

This Bill was formerly clauses 19 to 21 of the Law Reform (Miscellaneous Provisions) Bill (No. 3), as reported from the Justice and Law Reform Committee. Clause 19 has been replaced by clause 1, the Short Title clause, of this Bill. Clauses found in other Bills are indicated by points of ellipsis.

[AS REPORTED FROM THE JUSTICE AND LAW REFORM COMMITTEE]

House of Representatives, 9 March 1995.

Words struck out are shown with black rule at beginning and after last line; words inserted are shown with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 21 March 1995.

Hon. D. A. M. Graham

CUSTOMS AMENDMENT (NO. 3)

ANALYSIS

Title	154A. Rights and duties of Collector in recovery of duty
1. Short Title	154B. Ranking of duty
20. New sections substituted	21. Amendments to other Acts
154. Duty a charge on goods	

A BILL INTITULED

An Act to amend the Customs Act 1966

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title**—This Act may be cited as the Customs Amendment Act (No. 3) 1995, and shall be read together with and deemed part of the Customs Act 1966 (hereinafter referred to as the principal Act).

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20. New sections substituted—The principal Act is hereby amended by repealing section 154, and substituting the following sections:

“154. **Duty to be a charge on certain goods**—(1) This section applies in relation to goods on which duty is payable, being goods— 5

“(a) The property in which is held by the person liable to pay the duty; and

“(b) That have not been incorporated into any other goods by any process. 10

“(2) Duty on goods to which this section applies constitutes a charge on the goods until it is paid in full.

“(3) If any duty that, by virtue of **subsection (2)** of this section, constitutes a charge on goods is due and unpaid, the Collector may take possession of the goods and sell them in satisfaction or part satisfaction of the charge. 15

“154A. **Ranking of duty in other cases**—(1) This section applies to duty that is payable in relation to goods—

“(a) The property in which has been transferred by the person liable to pay the duty; or 20

“(b) That have been incorporated into any other goods by any process; or

“(c) That have been lost or have ceased to exist.

“(2) If any duty to which this section applies is due and unpaid, the duty shall be paid out of the property of the person liable to pay the duty in accordance with the following provisions of this section. 25

“(3) In the case of an individual who is declared bankrupt, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 104 of the Insolvency Act 1967. 30

“(4) In the case of a company that is in liquidation, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 286 of, and Schedule 8c to, the Companies Act 1955, or section 312 of, and the Seventh Schedule to, the Companies Act 1993, as the case may be. 35

“(5) In the case of a company in respect of the property of which a receiver is appointed in circumstances to which section 30 of the Receiverships Act 1993 applies, the amount 40

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of duty to which this section applies shall be paid in accordance with the requirements of section 30 (2) of the Receiverships Act 1993.

5 “(6) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation, the amount of any duty to which this section applies shall be paid in accordance with section 17B of the Judicature Act 1908.

10 “(7) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court, the amount of duty to which this section applies shall be paid in accordance with the directions
15 of the Court.

“(8) This section applies notwithstanding anything in any other Act.

“(9) Nothing in this section or in **section 154** of this Act derogates from section 155 of this Act.”

20 (2) Sections 118N and 118O of the principal Act (as substituted by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 are hereby repealed.

(3) The Company Law Reform (Transitional Provisions) Act 1994 is hereby consequentially amended by repealing so much
25 of the First Schedule thereto as relates to the principal Act.

New

20. New sections substituted—(1) The principal Act is hereby amended by repealing section 154, and substituting the following sections:

30 “154. **Duty a charge on goods**—(1) Subject to **subsection (3)** of this section, the duty on any goods shall constitute a charge on those goods until fully paid.

35 “(2) Subject to the provisions of this section, if any duty charged on any goods under this section is due and unpaid, the Collector may, whether or not the property in the goods has passed to a third party, take possession of the goods, and sell them or any part of them in satisfaction or part satisfaction of the charge.

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“(3) **Subsection (1)** of this section shall not apply as against a purchaser of the goods for valuable consideration and without knowledge that the duty was owing but had not been paid.

“(4) For the purposes of this section, ‘purchaser’ means— 5

“(a) A person (other than a person liable to pay the duty) who acquired the goods from a person liable to pay the duty; or

“(b) A subsequent purchaser of the goods.

