2).

Item 22 – Subsection 77X(2)

122. This item amends subsection 77X(2) to incorporate the remaining provisions of subsection 77X(1). New subsection 77X(2) is prefaced by the phrase "If a place ceases to be covered by a depot licence". This amendment is a technical amendment only.

Item 22 – Paragraph 77X(2)(g)

123. Under current paragraph 77X(2)(g), a Collector may, while controlled goods are in the place (being a place that has ceased to be covered by a depot licence) take such control of the place as may be necessary for the protection of the revenue or for ensuring compliance with the Customs Acts.
124. The Bill amends paragraph 77X(2)(g) to enable a Collector to take control of such a place for ensuring compliance with other Commonwealth or State or Territory laws. These laws would be prescribed in the *Customs Regulations 1926*. This amendment complements the amendments proposed to section 77Q (as set out above) in relation to the CEO's powers to impose conditions on the granting of a depot licence.

Item 24 – Subsection 77Y(1)

125. Section 77Y sets out the powers of a Collector to give directions to the holder of a depot licence or a person participating in the management or control of a depot. These directions can only be give in relation to goods in the depot that are subject to Customs control (in this section, the term for these goods is 'controlled goods'.) Under subsection 77Y(1), the directions can be given for the protection of the revenue or for ensuring compliance with the Customs Acts.
126. Similar to the amendments to paragraph 77X(2)(g), the Bill amends subsection 77Y(1) to enable a Collector to give directions for ensuring compliance with other Commonwealth and State or Territory laws. These laws would be prescribed in the *Customs Regulations 1926*. This amendment also complements the amendments proposed to section 77Q (as set out above).

127. The proposed amendments to sections 77Q, 77X and 77Y strengthen the powers that Customs can exercise in relation to goods in depots at all times while a depot licence is in force and once a licence has expired, has been suspended or has been cancelled.

Items 25 and 26 – Paragraph 77Y(2)(d) and (e)

128. Subsection 77Y(2) sets out the types of direction that a Collector can give under subsection 77Y(1). Under paragraph (d), the Collector may give a direction about the unpacking from receptacles of imported goods that are controlled goods. Under paragraph (e), the Collector may give a direction about the packing into receptacles of goods for export of controlled goods.
129. In order to widen the power to give directions, the Bill removes the limitation on the types of controlled goods that are the subject of paragraphs (d) and (e). A Collector would, therefore, be able to give direction in relation to the unpacking or packing of *any* controlled good in a depot, regardless of whether the goods are imported goods or goods for export. These amendments enhance Customs ability to respond effectively to identified high-risk goods, especially in the export environment.
130. Item 25 removes the reference to ‘imported’ goods in paragraph 77Y(2)(d) and item 26 removes the reference to ‘goods for export’ in paragraph 77Y(2)(e).

Item 27 – After subsection 77Y(3)

131. Under subsection 77Y(4), it is a strict liability offence to refuse or fail to comply with a direction given under subsection 77Y(1) or (3). The Bill introduces a fault based offence relation to the same refusal or failure to comply to address a greater level of culpability. This offence is punishable by a maximum penalty of 120 penalty units.

Item 28 – Subsection 243X(1)

132. This item inserts in subsection 243X(1) of the Customs Act a reference to subsections 77R(1) and 77Y(4). The inclusion of these subsections in subsection 243X(1) means that Division 5 of Part XIII of the Customs Act, which provides for infringement notices to be issued in lieu of prosecution, applies to these strict liability offences. The extension of the infringement notice scheme to these offences provides Customs with greater flexibility to deal with non-compliance.

Items 29, 30, 31 and 32 – Section 273GA

133. Section 273GA of the Customs Act sets out those decisions under the Customs Act in respect of which an application for review may be made to the Administrative Appeal Tribunal. These items make technical amendments to section 273GA, and add two new decisions to section 273GA.
134. Item 29 adds the words ‘the following’ to the opening phrase of subsection 273GA(1). This is a technical drafting amendment only.

