

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 103**

Issued by the Authority of the Minister for Home Affairs  
*Customs Act 1901*  
*Customs (Prohibited Imports) Amendment Regulations 2008 (No. 4)*

Subsection 270(1) of the *Customs Act 1901* (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed, for giving effect to the Act.

Section 50 of the Act provides, in part, that the Governor-General may, by regulation, prohibit the importation of goods into Australia. This 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.

The *Customs (Prohibited Imports) Regulations 1956* (the Principal Regulations) control the importation of the goods specified in various regulations and Schedules.

The purpose of the amending Regulations is to allow, where the use is for certain State Agencies or for supply to the United Nations or the government of a country other than Australia, the importation into Australia of anti-personnel sprays (for example, Oleoresin Capsicum spray), chemicals used in the manufacture of anti-personnel sprays, and grenades or canisters designed for use with anti-personnel sprays or anti-personnel chemicals.

Subregulation 4(2) of the Principal Regulations prohibits the importation into Australia of goods specified in Schedule 3 to the Principal Regulations, subject to certain exceptions. Anti-personnel sprays and chemicals for use in the manufacture of anti-personnel sprays are specified in item 1 of Schedule 3 to the Principal Regulations (item 1 goods). Grenades or canisters, designed for use with anti-personnel sprays or anti-personnel chemicals, are specified in item 1A of Schedule 3 to the Principal Regulations (item 1A goods).

Item 1 and 1A goods could only be imported when written consent was produced to a Collector, and the goods were imported into Australia for use by the Commonwealth government (including for the use of the Australian Federal Police) or a State or Territory police force or correctional institution.

While certain State agencies are authorised by the relevant State governments to possess and use anti-personnel sprays and associated grenades or canisters, importers have been prohibited from importing item 1 or 1A goods for supply to these agencies; agencies could only access domestically-produced sprays, grenades or canisters. Similarly, importers have been prohibited from importing item 1 or 1A goods for supply to the United Nations or foreign governments.

The amending Regulations repeal and substitute items 1 and 1A of Schedule 3 to the Principal Regulations to additionally allow item 1 and 1A goods to be imported when:

- a. the written consent of the Minister, the Commissioner of the Australian Federal Police or the commissioner (however designated) of the police force of a State or Territory is produced to a Collector, and the goods are imported for the use of: the Office of the New South Wales Sheriff; the Department of Primary Industries of Victoria; the Department of Sustainability and Environment of Victoria; the Office of Police Integrity of Victoria; or the Department of Primary Industries and Resources of South Australia; or
- b. the goods are imported as part of a contract to which a person in Australia is a party, the person made the contract with the intention of supplying the goods to the United Nations or the government of a country other than Australia in a manner that does not contravene Australia's international obligations, and the contract is in force when the goods are imported.

Consultation was undertaken with the Police Ministers of all the States and Territories. No further consultation was undertaken specifically in relation to the amending Regulations as they are of a minor or machinery nature and do not substantially alter existing arrangements.

The amending Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

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