“(5) In any case where a person claims, at or before the taking of possession of the goods by the Collector, that he or she is a purchaser to whom **subsection (3)** of this section applies, and there is a dispute as to whether that subsection applies, the Collector may— 10

“(a) Where the goods are in the possession or control of the importer, take possession of the goods and, subject to **subsection (7)** of this section, retain possession of them: 15

“(b) Where the goods are in the possession or control of the purchaser, by notice in writing, direct the purchaser, subject to **subsection (7)** of this section, to retain the possession or control of the goods,— 20
pending the resolution of the dispute, and **subsections (7) to (12)** of this section shall apply.

“(6) In any case where— 25

“(a) Possession of the goods has been taken by the Collector but the goods have not been sold; and

“(b) A person notifies the Collector that he or she claims that he or she is a purchaser to whom **subsection (3)** of this section applies; and 30

“(c) There is a dispute as to whether that subsection applies,—

the Collector shall, subject to **subsection (7)** of this section, retain possession of the goods pending the resolution of the dispute, and **subsections (7) to (10)** of this section shall apply. 35

“(7) Where any goods that the Collector has taken possession of or has directed a purchaser to retain under this section consist wholly or partly of any living creature or any thing which, in the opinion of the Collector, is of a perishable nature or which may otherwise lose its value if not sold as soon as possible, the Collector may, or the purchaser in possession or control of the goods may with the prior consent of the 40

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Collector, sell the goods, and the net proceeds of such sale shall be deemed to be substituted for the thing so sold.

5 “(8) The Collector or the purchaser of the goods may apply to the court for a declaration as to whether the goods were acquired by the purchaser for valuable consideration and without knowledge that the duty was owing and unpaid.

10 “(9) In any proceeding under **subsection (8)** of this section, where the purchaser and a person liable to pay the duty are related within the meaning of **subsection (10)** of this section, the onus of proving that the goods were acquired by the purchaser for valuable consideration and without knowledge that the duty was owing but unpaid shall be on the purchaser.

15 “(10) For the purposes of this section, one person is related to another person—

“(a) Where the person is connected to the other person by blood relationship, marriage, or adoption or where the person is a trustee for the other person; and for the purposes of this paragraph—

20 “(i) Persons are connected by blood relationship if within the fourth degree of relationship:

25 “(ii) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other, or if one has a relationship in the nature of marriage with the other or with a person who is connected by blood relationship to the other:

30 “(iii) Persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other:

35 “(b) If the other person is a company, where the person is a director or officer of the other person, or is related (within the meaning of **paragraph (a)** of this subsection) to a director or officer of the other person, or is directly or indirectly able to exercise control over the affairs of the other person:

40 “(c) If the person is a company, where the other person is a director or officer of the person, or is related (within the meaning of **paragraph (a)** of this subsection) to a director or officer of the person, or is directly or

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indirectly able to exercise control over the affairs of the person:

“(d) If the person and the other person are companies,—

“(i) Where the person is a holding company or a subsidiary of the other person within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be; or 5

“(ii) Where the person owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of the other person or the other person owns or controls shares that in aggregate carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of the person; or 10 15

“(iii) Where the person and the other person have the same holding company within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, or a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20 percent or more of the voting power at meetings of each of them. 20 25

“(11) Any purchaser who, except with the consent of the Collector, takes any action in contravention of a direction given by the Collector under **subsection (5)** of this section, commits an offence and is liable on conviction on indictment,— 30

“(a) In the case of an individual, to a fine not exceeding \$5,000;

“(b) In the case of a body corporate, to a fine not exceeding \$15,000.

“(12) Any purchaser who, knowingly and without the consent of the Collector, takes any action in contravention of a direction given by the Collector under **subsection (5)** of this section, commits an offence and is liable on conviction on indictment,— 35