135. Item 30 amends paragraph 273GA(1)(aat) to insert the phrase ‘to impose conditions on a depot licence or’. This extends section 273GA to the new decision making power of the CEO to impose additional conditions on a depot licence under the amended section 77Q (as set out above).
136. Item 31 amends paragraph 273GA(1)(aau) to omit the reference to ‘revoke’ and substitute ‘suspend’. Paragraph 273GA(1)(aau) applies to decisions made under section 77V. This amendment reflects the amendments to section 77V (as set out above) whereby a depot licence is suspended under 77V, not revoked.
137. Item 32 amends subsection 273GA(1) to insert new paragraph 273GA(1)(aav), which applies to a decision by the CEO under section 77VC to cancel a depot licence. This amendment extends section 273GA to the new decision making power of the CEO to cancel a depot licence under the new section 77VC (as set out above).

Customs Depot Licensing Charges Act 1997

Item 33 – Section 3 (definition of *depot licence charge*)

138. This item repeals the reference to section 77M in the definition of ‘depot licence charge’ in section 3 of the Charges Act. This amendment is consequential upon the repeal of section 77M of the Customs Act (as set out above).

Item 34 – Subsections 4(2) and 5(1)

139. These items repeal subsections 4(2) and 5(1) of the Charges Act. Subsection 4(2) sets out the amount of depot licence application charge payable under section 77M of the Customs Act and is to be repealed as a consequence of the repeal of section 77M. Subsection 5(1) sets out the amount of depot licence application charge payable in respect of premises that were previously appointed under paragraph 17(b) of the Customs Act. As paragraph 17(b) was repealed 14 years ago, there is no longer a continuing need for this charge.

Item 35 – Subsection 5(2)

140. This item omits the reference to ‘(2)’ in this subsection as there is only one provision in this section as a consequence of the repeal of subsection 5(1).

Item 36 – Subsection 5(2)

141. This item omits the references to paragraphs 5(1)(a) and (b) in subsection 5(2) as a consequence of the repeal of subsection 5(1) above. Subsection 5(2) now sets out the depot licence application charge for a depot licence.

Item 37 – Subsection 5(2)

142. This item omits the reference to subsection 6(6) in subsection 6(1) of the Charges Act. This amendment is consequential on the repeal of subsection 6(6) below.

Item 38 - Subsection 5(2)

143. This item repeals subsections 6(6) to 6(8) of the Charges Act. These subsections set out the formulae for depot licence charge payable under section 77M of the Customs Act and in relation to places previously appointed under paragraph 17(b) of the Customs Act. These amendments are consequential on the repeal of section 77M and paragraph 17(b).

PART 2 – WAREHOUSE LICENCES

Customs Act 1901

144. Under Part V of the Customs Act, a person can be licensed to operate a warehouse. Licensed warehouses are used to store imported goods in respect of which customs duty has not been paid. Such goods remain subject to Customs control until the duty is paid and the goods are delivered into home consumption. The main difference between a depot and a warehouse is that warehouses are used for longer term storage of goods. These goods have been entered for warehousing and detailed information on the goods including value, origin and classification has been communicated to Customs and Border Protection. The goods remain subject to Customs control until such time as they are entered for home consumption and the duty is paid. Similar to the amendments for depots, the amendments set out in this Part strengthen warehouse controls and improve administration by providing clients with standardised procedures and terminology across the two regimes.

Item 39 - After section 81

145. This item amends the Customs Act by inserting new section 81A.
146. Under section 77L of the Customs Act in relation to depots, the CEO has 60 days after the receipt of an application for a depot licence to decide whether or not to grant the licence. This service standard provides certainty to applicants in understanding when they will receive advice on the success or otherwise of their application. However, the Customs Act does not have a corresponding provision setting timeframes for warehouse licence applications, although the same time frames are applied in practice and are made available in published service standards.
147. New subsection 81A(1) provides that if an application for a warehouse licence is made under section 80 of the Customs Act, the CEO must decide whether or not to grant the licence within 60 days after receiving the application.
148. Under new subsection 81A(2), if the CEO does not make this decision within the 60 day period, the CEO is taken to have refused the application at the end of that period. These provisions are the same as the provisions that apply in relation to applications for a depot licence.

