

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Customs Act 1901

Customs Legislation Amendment (2019 Measures No. 1) Regulations 2019

The *Customs Act 1901* (the Act) relates to customs functions and is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and from Australia.

Subsection 270(1) of the Act relevantly provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

In addition, regulations may be made pursuant to the provisions of the Act listed in Attachment A.

The *Customs Legislation Amendment (2019 Measures No. 1) Regulations 2019* (the Regulations) amend the *Customs (Prohibited Imports) Regulations 1956* (the Imports Regulations) and the *Customs (Prohibited Exports) Regulations 1958* (the Exports Regulations) to update references to authorities in line with the *Acts Interpretation Substituted Reference Order 2017* (the 2017 Substituted Reference Order) and make other minor technical amendments to bring the Imports Regulations and the Exports Regulations into line with current drafting practices.

Substituted reference orders are made by the Governor-General under section 19B of the *Acts Interpretation Act 1901*. They provide that, where a provision of an Act refers to an authority, it is to have effect as if the provision referred to another specified authority. Substituted reference orders ensure that ministers, Australian public service employees and secretaries of departments of state, can exercise all powers granted to them by legislation, for example where a Machinery of Government change has transferred the responsibility for particular legislation from one portfolio to another. In doing so, they avoid the need to amend legislation, but do not themselves amend the statute book. Instead, substituted reference orders allow affected provisions to be read as though one authority had been substituted for another, without amending the text of the provision.

The Regulations update references to authorities, effectively substituted by the 2017 Substituted Reference Order, so that the correct authority is apparent on the face of the legislation.

The Regulations also make a number of other, minor technical changes to update provisions in accordance with current drafting practices, including replacing references to repealed legislation, removing gender specific language and replacing references to authorities to refer to the authority by reference to a key piece of portfolio legislation.

These changes are purely technical in nature and do not substantively affect the operation of the amended provisions.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

Details of the Regulations are set out in [Attachment C](#).

Consultation

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. No Regulation Impact Statement is required. The OBPR consultation reference number is 24423.

The Regulations were informed by consultation with the Department of Jobs and Small Business, the Department of Industry, Innovation and Science, the Department of Agriculture and Water Resources, the Treasury and the Department of the Environment and Energy which support the changes. No other consultation was considered necessary as the amendments do not substantially change existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which envisages consultations where appropriate and reasonably practicable.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The Regulations commence on 1 May 2019.

AUTHORISING PROVISIONS

Subsection 270(1) of the Act relevantly provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

In addition, the following provisions of the Act may apply:

- section 50 of the Customs Act, which provides, relevantly, that the Governor-General may, by regulation, prohibit the importation of goods into Australia and that the power may be exercised by prohibiting the importation of goods absolutely or by prohibiting the importation of goods unless specified conditions or restrictions are complied with; and
- section 112 of the Customs Act, which provides, relevantly, that the Governor-General may, by regulation, prohibit the exportation of goods from Australia and that the power may be exercised by prohibiting the exportation of goods absolutely or by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

ATTACHMENT B**Statement of Compatibility with Human Rights**

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

Customs Legislation Amendment (2019 Measures No. 1) Regulations 2019

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

Overview of the Legislative Instrument

The *Customs Legislation Amendment (2019 Measures No. 1) Regulations 2019* (the Regulations) amend the *Customs (Prohibited Imports) Regulations 1956* (the Imports Regulations) and the *Customs (Prohibited Exports) Regulations 1958* (the Exports Regulations) to update references to authorities in line with the *Acts Interpretation Substituted Reference Order 2017* (the 2017 Substituted Reference Order) and make other minor technical amendments to bring the Imports Regulations and the Exports Regulations into line with current drafting practices.

Substituted reference orders are made by the Governor-General under section 19B of the *Acts Interpretation Act 1901*. They provide that, where a provision of an Act refers to an authority, it is to have effect as if the provision referred to another specified authority. Substituted reference orders ensure that ministers, Australian public service employees and secretaries of departments of state, can exercise all powers granted to them by legislation, for example where a Machinery of Government change has transferred the responsibility for particular legislation from one portfolio to another. In doing so, they avoid the need to amend legislation, but do not themselves amend the statute book. Instead, substituted reference orders allow affected provisions to be read as though one authority had been substituted for another, without amending the text of the provision.

