

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 199**

Issued by the Authority of the Minister for Home Affairs  
*Customs Act 1901*  
*Customs (Prohibited Imports) Amendment Regulations 2009 (No. 4)*

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.

Section 50 of the Act provides 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.

Regulation 4C of the Principal Regulations prohibits the importation of amphibole asbestos and goods containing amphibole asbestos, and chrysotile and goods containing chrysotile, subject to certain exceptions. The term 'amphibole asbestos' is defined in regulation 2 of the Principal Regulations to mean asbestos in a form other than chrysotile. The term 'asbestos' is defined in regulation 2 to mean any of the following fibrous forms of mineral silicates belonging to the serpentine or amphibole groups of rock-forming minerals: actinolite asbestos, amosite (brown asbestos), anthophyllite asbestos, chrysotile (white asbestos), crocidolite (blue asbestos) or tremolite asbestos.

The amending Regulations amend the import control which applies to ships and resources installations which contain amphibole asbestos and chrysotile. Ships and resources installations contracted or sold to undertake work in Australian waters are taken to be imported goods under the Act and are subject to regulation 4C.

On 15 June 2006, regulation 4C of the Principal Regulations was amended to remove the exception which permitted the importation of goods which contain chrysotile where the chrysotile is incorporated into goods in a way that does not constitute a risk to users until the chrysotile is disturbed ("in-situ" asbestos).

The removal of the exception, in combination with the original regulation 4C, created an unintended consequence for imported ships and resources installations which contain in-situ asbestos. Ships and resources installations which contain in-situ asbestos could only be imported once appropriate permissions have been obtained. For goods containing chrysotile asbestos such permissions was only able to be given for very limited uses (for example, for research and analysis purposes). The restriction on the importation of ships and resources installations which contain in-situ asbestos has had significant implications for Australian industry, particularly in offshore gas and oil exploitation.

The amending Regulations remove the import control for ships and resources installations containing in-situ asbestos (whether amphibole asbestos or chrysotile), where the ship or resources installation is at least 150 gross tonnage (as shown by the International Tonnage Certificate (1969) for the ship or resources installation), and where the in-situ asbestos was fixed or installed before 1 January 2005.

The amending Regulations do not alter industry's obligations and responsibilities in respect of providing a safe workplace on ships and resources installations or the obligations and responsibilities under relevant Commonwealth, state and/or territory occupational health and safety (OH&S) legislation.

The import control continues to prohibit the importation of ships or resources installations where the in-situ asbestos is fixed or installed after 1 January 2005.

The in-situ asbestos import control was implemented in July 2006 at the request of the Workplace Relations Ministers' Council (WRMC) comprising federal, State and Territory Ministers responsible for workplace relations, occupational health and safety and workers compensation in their respective jurisdictions. In August 2008, the WRMC was advised of the unintended consequences of the import control. The WRMC did not object to the proposal to amend the import control to address these unintended consequences on the basis that this would not facilitate the operation of non-compliant ships in Australia.

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

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