149. This item also inserts new section 81B. Under section 77LA of the Customs Act, the CEO may upon application by the holder of a depot licence vary the places described in the licence. However, there is no corresponding provision in relation to warehouse licences. This means that those matters that may be dealt with by a variation to a depot licence are unable to be similarly dealt with for warehouse licence holders. Instead, warehouse licence holders must submit a new application in relation to the new premises, which can be a time-consuming process.
150. New section 81B sets out the regime whereby the holder of a warehouse licence may apply to the CEO to vary the licence, either by omitting and substituting the description of the place described in the licence (ie an entirely new premises), or by altering such a description (new subsection 81B(1)).
151. Under new subsection 81B(2), the application must be in writing in an approved form and must contain the information the form requires and be signed in the manner the form requires.
152. Under new subsection 81B(3), the CEO may require an applicant to provide further information in relation to the application within a specified period.
153. Subsections 81B(4) and (5) set out the circumstances in which the CEO must not grant the application to vary the licence. These circumstances are the same as those that apply in relation to depots under section 77LA. Under subsection 81B(4), the CEO must not grant the application if, in the CEO's opinion:
- (a) the physical security of the place whose description is to be substituted, or of the place that would have the altered description, would not be adequate having regard to:
 - (i) the nature of the place; or
 - (ii) the kinds and quantity of goods that would be kept in the place if the variation were made; or
 - (iii) the procedures and methods that would be adopted by the applicant to ensure the security of goods in the place if the variation were made; or
 - (b) the plant and equipment that would be used in relation to goods in the place, if the variation were made, would not be suitable having regard to the nature of those goods and that place; or
 - (c) the books of account or records that would be kept in relation to the place, if the variation were made, would not be suitable to enable Customs adequately to audit those books or records.

154. Under subsection 81B(5), the CEO must not grant the application in relation to the substitution of the description if, in the CEO's opinion, the place would be too remote from the nearest place where officers, who regularly perform their functions for Customs, would be able to conveniently check whether the Customs Acts are being complied with at the place. For example, the CEO would be unlikely to approve the relocation of a warehouse away from a capital city to a regional location with no local Customs office.
155. Under new subsection 81B(6), the CEO must decide whether or not to grant the application within 60 days after receiving the application. If information is requested and supplied in accordance with subsection 81B(3) above, the CEO must make this decision within 60 days after receiving the information.
156. Similar to the initial application for a warehouse licence, under new subsection 81B(7), if the CEO does not make this decision within the relevant 60 day period, the CEO is taken to have refused the application at the end of that period. These provisions are the same as those that apply in relation to depots under section 77LA.

Item 40 – Subsection 82(2)

157. This item repeals subsection 82(2) of the Customs Act. Section 82 sets out the conditions to which a warehouse licence is subject. Similar to depots, subsection 82(1) imposes several statutory conditions upon a warehouse licence. In addition, the CEO and Customs may specify conditions upon a warehouse licence under subsection 82(2) and 82(3).
158. For ease of administration, the two provisions under which additional conditions can be imposed will be consolidated into the one subsection 82(3). Therefore, subsection 82(2) is to be repealed.

Item 41 – Subsection 82(3)

159. This item repeals and substitutes subsection 82(3) of the Customs Act.
160. Under current subsections 82(2) and 82(3), similar to the current restrictions in relation to depots, the CEO is restricted to specifying conditions that are for the purpose of protecting the revenue or for ensuring compliance with the Customs Act. The CEO cannot specify conditions for ensuring compliance with other Commonwealth and State or Territory laws.
161. New subsection 82(3) therefore provides that the CEO may impose such other conditions specified in the licence that the CEO considers the conditions to be necessary or desirable:
 - (a) for the protection of the revenue; or

(b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*; or

(c) for any other purpose (this provision is currently in subsection 82(2)).

