

6820

CUSTOMS AMENDMENT BILL 1979

27/5/79

REPORT TO THE HOUSE

Mr Giles 4.47 1/2 pm

CHAIRMAN - Mr Speaker -

I have to report that the Customs Amendment Bill has been considered in legislation committee and has been agreed to with amendments.

MINISTER - I move -

That consideration of the Report be made an order of the day for the next sitting.

Mr Vince

Question - put & passed.

1978-79

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

CUSTOMS AMENDMENT BILL 1979

Schedule of the amendments made in legislation committee

- (1) Clause 2, page 1, lines 6 and 7, omit the clause, substitute the following clause:

“ 2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent. Commence-
ment

“ (2) Sections 5 and 6 shall come into operation on a date to be fixed by Proclamation.”.

- (2) Clause 5, page 3, line 16, after paragraph (a) insert the following paragraph:

“ (aa) by omitting ‘ The officer may detain ’ and substituting ‘ An officer may detain ’.”

- (3) Clause 6, page 3, lines 22 and 23, omit “ 6. After section 196 of the Principal Act the following section is inserted:”, substitute—

“ 6. After section 196 of the Principal Act the following sections are inserted:

‘ 196AA. (1) An order shall not be made by a Magistrate under section 196 for the searching of a suspected person unless the Magistrate is satisfied, by information on oath, that there is reasonable ground for suspecting that the person is unlawfully carrying, or has secreted about him, any goods subject to the control of the Customs, any prohibited imports or any prohibited exports. Orders for
searches of
suspected
persons

(2) An order of a Magistrate under section 196 for the searching of a suspected person shall be in accordance with the prescribed form.”.

(4) Clause 6, page 3, line 37, after sub-section (3) of proposed section 196A insert the following sub-sections:

“(3A) A medical practitioner who carries out an examination of the body cavities of a person in pursuance of arrangements made by an officer of Customs or of police under this section may sign a certificate, in accordance with the prescribed form, setting out the results of the examination.

“(3B) In any proceedings under this Act, a certificate by a medical practitioner under sub-section (3A) is *prima facie* evidence of the matters stated in the certificate.

“(3C) For the purposes of sub-section (3B), a document purporting to be a certificate under sub-section (3A) and to be signed by a medical practitioner shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.”.

(5) Clause 8, page 4, proposed section 219A, before the definition of “listening device” insert the following definition:

“ ‘Judge’ means a Judge holding the judicial rank of Justice of the Supreme Court of a State or Territory or of the Federal Court of Australia;”.

(6) Clause 8, pages 5 and 6, proposed section 219B, omit sub-sections (5) and (6), substitute the following sub-sections:

“(5) Where an affidavit is laid before a Judge by the Comptroller alleging that—

- (a) there are reasonable grounds for believing that a person has committed, or is likely to commit, a narcotics offence; and
- (b) the use by officers of Customs of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist officers of Customs in, or in connection with—
 - (i) if there are reasonable grounds for believing that a person has committed a narcotics offence—inquiries that are being made in relation to that offence by that person; or
 - (ii) if there are reasonable grounds for believing that a person is likely to commit a narcotics offence—inquiries that are being made in relation to the likely commission, by that person, of that offence,

the Judge may, by writing under his hand, authorize officers of Customs, subject to any conditions or restrictions that are specified in the warrant, to use a listening device for the purposes of listening to or recording words spoken by, to or in the presence of that person, and such a warrant may authorize officers of Customs to enter any premises specified in the

warrant in which that person is, or is likely to be, for the purpose of installing, maintaining, using or recovering a listening device or a part of a listening device.

‘ (6) A Judge shall not issue a warrant under sub-section (5) in relation to an affidavit of the Comptroller unless—

- (a) the affidavit of the Comptroller under sub-section (5) specifies the facts and other grounds on which the issue of the warrant is sought;
- (b) the Comptroller has given to the Judge, either orally or by further affidavit, such further information as the Judge requires concerning the grounds on which the issue of a warrant is being sought;
- (c) the Judge is satisfied as to the matters specified in paragraphs (a) and (b) of sub-section (5);
- (d) the Judge is satisfied that other methods of investigation have been tried without success, or would be unlikely to be successful, or would be impracticable; and
- (e) the Judge is satisfied that, given the seriousness of the suspected offence, or suspected likely offence, the issue of a warrant would be in the public interest.

‘ (6A) Where an affidavit is laid before a Judge by the Comptroller alleging that—

- (a) there are reasonable grounds for believing that particular premises have been, or are likely to be, used in connection with the commission of a narcotics offence; and
- (b) the use by officers of Customs of a listening device to listen to or to record words spoken by or to persons in those premises will, or is likely to, assist officers of Customs in, or in connection with, inquiries that are being made in relation to the use, or likely use, of the premises in connection with a narcotics offence for which there are reasonable grounds for believing has been, or is likely to be, committed,

the Judge may, by writing under his hand, authorize officers of Customs, subject to any conditions or restrictions that are specified in the warrant, to use a listening device for the purposes of listening to or recording words spoken by, or to any person while the person is in those premises, and such a warrant may authorize officers of Customs to enter those premises for the purpose of installing, maintaining, using or recovering a listening device, or a part of a listening device.