The Regulations update references to authorities, effectively substituted by the 2017 Substituted Reference Order, so that the correct authority is apparent on the face of the legislation.

The Regulations also make a number of other minor, technical changes to update provisions in accordance with current drafting practices, including replacing references to repealed legislation, removing gender specific language and replacing references to authorities to refer to the authority by reference to a key piece of portfolio legislation.

Specifically, this instrument amends:

- regulations 3, 4A, 5, 9, 9AA, 9AD, 13G, 13H and Schedule 7 of the Exports Regulations, and
- regulations 4A, 4AA, 4AB, 4K, 4MA, 4R, 4S, 4U, 4VA, 5, 5A, 5F, 5H, 5I, and Schedules 3 and 6 to the Imports Regulations.

These changes are purely technical in nature and do not substantively affect the operation of the amended provisions.

Human rights implications

These amendments do not engage any of the applicable rights or freedoms.

Conclusion

These amendments are compatible with human rights and they do not raise any human rights issues.

The Honourable Peter Dutton MP
Minister for Home Affairs

ATTACHMENT C**Details of the *Customs Legislation Amendment (2019 Measures No. 1) Regulations 2019*****Section 1 – Name**

This section provides that the title of the Regulations is the *Customs Legislation Amendment (2019 Measures No. 1) Regulations 2019* (the Regulations).

Section 2 – Commencement

This section provides that the whole of the instrument is to commence on 1 May 2019.

Section 3 – Authority

This section provides that this instrument is made under the *Customs Act 1901* (the Act).

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments**Incorporating amendments made by the *Acts Interpretation Substituted Reference Order 2017***

Substituted reference orders are made by the Governor-General under section 19B of the *Acts Interpretation Act 1901*. They provide that, where a provision of an Act refers to an authority, it is to have effect as if the provision referred to another specified authority. Substituted reference orders ensure that ministers, Australian public service employees and secretaries of departments of state, can exercise all powers granted to them by legislation, for example where a Machinery of Government change has transferred the responsibility for particular legislation from one portfolio to another. In doing so, they avoid the need to amend legislation, but do not themselves amend the statute book. Instead, substituted reference orders allow affected provisions to be read as though one authority had been substituted for another, without amending the text of the provision.

Items 1, 2, 7, 9-12, 14-21, 23, 25-31 and 73-85 update references to authorities, effectively substituted by the *Acts Interpretation Substituted Reference Order 2017* (the 2017 SRO), so that the correct authority is apparent on the face of the legislation.

Items 1 and 2 make it clear that the responsible Minister for the purposes of regulation 3 of the *Customs (Prohibited Exports) Regulations 1958* (the Exports Regulations) is the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995*, as substituted by item 14 of the table under subsection 2.4(2) of the *Acts Interpretation Substituted Reference Order 2017* (the 2017 SRO).

Item 9 makes it clear that the relevant Minister for the purposes of regulation 9 of the Exports

Regulations is the Minister administering the *National Radioactive Waste Management Act 2012*, as substituted by item 2 of the table under subsection 2.3(2) of the 2017 SRO.

Items 9-12 make it clear that the relevant Minister for the purposes of regulation 9AA of the Exports Regulations is the Minister administering the *Offshore Minerals Act 1994*, in accordance with item 3 of the table under subsection 2.3(2) of the 2017 SRO. Similarly, the relevant Department is the Department administered by the Minister administering the *Offshore Minerals Act 1994*, as substituted by items 1 and 2 of the table under section 3.3 of the 2017 SRO.

Items 14-17 make it clear that the relevant Minister for the purposes of regulations 13G, 13H and Schedule 7 is the Minister administering the *National Radioactive Waste Management Act 2012*, as substituted by item 2 of the table under subsection 2.3(2) of the 2017 SRO.

Items 18-21, 23 and 25 make it clear that the relevant Minister for the purposes of regulation 4A of the *Customs (Prohibited Imports) Regulations 1956* (the Imports Regulations) is the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995*, as substituted by item 15 of the table under subsection 2.4(2) of the 2017 SRO.

