



## Customs (Budget Amendment) Act

Bill No. 30 of 2017

### Introduction

The **Customs (Budget Amendment) Bill 2017** ('Bill') seeks to amend the *Customs Act 1986* ('Act'). The Bill includes three key amendments. Firstly, it will increase the penalties for a broad range of offences under the Act.

Secondly, it will remove the current five-year time limit in which proceedings under the Act must be commenced. Thirdly, it will shift the burden of proof from the prosecution to the defendant in offence proceedings.

The Bill will also:

- increase the length of time certain records must be retained from five to seven years;
- allow authorised officers to use x-ray or imaging equipment and other electronic devices when exercising powers of boarding, entry, search and examination; and
- add customs rulings made under section 154G of the Act to the list of decisions made by the Comptroller for which appeals may be heard by the Court of Review.

### Objectives, scope and intent of the Bill

The Bill is one of several consequential Bills tabled after the Appropriations Bill to give effect to the 2017–18 Budget.

### Summary of provisions

**Clause 1** provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 30 June 2017. This appears to mean that the amendments in the Bill, including penalty increases and the reversal of the onus of proof for offences, will apply retrospectively.

### Penalty increases

**Clauses 2–25, 27–28, and 30–44** will increase the penalties that apply to offences throughout the Act. The offences for which penalties are being amended, current penalties and proposed increased penalties are set out in a table in the **Appendix**. In some instances, offences that currently have very different maximum penalties (for example six months, two years, and seven years imprisonment and/or a proportionate fine) will be amended to each have the same higher penalty (in most cases, ten years imprisonment and/or a fine of \$25,000).

### Changes to legal proceedings

The Bill includes two significant changes to how legal proceedings under the Act are dealt with.

Section 167 of the Act includes limitations on when proceedings may be instituted. Proceedings for an offence must be commenced, and anything liable to forfeiture seized, within five years of the alleged commission of an offence. Similarly, proceedings for the recovery of any duty or other charges must be commenced within five years of the amount being due or payable. **Clause 47** will delete section 167, removing the five-year time limits.



**Clause 48** will insert new section 167A into the Act. The new section will provide that in any proceedings under the Act, the burden of proof lies with the defendant. Neither the Bill nor the accompanying Explanatory Note state whether this amendment is intended to impose an evidential burden or a legal burden on the defendant. If it is the former, the defendant would be required to point to evidence that indicates that an offence was not committed, and the prosecution would then be required to rebut that evidence. If it is the latter, it would mean that instead of a prosecutor being required to prove a defendant's guilt, the defendant would be required to prove his or her innocence. Members of Parliament may wish to seek clarification on this point.

The Schedule to the Act lists decisions of the Comptroller for which appeals may be heard by the Court of Review. **Clause 49** will add customs rulings made under section 154G of the Act to that list.

### Length of time documents must be retained

**Clause 26** will amend subsection 114A(2), and **clause 46** will amend subsection 165A(1), to increase the length of time certain document must be retained from five years to seven years.

### Search powers

Part 17 of the Act sets out the powers of officers. **Clause 29** will insert new section 122B into the Act. The new section will allow authorised officers to use x-ray or imaging equipment, other electronic devices and any other equipment authorised by the Comptroller in the course of exercising their powers of boarding, entry, search and examination.

### Other

**Clause 45** appears to be correcting an incorrect cross-reference by changing a reference to 'section 15A(3)' in section 154A to instead refer to 'section 154A(3)'.

### Gender analysis

In the absence of statistics for Customs Act prosecutions by gender, it is not possible to determine whether this Bill will have any disproportionate impact on women and men. Further, some defendants would be organisations rather than individuals.

#### Disclaimer

This bill summary was prepared to assist consideration of the Bill by Members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. The Research and Library Team shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice. The Research and Library Team accepts no responsibility for any references or links to, or the content of, information maintained by third parties. Other sources should be consulted to determine the subsequent official status of the Bill.