‘ (6B) A Judge shall not issue a warrant under sub-section (6A) in relation to an affidavit of the Comptroller unless—

- (a) the affidavit of the Comptroller under sub-section (6A) specifies the facts and other grounds on which the issue of the warrant is sought;

- (b) the Comptroller has given to the Judge, either orally or by further affidavit, such further information as the Judge requires concerning the grounds on which the issue of a warrant is being sought;
 - (c) the Judge is satisfied as to the matters specified in paragraphs (a) and (b) of sub-section (6A);
 - (d) the Judge is satisfied that other methods of investigation have been tried without success, or would be unlikely to be successful, or would be impracticable; and
 - (e) the Judge is satisfied that, given the seriousness of the suspected offence, or suspected likely offence, the issue of a warrant would be in the public interest.”.
- (7) Clause 8, page 6, line 29, omit “ the Minister ”, substitute “ the Judge issuing the warrant ”.
- (8) Clause 8, page 6, lines 34–36, omit “ 6 months, but may be revoked by the Minister at any time before the expiration of the period so specified ”, substitute “ 30 days ”.
- (9) Clause 8, page 6, proposed section 219B, after sub-section (9) insert the following sub-section:
- “ (9A) Where a Judge issues a warrant under sub-section (5) or sub-section (6A), he shall state on the affidavit furnished to him by the Comptroller, which of the grounds specified in that affidavit he has relied on to justify the issue of the warrant and particulars of any other grounds relied on by him to justify the issue of the warrant.”.
- (10) Clause 8, page 7, omit proposed section 219C.
- (11) Clause 8, page 7, omit proposed section 219D, substitute the following section:
- “ 219D. (1) Where it is impracticable for the Comptroller to make application to a Judge for the issue of a warrant in accordance with section 219B, the Comptroller may make application for the issue of a warrant authorizing the use of a listening device to a Judge, by telephone, in accordance with this section.
- ‘ (2) Before making application to a Judge by telephone under sub-section (1), the Comptroller shall prepare an affidavit setting out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the affidavit has been sworn.
- ‘ (3) Where a Judge is, upon application made under sub-section (1), satisfied—
- (a) after having considered the terms of the affidavit prepared in accordance with sub-section (2); and

Issue of
warrants by
Judge in
emergency

(b) after having had given to him such further information (if any) as he requires and the Comptroller is able to give concerning the grounds on which the issue of the warrant is being sought, that there are reasonable grounds for issuing the warrant, the Judge shall issue such a warrant as he would issue under section 219B if the application had been made to him in accordance with that section.

- (4) Where a Judge issues a warrant under sub-section (3)—
- (a) the Judge shall complete and sign the warrant;
 - (b) the Judge shall inform the Comptroller of the terms of the warrant signed by him, and record on the warrant his reasons for issuing the warrant; and
 - (c) the Comptroller shall complete a form of warrant in the terms furnished to him by the Judge and write on it the name of the Judge who issued the warrant and the date on which and the time at which it was issued.

(5) Where a Judge issues a warrant under sub-section (3), the Comptroller shall, not later than the day next following the date of expiry of the warrant, forward to the Judge who issued the warrant the form of warrant prepared by him and the information and affidavit duly sworn in connection with the issue of the warrant.

(6) Upon receipt of the documents referred to in sub-section (5), the Judge shall attach to them the warrant signed by him and deal with the documents in the manner in which he would have dealt with the information if the application for the warrant had been made to him in accordance with section 219B.

(7) A form of warrant duly completed by the Comptroller in accordance with sub-section (4), is, if it is in accordance with the terms of the warrant signed by the Judge, authority for the use of any listening device in relation to any particular person or premises that it authorizes.

(8) Where it is necessary for the Court, in any proceeding, to be satisfied that the use of a listening device was authorized by a warrant issued by a Judge in accordance with this section, and the warrant signed by a Judge in accordance with this section authorizing the entry or seizure is not produced in evidence, the Court shall assume, unless the contrary is proved, that the entry or seizure was not authorized by such a warrant.”.

(12) Clause 8, page 7, after proposed section 219D insert the following section:

“ 219DA. The Comptroller shall, upon receipt of a warrant under section 219B or 219D forthwith furnish to the Minister a copy of the warrant, a copy of any affidavit furnished to a Judge in connection with the issue of warrants under this part, and a copy of any endorsement on an affidavit by a Judge under sub-section 219B (9A).”.

Copy of
warrant, &c.,
to be
furnished
to Minister

(13) Clause 8, page 9, omit proposed section 219j, substitute the following section:

Retention of warrants, &c.

“ ‘ 219j. The Comptroller shall cause to be retained in the records of the Department all warrants issued to him under this Division, and all affidavits and other documents furnished to a Judge under this Division.”.

(14) Clause 13, page 17, omit proposed section 243E, substitute the following section:

Degree of proof

“ ‘ 243E. In a proceeding under this matter, the degree to which the Court must be satisfied in respect of a matter shall be—

- (a) if the matter involves a question specified in section 243D—satisfaction of the Court on the matter beyond reasonable doubt; or
- (b) any matter other than a matter involving a question specified in section 243D—satisfaction of the Court on the matter on the balance of probabilities.”.



Clerk to the Committee

10 May 1979