Item 42 – At the end of section 82

162. This item amends the Customs Act by inserting new subsection 82(6) which provides that subsection 82(5) does not limit new section 82B.
163. Subsection 82(5) provides that the CEO may vary the conditions specified in a warehouse licence but only if the licence holder applies to the CEO to vary the conditions. Unlike depots, the CEO does not have the power to vary the conditions on his or her own initiative. This limits the power of the CEO to respond to emerging risks to cargo security, risks to the revenue or for community protection purposes.
164. New section 82B below addresses this shortcoming. The purpose of new subsection 82(6) is to put beyond doubt that the powers of the CEO under new section 82B are not limited by the restriction on the CEO's powers under current subsection 82(5).

Item 43 – After section 82

New section 82A

165. This item amends the Customs Act by inserting new section 82A.
166. Similar to depots, section 82 does not clearly indicate that the CEO may specify additional licence conditions at any time after the initial granting of a warehouse licence. This means that, as with depots, Customs cannot confidently impose additional conditions on existing warehouse licences in order to respond to emerging risks to cargo security, risks to the revenue or for community protection purposes. New section 82A addresses this shortcoming.
167. New subsection 82A(1) provides that the CEO may, at any time after a warehouse licence is granted, impose additional conditions to which the licence is subject if the CEO considers the conditions to be necessary or desirable:
- (a) for the protection of the revenue; or
- (b) for the purpose of ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*; or

(c) for any other purpose.

168. New subsection 82A(2) provides that the CEO must, in writing, notify the holder of the warehouse licence of the new conditions. In addition, the new conditions cannot take effect before the end of 30 days after giving this notice. However, the CEO can specify a shorter period of effect if he or she considers that it is necessary that they take effect earlier.

New section 82B

169. This item also amends the Customs Act by inserting new section 82B.
170. Under subsection 82(5) of the Customs Act, the CEO may vary the conditions specified in a warehouse licence by the CEO, but only upon the application of the holder of the licence. However, unlike in relation to depots, the CEO cannot of his or her own initiative vary the conditions specified in a warehouse licence. New section 82B addresses this shortcoming.
171. New subsection 82B(1) provides that the CEO may vary either the conditions specified in a warehouse licence under section 82 (that is, when the licence is originally granted) or the additional conditions imposed under section 82A (that is, at any time after the licence is originally granted). This must be done by written notice to the licence holder.
172. Under new subsection 82B(2), and similar to new subsection 82A(2), the new conditions cannot take effect before the end of 30 days after giving this notice. However, the CEO can specify a shorter period of effect if he or she considers that it is necessary that they take effect earlier.
173. New subsection 82B(3) provides that new section 82B does not limit the CEO's powers under subsection 82(5), set out above.

New section 82C

174. This item also amends the Customs Act by inserting new section 82C.
175. In relation to depots, under section 77R it is an offence to breach a condition to which a depot licence is subject. There is no corresponding offence in relation to the breach of conditions to which a warehouse licence is subject.
176. New section 82C establishes a new strict liability offence of breaching a condition to which a warehouse licence is subject under section 82 or 82A (which includes a condition varied under subsection 82(5) or section 82B). The offence is punishable by a maximum penalty of 50 penalty units. A penalty unit is equal to \$110. The offence is necessary to bolster the integrity of the regulatory regime. Presently, suspension and cancellation of licences are the only options for breaches of conditions.

177. In developing this offence, consideration was given to both the Senate Standing Committee for the Scrutiny of Bills Sixth Report of 2002 on *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* and the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

Item 44 – Paragraph 83(2)(d)

178. Section 83 of the Customs Act sets out the duration of a warehouse licence. Under subsection 83(2), a Collector may authorise several activities that may be undertaken in relation to a warehouse where its term has expired and the licence has not been renewed. Under paragraph 83(2)(d), a Collector may take such control of a former warehouse, or goods in the former warehouse, that is necessary for the protection of the revenue or for ensuring compliance with the Customs Acts.
179. However, a Collector cannot take control of a former warehouse in order to ensure compliance with other Commonwealth and State or Territory laws. The amendments to paragraph 83(2)(d) address this shortcoming by extending the power of a Collector take control for ensuring compliance with any other law of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*.