“(a) In the case of an individual, to a fine not exceeding \$15,000; or 40

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- “(b) In the case of a body corporate, to a fine not exceeding \$50,000; or
- 5 “(c) In either case, to an amount not exceeding 3 times the value of the goods to which the offence relates.
- “154A. **Rights and duties of Collector in recovery of duty**—(1) This section applies to the recovery of unpaid duty that is due in relation to goods by—
- 10 “(a) An individual who is bankrupt; or
- “(b) A company that is in liquidation; or
- “(c) A company in respect of the property of which a receiver has been appointed in circumstances to which section 30 of the Receiverships Act 1993 applies; or
- 15 “(d) An unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation; or
- “(e) An unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court—
- 20 where the unpaid duty is a charge on the goods.
- “2) In any case to which this section applies, the provisions of section 279 of the Companies Act 1955, section 305 of the Companies Act 1993, and section 90 of the Insolvency Act 1967 shall not apply.
- 25 “3) The Collector shall notify the assignee in bankruptcy or the liquidator or the receiver, as the case may be, that the unpaid duty constitutes a charge on the goods in accordance with **section 154** of the Act.
- 30 “4) Every notice under **subsection (3)** of this section shall be given within 60 days after,—
- “a) In the case of an individual, the date of the notice in the *Gazette* that the individual has been adjudicated bankrupt; or
- 35 “b) In the case of a company, the date of the notice in the *Gazette* of the date of the commencement of the liquidation, or of the appointment of a receiver, as the case may be; or
- 40 “c) In the case of an unincorporated body of persons described in **subsection (1) (d)** of this section, the date of

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- the notice in the *Gazette* of the commencement of the liquidation; or
- “(d) In the case of an unincorporated body of persons described in **subsection (1) (e)** of this section, the date of the notice in the *Gazette* of the appointment of a receiver— 5
- or, if there is a dispute as to whether **section 154 (3)** of this Act applies, within 30 days after the dispute is resolved or determined. 10
- “(5) If any duty to which this section applies is due and unpaid, the Collector may—
- “(a) Realise the property subject to the charge; or
- “(b) Value the property subject to the charge and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of **section 154b** of this Act, for the balance of the unpaid duty (if any); or 15
- “(c) Realise the property subject to the charge and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of **section 154b** of this Act for any balance of the unpaid duty after deducting the amount realised; or 20
- “(d) Surrender the charge to the official assignee or the liquidator or the receiver, as the case may be, for the general benefit of creditors and claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of **section 154b** of this Act for the whole debt. 25
- “(6) If the Collector values the property subject to the charge and claims for the balance of unpaid duty (if any) in accordance with **subsection (5) (b)** of this section, the valuation and claim must— 30
- “(a) Contain full particulars of the valuation and claim; and
- “(b) Contain full particulars of the charge; and 35
- “(c) Identify any documents that substantiate the claim and the charge.
- “(7) The official assignee or the liquidator or the receiver, as the case may be, may require production of any document referred to in **subsection (6)** of this section. 40
- “(8) Where the Collector realises the property subject to the charge, the provisions of section 223 of this Act shall apply.

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“(9) Where a claim is made by the Collector under **subsection (6)** of this section, the official assignee, liquidator, or receiver, as the case may be, must—

5 “(a) Accept the valuation and claim; or

 “(b) Reject the valuation and claim in whole or in part, but—

 “(i) Where a valuation and claim is rejected in whole or in part, the Collector may make a revised valuation and claim within 20 days of receiving notice of the rejection; and

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 “(ii) The official assignee, liquidator, or receiver, as the case may be, may, if he or she subsequently considers that a valuation and claim was wrongly rejected in whole or in part, revoke or amend that decision.

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“(10) Where the official assignee, liquidator, or receiver, as the case may be,—

 “(a) Accepts a valuation and claim under **subsection (9) (a)** of this section; or

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 “(b) Accepts a revised valuation and claim under **subsection (9) (b) (i)** of this section; or

 “(c) Accepts a valuation and claim on revoking or amending a decision to reject a claim under **subsection (9) (b) (ii)** of this section,—

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the official assignee, liquidator, or receiver, as the case may be, may, unless the Collector has realised the property, at any time, redeem the charge on payment of the assessed value.

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“(11) The official assignee, the liquidator, or the receiver, as the case may be, may at any time, by notice in writing, require the Collector, within 30 days after receipt of the notice, to—

 “(a) Elect which of the rights referred to in **subsection (5)** of this section the Collector wishes to exercise; and

 “(b) If the Collector elects to exercise the right referred to in **paragraph (b)** or **paragraph (c)** or **paragraph (d)** of **subsection (5)** of this section, exercise the right within that period.

