

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 252**

Issued by the Authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs Amendment Regulations 2008 (No. 7)*

Section 270 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.

New Subdivision GC of Division 1 of Part XII of the Act, which was inserted into the Act by the *Customs Amendment (Strengthening Border Controls) Act 2008* (the Amendment Act), sets out a new regime whereby a required permission to import certain prohibited imports can be granted after the goods have been imported. New Subdivision GC will commence on 12 January 2009.

The purpose of the amending Regulations is to prescribe those prohibited imports that are the subject of the new post-importation permission regime.

The importation of most goods in the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) is prohibited unless permission to import the goods is obtained prior to the importation of the goods. If it is not obtained prior to importation, the goods will be prohibited imports in accordance with section 51 of the Act.

However, for a variety of reasons, it is not always possible to obtain a permission to import goods before their importation. In some cases, a permit would also likely have been granted had the importer been aware of the control prior to importing the goods. Therefore, where the importer is acting in good faith, seizure and forfeiture of the goods in these circumstances without an opportunity to apply for a permission may be unreasonable.

Therefore, under the specified circumstances in new Subdivision GC, the owner of certain prohibited imports may apply for, and the decision maker may give, the required permission to import the goods after they have been imported. It is a discretionary power to grant the required permission and the relevant goods will remain in the custody of Customs until the required permission is granted.

New Subdivision GC only applies to goods that are prohibited imports of a kind prescribed by regulations for the purposes of the new Subdivision. The amending Regulations amend the *Customs Regulations 1926* to prescribe the prohibited imports for the purposes of new Subdivision GC.

The amending Regulations are set out in greater detail in the [Attachment](#).

No consultation was undertaken in relation to the amendments as they are minor or machinery and do not substantially alter existing arrangements.

The amending Regulations commence on the commencement of Schedule 1 to the Amendment Act.

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**ATTACHMENT****DETAILS OF THE CUSTOMS AMENDMENT REGULATIONS 2008 (No. 7)****Regulation 1 - Name of Regulations**

This regulation provides that the title of the amending Regulations is the *Customs Amendment Regulations 2008 (No. 7)*.

**Regulation 2 - Commencement**

This regulation provides that the amending Regulations commence on the commencement of Schedule 1 to the *Customs Amendment (Strengthening Border Controls) Act 2008*. This Schedule is due to commence on 12 January 2009.

**Regulation 3 - Amendment of Customs Regulations 1926**

This regulation provides that Schedule 1 amends the *Customs Regulations 1926* (the Principal Regulations).

**SCHEDULE 1 - AMENDMENT****Item [1] - After Regulation 170**

Item 1 amends the Principal Regulations by inserting new regulation 170AA after regulation 170.

The importation of most goods in the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) is prohibited unless a licence or permission or other document to import the goods is obtained. The licence or permission or other document must be obtained prior to the importation of the goods. If it is not obtained prior to importation, the goods will be prohibited imports in accordance with section 51 of the *Customs Act 1901* (the Act). Prohibited imports can be seized without a warrant when they are in a Customs place and there are also offences in the Act that apply to the importation of prohibited imports.

Under the specified circumstances in new Subdivision GC of Division 1 of Part XII of the Act, which was inserted into the Act by the *Customs Amendment (Strengthening Border Controls) Act 2008*, the owner of certain prohibited imports may apply for, and the decision maker may grant or give, the required permission to import the goods after they have been imported. The relevant goods will remain in the custody of Customs at all times until the required permission is granted or given. If the required permission is not given within the specified period, the goods are taken to be seized and the normal post-seizure processes under the Act will apply.

New Subdivision GC only applies to goods that are prohibited imports of a kind prescribed by regulations for the purposes of the new Subdivision. The amending Regulations insert new regulation 170AA into the Principal Regulations to prescribe the following prohibited imports for the purposes of new Subdivision GC:

- a) Goods to which regulation 4A of the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) applies (Pornography and other objectionable material);
- b) Goods to which regulation 4B of the PI Regulations applies (Fish);
- c) Goods to which regulation 4BA of the PI Regulations applies (Toothfish);

- d) Goods to which regulation 4C of the PI Regulations applies (Asbestos and goods containing asbestos);
- e) Goods to which regulation 4F of the PI Regulations applies (Firearms and accessories);
- f) Goods to which regulation 4S of the PI Regulations applies (Disposable, novelty or refillable cigarette lighters);
- g) Goods to which regulation 4T of the PI Regulations applies (Counterfeit credit, debit and charge cards);
- h) Goods to which regulation 4V of the PI Regulations applies (ANZAC goods);
- i) Goods to which regulation 4W of the PI Regulations applies (Cat or dog fur, cat or dog fur products);
- j) Goods to which regulation 5G of the PI Regulations applies (Hormones and related substances);
- k) Goods specified in items 8, 9, 12, 13, 14, 15, 16, 18, 18A, 18B, 18C, 18D, 19, 19A, 20, 21, 22, 23, 29A, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48 of Schedule 2 to the PI Regulations (Weapons, knives, daggers, warfare items and other certain goods);
- l) Goods specified in items 1 and 1A of Schedule 3 to the PI Regulations (Anti-personnel goods);
- m) Goods specified in items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 12A, 12AA, 13, 14, 15, 16 and 17 of Schedule 8 to the PI Regulations (Therapeutic substances, steroids);
- n) Goods specified in items 2, 3, 10 and 11 of Schedule 9 to the PI Regulations (Organochlorine Chemicals);
- o) Goods specified in Parts 3 and 4 of Schedule 11 to the PI Regulations (Chemical Compounds); and
- p) Goods specified in item 5 of Schedule 12 to the PI Regulations (Chewing tobacco and oral snuffs).

Subregulation 170AA(2) provides that in subregulation 170AA, the reference to the *Prohibited Imports Regulations* means the *Customs (Prohibited Imports) Regulations 1956*.