Item 45 – At the end of section 85

180. This item amends the Customs Act in inserting new subsections 85(4) and (5).
181. Subsection 85(1) of the Customs Act provides that such fees as are prescribed are payable in respect of warehouse licences. These fees are prescribed under regulations 50 and 51 of the *Customs Regulations 1956*. Regulation 50B of the *Customs Regulations 1956* sets out the methods by which warehouse licence fees are payable. The fees can either be paid in full, or by instalments in accordance with the times set out in the regulations.
182. Currently, there is no provision in the Customs Act whereby a licence holder can receive a refund of the warehouse licence fee where a warehouse licence is cancelled before the end of the financial year (unlike section 77W in relation to depot licence charges).
183. New subsection 85(4) provides that the regulations may make provisions for, and in relation to, the refund of any fees referred to in subsection 85(1). It is proposed that regulations made for the purposes of this subsection would allow for the *pro rata* refund of warehouse licence fees, similar to the circumstances in which a depot licence charge is refundable.
184. New subsection 85(4) provides that, without limiting new subsection 85(4), the regulations may set out the means of determining the amount of the refund. This head of power would allow *pro rata* formulae for the calculation of the amount of the

refund, including where the warehouse licence fees are paid by instalments, to be prescribed.

Item 46 – Subsection 86(1)

185. This item makes a technical amendment to subsection 86(1) by inserting a comma between ‘revenue’ and ‘or for’ in the last phrase of this subsection.

Item 47 – Subsection 86(1)

Item 48 – Paragraph 86(3)(b)

186. Section 86 of the Customs Act sets out the circumstances in which the CEO may give a ‘show cause’ notice to the holder of a warehouse licence. This notice is similar to the notice that may be given to the holder of a depot licence in accordance with the proposed amendments to section 77V of the Customs Act set out above. This notice may include a notification that the licence is suspended. A suspension of a licence, as opposed to its cancellation, gives a licence holder the opportunity to address matters that may be able to be dealt with and which would enable the suspension to be lifted.
187. Currently, a notice can be given, and a licence can be suspended, if it appears to the CEO that it is necessary for the protection of the revenue or for ensuring compliance with the Customs Acts. However, similar to current section 86, the CEO cannot give such notice, or suspend a licence, to ensure compliance with other laws of the Commonwealth or State or Territory laws. The amendments to subsection 86(1) address this shortcoming by extending the power of the CEO to give notice, and to suspend a warehouse licence, for ensuring compliance with any other law of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*.

Item 49 – Paragraph 86(7)(e)

188. Under subsection 86(7), a Collector may authorise several activities that may be undertaken in relation to a warehouse during the period in which a warehouse licence is suspended under subsection 86(3). Under paragraph 86(7)(e), a Collector may take such control of a warehouse, or goods in the warehouse, that is necessary for the protection of the revenue or for ensuring compliance with the Customs Acts.
189. However, a Collector cannot take control of the warehouse in order to ensure compliance with other laws of the Commonwealth or State or Territory laws. The amendments to paragraph 86(7)(e) address this shortcoming by extending the power of a Collector to take control for ensuring compliance with any other law of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*.

Item 50 – At the end of paragraph 87(1)(b)

190. Section 87 of the Customs Act sets out the circumstances under which the CEO may cancel a warehouse licence. Similar to the grounds for suspending a licence, the CEO currently may cancel a licence if, under paragraph 87(1)(b), the CEO is satisfied that cancellation of the licence is necessary for the protection of the revenue or for ensuring compliance with the Customs Acts.
191. However, the CEO currently cannot cancel a warehouse licence if the CEO is satisfied that cancellation is necessary to ensure compliance with other laws of the Commonwealth or State or Territory laws. The amendments to paragraph 87(1)(b) address this shortcoming by extending the power of the CEO to cancel a warehouse licence for ensuring compliance with any other law of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*.