### Appendix: Increases to maximum penalties

Clause in Bill	Provision of Act	Offence	Current maximum penalty	Proposed maximum penalty
2	11A(5)	Master, pilot, commanding officer or agent of an aircraft or ship: <ul style="list-style-type: none"> <li>• failing to make an advanced notification or arrival</li> <li>• making a notification including false particulars or</li> <li>• failing to comply with a direction from the Comptroller</li> </ul>	\$10,000	\$25,000, imprisonment for ten years, or both
3	13	Master of an aircraft or ship: <ul style="list-style-type: none"> <li>• refusing or failing to facilitate the boarding or disembarkation of, or neglecting to receive, an officer or</li> <li>• neglecting to bring an aircraft or vessel to a place</li> </ul>	\$20,000, imprisonment for four years, or both	\$25,000, imprisonment for ten years, or both
4	14(4)	Master of aircraft or ship contravening or failing to comply with procedures required on arrival to Fiji	\$20,000, imprisonment for four years, or both	\$25,000, imprisonment for ten years, or both
5	16(2)	Boarding an aircraft or ship before the proper officer (unless duly authorised to do so)	\$10,000	\$25,000, imprisonment for ten years, or both
6	17(2)	Contravening or failing to comply with the Comptroller's directions about going ashore, disembarking, or boarding an aircraft or ship	\$10,000	\$25,000, imprisonment for ten years, or both
7	27(2)	Failing to comply with a direction of the Comptroller relating to uncleared imported goods	\$5,000	\$25,000, imprisonment for ten years, or both
8	31(3)	Importer contravening an undertaking given to the Fiji Revenue and Customs Authority about making an entry for imported goods	\$10,000	\$25,000, imprisonment for ten years, or both
9	37(3)	Warehouse keeper contravening conditions of licence	\$10,000	\$25,000, imprisonment for ten years, or both
10	38(5)	Warehouse keeper: <ul style="list-style-type: none"> <li>• making an unauthorised alteration or addition to a warehouse or</li> <li>• using, or permitting a warehouse to be used, in</li> </ul>	\$10,000	\$25,000, imprisonment for ten years, or both



Clause in Bill	Provision of Act	Offence	Current maximum penalty	Proposed maximum penalty
		contravention of any licence condition/s		
10	38(6)	Owner or occupier of a building, enclosure or storage tank, using it, or permitting it to be used, for particular purpose without a valid licence in force	\$10,000	\$25,000, imprisonment for ten years, or both
11	40(3)	Warehouse keeper contravening a direction given by the Comptroller that no further goods be warehoused until certain conditions are met	\$10,000	\$25,000, imprisonment for ten years, or both
12	47(5)	Contravening certain provisions about warehousing of goods	\$20,000, imprisonment for four years, or both	\$25,000, imprisonment for ten years, or both
13	55	Accessing a bonded warehouse without the authority of the proper officer	\$10,000, imprisonment for four years, or both	\$25,000, imprisonment for ten years, or both
14	63G	Failing to comply with conditions imposed by Comptroller on warehouse licences	\$20,000	\$25,000, imprisonment for ten years, or both
15	65(2)	Contravening certain provisions about loading of goods onto an aircraft or ship	\$50,000/three times the value of the export (whichever is greater), imprisonment for six years, or both	Same fine as current, imprisonment for ten years, or both
16	66H(1)(b)	Operator under the secure exports scheme having records of goods found to be incorrect in any material particular	\$50,000/three times the value of the export (whichever is greater), imprisonment for six years, or both	Same fine as current, imprisonment for ten years, or both
17	71	Giving information that is incorrect in certain material particulars for the purpose of the issue or verification of a certificate of origin or movement certificate	\$20,000	\$25,000, imprisonment for ten years, or both
18	72(5)	Aircraft or ship failing to depart from Fiji within a certain period after obtaining clearance to do so (offence)	\$20,000, imprisonment for two years, or both	\$25,000, imprisonment for ten years, or both
19	74(2)	Discharging certain goods placed on board an aircraft or ship in Fiji, or transferring them to another aircraft or ship in Fiji	\$50,000/three times the value of the export (whichever is greater), imprisonment for three years, or both	Same fine as current, imprisonment for ten years, or both
20	95D(1)	Failing to comply with a garnishee order	\$5,000, imprisonment for six	\$25,000, imprisonment for ten



Clause in Bill	Provision of Act	Offence	Current maximum penalty	Proposed maximum penalty
			months, or both	years, or both
21	100(1)	Claiming drawback on goods, where the goods do not match the description, quality or quantity stated	\$10,000/three times the value of the drawback claimed (whichever is greater)	\$25,000/three times the value of the export (whichever is greater), imprisonment for ten years, or both
21	100(2)	Wilfully claiming more drawback on goods than is legally due, or falsely claiming drawback in goods	\$10,000	\$25,000, imprisonment for ten years, or both
22	102(3)	Refusing or neglecting to comply with a request of the Comptroller for a book, invoice or document, or providing false information or documents, where the request is made due to suspicion that goods have been or are intended to be illegally dealt with	\$10,000, imprisonment for four years, or both	\$25,000, imprisonment for ten years, or both
23	103(4)	Master of a ship or aircraft contravening certain provisions about providing the ship or aircraft for boarding	For a master of a light aircraft or a ship of less than 250 tonnes register—\$40,000	For a master of a light aircraft or a ship of less than 250 tonnes register— same fine as current, imprisonment for ten years, or both
			For a master of any other aircraft or ship—\$200,000	For a master of any other aircraft or ship—same fine as current, imprisonment for ten years, or both
24	104(4)	Master of a ship failing to provide suitable food and accommodation to a proper officer who remains on board	\$10,000	\$25,000, imprisonment for ten years, or both
25	104(5)	Master of an aircraft or ship refusing to provide certain assistance to, or obstructing, a proper officer searching the aircraft or ship	\$10,000/three times the value of the goods found to be missing as a result of the offence (whichever is greater)	\$25,000/three times the value of the drawback claimed (whichever is greater), imprisonment for ten years, or both
25	113(1)	Interfering with property that is being used for the purpose of enforcing customs laws	\$10,000 (under section 143, which states the penalty that applies to an offence against the	\$25,000, imprisonment for ten years, or both