Items 26-31 make it clear that the relevant Minister for the purposes of regulation 4AA of the Imports Regulations is the Minister administering the Act (the Home Affairs Minister), as substituted by item 16 of the table under subsection 2.4(2) of the 2017 SRO. Similarly, the relevant Department is the Department administered by the Minister administering the Act, in accordance with item 5 of the table under subsection 3.4(2) of the 2017 SRO.

Items 73-83 and 85 make it clear that the relevant Minister for the purposes of Schedule 6 to the Imports Regulations is the Minister administering the Act (the Home Affairs Minister), as substituted by item 16 of the table under subsection 2.4(2) of the 2017 SRO. Similarly, item 84 makes it clear that the relevant Department is the Department administered by the Minister administering the Act, in accordance with item 2 of the table under subsection 4.3(2) of the 2017 SRO.

These amendments do not affect the operation of the provisions.

Replacing references to repealed legislation

Items 40-42 replace references to repealed legislation with references to legislation that is currently in effect.

Item 40 redefines ‘Minister’ for the purposes of regulation 4S of the Imports Regulations as the Minister administering Part 3-3 of Schedule 2 to the *Competition and Consumer Act 2010*, replacing the reference to the *Trade Practices Act 1974*.

Item 41 replaces the reference to the *Trade Practices Act 1974* in the heading of regulation 4U of the Imports Regulations with a reference to the *Competition and Consumer Act 2010*.

Item 42 redefines ‘Minister’ for the purposes of regulation 4U of the Imports Regulations as the Minister administering Part 3-3 of Schedule 2 to the *Competition and Consumer Act 2010*, replacing the reference to the *Trade Practices Act 1974*.

These amendments do not substantively affect the operation of the provisions.

Removing Gender Specific Language and fixing spelling errors

Item 8 amends subregulation 9(3F) of the Exports Regulations to replace gender specific language with gender neutral language in accordance with current drafting practices.

Items 24, 32 and 44-66 amend the Imports Regulations to replace gender specific language with gender neutral language in accordance with current drafting practices.

Item 22 amends subregulation 4A(2A) to correct the spelling of the word “authorised”.

These amendments do not affect the operation of the provisions.

Replacing references to Departments and Ministers by name or title

Items 3-6, 13, 33-39, 43 and 67-72 amend references to authorities to define the relevant Minister by reference to a key piece of legislation administered by the Minister, and to refer to the relevant Department as the department administered by the relevant Minister.

Items 3-4 provide that the relevant Minister for the purposes of regulation 4A of the Exports Regulations is the Minister administering the *Agricultural and Veterinary Chemicals Code Act 1994*.

Items 5-6 provide that the relevant Minister for the purposes of regulation 5 of the Exports Regulations is the Minister administering the *Export Control Act 1982*.

Item 13 provides that the relevant Minister for the purposes of regulation 9AD of the Exports Regulations is the Minister administering the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Items 33-37 provide that the relevant Minister for the purposes of regulation 4K of the Imports Regulations is the Minister administering the *Primary Industries Levies and Charges Collection Act 1991*. Similarly, the relevant Department is the Department administered by the Minister administering the *Primary Industries Levies and Charges Collection Act 1991*.

Item 38 provides that the relevant Department for the purposes of regulation 4MA of the Imports Regulations is the Department administered by the Minister administering the *Offshore Minerals Act 1994*.

Item 39 provides that the relevant Minister for the purposes of regulation 4R of the Imports Regulations is the Minister administering the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Item 43 provides that the relevant Minister for the purposes of regulation 4VA of the Imports Regulations is the Minister administering the *Greenhouse and Energy Minimum Standards Act 2012*.

Items 67-71 provide that the relevant Minister for the purposes of regulation 5I of the Imports Regulations is the Minister administering the *Agricultural and Veterinary Chemicals Code Act 1994*.

Item 72 provides that the relevant Minister for the purposes of table item 3 of Schedule 3 to the Imports Regulations is the Minister administering the *Ozone Protection and Synthetic*

Greenhouse Gas Management Act 1989, and the relevant department is the Department administered by that Minister.

The intended effect of these amendments is to bring the provisions into line with current drafting practices, and to avoid the need to amend the provision in the future should the name of the relevant Department or the title of the relevant Minister change.

These amendments do not substantively affect the operation of the amended provisions.