Item 51 – After subsection 87(1)

192. This item amends the Customs Act by inserting new subsection 87(1A). Under this new subsection, the CEO must cancel a licence if the CEO receives a written request from the holder of the licence that it be cancelled on and after a specified day. Similar to depots, a licence holder may make such a request, for example, if the business is closing and they wish to cancel the licence in order to receive a refund of their warehouse licence fees (in accordance with new section 87A below).

Items 52, 53 and 54 – Various amendments to section 87

193. These items amend subsections 87(2), (4), (5) and (7) to replace references from 'shall' to 'must'. These are technical amendments only and reflect current drafting style.

Item 55 – Subsection 96A(6) and 96B(6)

194. Sections 96A and 96B set out the regimes whereby the holder of a warehouse licence may be authorised to operate their licensed warehouse as an outwards duty free shop (section 96A) or an inwards duty free shop (section 96B). If premises are so authorised, a Collector may give permission for goods to be delivered personally to an international traveller for export by the traveller on an international flight or voyage, and for the goods to be so exported without having to be entered for export.
195. Under subsections 96A(6) and 96B(6), a Collector may impose conditions on such a permission which, in the opinion of the Collector, are necessary for the protection of the revenue or for ensuring compliance with the Customs Acts. However, similar to other instances in relation to warehouse licences described above, a Collector cannot impose conditions that are necessary to ensure compliance with other laws of the Commonwealth or State or Territory laws. The amendments to subsections 96A(6) and 96B(6) address this shortcoming by extending the power of a Collector to impose conditions that are necessary for ensuring compliance with any other law

of the Commonwealth prescribed by regulations or a law of a State or Territory prescribed by the regulations. These laws would be prescribed in the *Customs Regulations 1926*.

Item 56 – Subsection 243X(1)

196. This item amends subsection 243X(1) by inserting a reference to new subsection 82C(1). New subsection 82C(1) sets out the new offence of breaching a condition to which a warehouse licence is subject under section 82 or 82A
197. The inclusion of this new offence in subsection 243X(1) means that Division 5 of Part XIII of the Customs Act, which provides for infringement notices to be issued in lieu of prosecution, applies to this strict liability offence. The extension of the infringement notice scheme to this offence provides Customs with greater flexibility to deal with non-compliance.

SCHEDULE 3 – OTHER AMENDMENTS

Customs Act 1901

Background

198. Section 65 of the Customs Act currently requires the master or pilot of a lost or wrecked ship or aircraft to report to the Customs House nearest the wreck, a manifest of the cargo carried on the lost or wrecked ship or aircraft. Failure to comply with these requirements is a strict liability offence.
199. A review of section 65 concluded that a reporting requirement would be a duplicated if section 65 requires a report of cargo on a lost or wrecked ship or aircraft where a cargo report under section 64AB of the Customs Act or an outward manifest under section 119 of the Customs Act had already been made. The Bill removes the requirement to report cargo on board a ship or aircraft that is lost or wrecked if that cargo has been reported on a cargo report or outward manifest.

Item 1 – After subsection 65(1)

200. This item inserts new subsection 65(1A). The new provision provides that subsection 65(1) (which deals with the reporting requirement for lost or wrecked ships) does not apply to the extent that it requires the master or owner of a ship to make a report of cargo if the master or owner has:
- (a) made a cargo report in respect of the cargo; or
 - (b) communicated an outward manifest under section 119 of the Customs Act in respect of the cargo.

Item 2 – After subsection 65(2)

201. This item inserts new subsection 65(2A). Similar to new subsection 65(1A), this new provision provides that subsection 65(2), which deals with the reporting requirement for lost or wrecked aircraft, does not apply to the extent that it requires the pilot or owner of an aircraft to make a report of cargo if the pilot or owner has:
- (a) made a cargo report in respect of the cargo; or
 - (b) communicated an outward manifest under section 119 of the Customs Act in respect of the cargo.
202. A Note to each of these new subsections indicates that, in accordance with subsection 13.3(3) of the *Criminal Code*, the defendant bears the evidential burden in relation to the matters in new subsections 65(1A) and (2A).