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“(12) If—

 “(a) The Collector fails to give notice to the official assignee or the liquidator or the receiver, as the case may be, in accordance with **subsection (3)** of this section within the time specified in **subsection (4)** of this section; or

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- “(b) Having been required to make an election in accordance with **subsection (11)** of this section, the Collector fails to do so within the time specified in that subsection,—
the Collector shall be taken to have surrendered the charge to the official assignee, or liquidator, or receiver, as the case may be, under **subsection (5) (d)** of this section for the general benefit of creditors and the Collector may claim in the bankruptcy, liquidation, or receivership, as the case may be, in accordance with the provisions of **section 154B** of this Act. 5 10
- “(13) Where the Collector has surrendered a charge under **subsection (5) (d)** of this section or is taken as having surrendered a charge under **subsection (12)** of this section, the Collector may, with the leave of the Court or the official assignee or the liquidator or the receiver, as the case may be, and subject to such terms and conditions as the Court or the official assignee or the liquidator or the receiver, as the case may be, thinks fit, at any time before the official assignee, liquidator, or receiver, as the case may be, has realised the property charged,— 15
- “(a) Withdraw the surrender and rely on the charge; or 20
- “(b) Submit a new claim under this section.
- “154B. **Ranking of duty**—(1) This section applies to the recovery of unpaid duty—
- “(a) That is owing by— 25
- “(i) An individual who is bankrupt; or
- “(ii) A company that is in liquidation; or
- “(iii) A company in respect of the property of which a receiver has been appointed in circumstances to which section 30 of the Receiverships Act 1993 applies; or 30
- “(iv) An unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation; or
- “(v) An unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court— that does not constitute a charge on goods; or 35
- “(b) That the Collector is entitled to claim under this section pursuant to **section 154A** of this Act. 40

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“(2) Unpaid duty to which this section applies shall be paid in accordance with the following provisions of this section.

5 “(3) In the case of an individual who is declared bankrupt, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 104 of the Insolvency Act 1967.

10 “(4) In the case of a company that is in liquidation, the amount of any duty to which this section applies shall be paid in accordance with the requirements of section 286 of, and Schedule 8c to, the Companies Act 1955, or section 312 of, and the Seventh Schedule to, the Companies Act 1993, as the case may be.

15 “(5) In the case of a company in respect of the property of which a receiver is appointed in circumstances to which section 30 of the Receiverships Act 1993 applies, the amount of duty to which this section applies shall be paid in accordance with the requirements of section 30 (2) of the Receiverships Act 1993.

20 “(6) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) that is put into liquidation, the amount of any duty to which this section applies shall be paid in accordance with section 17B of the Judicature Act 1908.

25 “(7) In the case of an unincorporated body of persons (including a partnership or a joint venture or the trustees of a trust) in respect of the property of which a receiver is appointed by the High Court, the amount of duty to which this section applies shall be paid in accordance with the directions
30 of the Court.

“(8) This section applies notwithstanding anything in any other Act.

“(9) Nothing in this section or in **section 154** or **section 154A** of this Act derogates from section 155 of this Act.”

35 (2) Sections 118N and 118O of the principal Act (as substituted by section 2 of the Company Law Reform (Transitional Provisions) Act 1994) are hereby repealed.

(3) The Company Law Reform (Transitional Provisions) Act 1994 is hereby consequentially amended by repealing so much
40 of the First Schedule thereto as relates to the principal Act.

21. Amendments to other Acts—(1) Schedule 8c to the Companies Act 1955 (as inserted by section 61 of the Companies Amendment Act 1993) is hereby amended by repealing paragraph (e) of clause 5, and substituting the following paragraph:

“(e) Duty payable by the company under any of the Customs Acts or under any regulations made under any of those Acts—”.

(2) Section 104 (1) (e) of the Insolvency Act 1967 (as substituted by section 6 of the Student Loans Scheme Amendment Act 1993) is hereby amended by adding the following subparagraph:

“(iv) Duty payable under any of the Customs Acts or under any regulations made under any of those Acts:”.

(3) The Seventh Schedule to the Companies Act 1993 is hereby amended by repealing paragraph (e) of clause 5, and substituting the following paragraph:

“(e) Duty payable by the company under any of the Customs Acts or under any regulations made under any of those Acts—”.

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(4) Section 12 (4) (a) of the Goods and Services Tax Act 1985 is hereby amended by inserting, after the expression “154”, the expression “**154A, 154B**,”.

(5) Section 42 (2) of the Goods and Services Tax Act 1985 is hereby amended by omitting the words “section 12 or section 13 and”, and the words “, or, as the case may be, the Comptroller of Customs”.

(6) Section 7 of the Goods and Services Tax Amendment Act 1993 is hereby consequentially repealed.