Clause in Bill	Provision of Act	Offence	Current maximum penalty	Proposed maximum penalty
			Act for which a penalty is not otherwise specified)	
27	116(3)	Failing to declare or produce baggage or another thing required to be declared or provided upon entry to Fiji	\$10,000/three times the value of the thing not declared/produced (whichever is greater)	\$25,000/three times the value of the thing not declared/produced (whichever is greater), imprisonment for ten years, or both
28	122(2)	Contravening instructions given by an officer or police officer because it appears that an aircraft will depart Fiji without customs clearance	\$10,000, imprisonment for three years, or both	\$25,000, imprisonment for ten years, or both
30	123	Obstructing officers in the course of their duties	\$20,000, imprisonment for four years, or both	\$25,000, imprisonment for ten years, or both
31	123A	Killing or injuring a customs dog without lawful authority or reasonable excuse	\$15,000, imprisonment for two years, or both	\$25,000, imprisonment for ten years, or both
32	124(1)	Attacking, wounding or maiming an officer who is performing his or her duties (or attempting to do so), or aiding another person's attack (or attempting to do so)	Imprisonment for ten years	\$25,000, imprisonment for ten years, or both
32	124(2)	Being armed with a firearm or other weapon while committing an offence against the Act and while armed, found with goods liable to forfeiture under the Act	Imprisonment for seven years	\$25,000, imprisonment for ten years, or both
32	124(3)	Being disguised while committing an offence against the Act and while disguised, found with goods liable to forfeiture under the Act	\$20,000, imprisonment for two years, or both	\$25,000, imprisonment for ten years, or both
32	124(4)	Taking certain actions to prevent the seizure or securing of goods , or rescuing a person arrested for an offence under the Act	\$20,000, imprisonment for two years, or both	\$25,000, imprisonment for ten years, or both
33	126	Assembling with others for the purpose of contravening customs laws	Imprisonment for four years	\$25,000, imprisonment for ten years, or both
34	127	Unlawfully posing as an officer	\$20,000, imprisonment for two years, or both	\$25,000, imprisonment for ten years, or both
35	128(2)	Abuse of office by the Comptroller or any officer authorised	\$10,000 (under section 143,	\$25,000, imprisonment for ten



Clause in Bill	Provision of Act	Offence	Current maximum penalty	Proposed maximum penalty
		by the Comptroller to perform certain duties relating to the Act	which states the penalty that applies to an offence against the Act for which a penalty is not otherwise specified)	years, or both
35	128(4)	Comptroller or any officer authorised by the Comptroller to perform certain duties relating to the Act engaging in misconduct, and any person bribing the Comptroller or an officer	\$50,000, imprisonment for three years, or both	\$50,000, imprisonment for ten years, or both
36	134(1)	Various offences relating to aircraft and ships (apply to owner of aircraft or ship)	\$10,000	\$25,000, imprisonment for ten years, or both
37	136	Removing or destroying dutiable goods	\$10,000	\$25,000, imprisonment for ten years, or both
38	137	Various offences relating to customs laws, including unlawfully conveying or possessing smuggled goods, misleading officers and making false entries or records	\$10,000	\$25,000, imprisonment for ten years, or both
39	138	Conduct relating to counterfeiting or falsifying documents required under customs laws	\$20,000, imprisonment for two years, or both	\$25,000, imprisonment for ten years, or both
40	139	Fraudulently evading duty payable on goods	\$20,000/three times the value of the goods (whichever is greater), imprisonment for two years, or both	\$25,000/three times the value of the goods (whichever is greater), imprisonment for ten years, or both
41	140(3)	Conduct relating to providing false scales or other measurement instruments used to measure goods for customs purposes	\$10,000	\$25,000, imprisonment for ten years, or both
42	143	Penalty that applies to an offence under the Act if no specific penalty is listed for that offence	\$10,000	\$25,000, imprisonment for ten years, or both
43	143A	Interfering with systems and related hardware, or records stored therein	\$20,000, imprisonment for two years, or both	\$25,000, imprisonment for ten years, or both
44	149(4)	Clerk assisting a person other than the person to whom he or she is appointed to assist	\$10,000	\$25,000, imprisonment for ten years, or both