

# Customs (Prohibited Exports) Regulations (Amendment) 1997 No. 381

## EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 381

Issued by the Authority of the Minister for Small Business and Consumer Affairs

*Customs Act 1901*

Customs (Prohibited Exports) Regulations (Amendment)

Section 112 of the *Customs Act 1901* (the Act) provides in part that:

"(1) The Governor-General may, by regulation, prohibit the exportation of goods from Australia.

(2) The power conferred by the last preceding subsection may be exercised - (c) by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

(2A) Without limiting the generality of paragraph (2)(c), the regulations - ... (a) may provide that the exportation of the goods is prohibited unless a licence, permission, consent or approval to export the goods or a class of goods in which the goods are included has been granted as prescribed by the regulations; and

The Customs (Prohibited Exports) Regulations (the Regulations) control the exportation of the goods specified in the various regulations or the Schedules to the Regulations, by prohibiting exportation absolutely, or making exportation subject to the permission of a Minister or a specified person.

The purpose of these amendments is to implement the Government's decision to introduce prohibitions on the exportation of all refused classification materials, in line with a recommendation in July 1996 of the Committee of Ministers on the Portrayal of Violence.

Details of the Regulations are as follows:

Regulation 2 inserts a new regulation 3 in the Regulations to introduce export controls on objectionable goods, similar to the import controls on those goods contained in regulation 4A of the Customs (*Prohibited Imports*) Regulations. To this end, new subregulation (3) prohibits the exportation of objectionable goods unless a written permission to export the goods has been granted under subregulation 3(4) by the Attorney-General or an **authorised person**.

\* subregulation 3(3) provides that an *authorised person* can only be a person who holds the office or performs the duties of the office of the Director or Deputy Director of the Classification Board established by section 45 of the Classification (*Publications, Films and Computer Games*) Act 1995;

new subregulation 3(2) provides definitions of "**computer game**", "**computer generated image**", "**film**", "**interactive game**" and "**publication**" for the purposes of the new controls.

### Goods to which the controls apply

New subregulation 3(2) provides that the new controls apply to goods, including "**publications**", that:

- \* describe, depict or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a way that offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that the goods should not be exported; new Paragraph (2)(a) or
- \* describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 (whether the person is engaged in sexual activity or not), new paragraph (2)(b),
- \* in relation to a computer game - are unsuitable for a person under 18 to see or play; new paragraph (2)(c), or
- \* promote, incite or instruct in matters of crime or violence; new paragraph (2)(d), or
- \* promote or incite the misuse of a drug specified in Schedule 4 to the Customs (*Prohibited Imports*) Regulations: new paragraph (2)(d).

### **Exportation permissions**

New subregulation 3(5) prescribes the matters to which the Attorney-General or an authorised officer must have regard in deciding whether to give a permission under new subregulation 3(4). New subregulation (3)(6) enables a permission to be granted subject to conditions, noncompliance with which may result in the revocation of the permission; new sub-regulation 3(7).

### **Review of Decisions**

New subregulation 3(8) provides for review by the Administrative Appeals Tribunal of a decision in relation to a permission, while subregulations 3(9) to 3(12) provide that the Attorney-General may grant a conclusive certificate excluding that review mechanism if he or she is satisfied that it is in the public interest to do so.

- \* subregulation 3(13) provides for the tabling in the Parliament of a conclusive certificate which is granted by the Attorney-General under subregulation 3(9);

### **Statements of Reasons**

Subregulations 3(14) and 3 (15) provide for the giving of statements of reasons by the Attorney-General or an authorised person in relation to decisions made under proposed new regulation 3:

- refusing a permission; paragraph 3(14)(a),
- revoking a permission; paragraph 3(14)(b), or
- granting a permission subject to conditions; paragraph 3(14)(c).

- \* subregulations 3(16) provides that a failure to provide a statement of reasons in relation to a decision does not affect the validity of that decision.

The Regulations commenced on gazettal.