

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 49**

Issued by the Authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs Amendment Regulation 2012 (No. 1)*

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

The purpose of the amending Regulation is to amend the *Customs Regulations 1926* (the Principal Regulations) to enable the deployment of body scan technologies in accordance with the *Customs Amendment Serious Drugs Detection Act 2011* (the Serious Drugs Detection Act) and also to remove regulations prescribing obsolete technologies.

The Serious Drugs Detection Act recently amended the Customs Act to enable officers of Customs, using prescribed equipment, to undertake an internal non-medical scan of a person who is suspected to be internally concealing a suspicious substance.

The amendments permit, with the consent of the detainee, an initial internal non-medical scan of a person to be carried out by an officer of Customs using body scan technology that is to be prescribed in the regulations. This technology produces a computer image of a person's internal cavities within a skeletal structure, as opposed to images of external body parts. Such images may serve to allay an officer's suspicion that a passenger is internally concealing a suspicious substance, in which case the detainee would be released immediately. Where, however, a body scan image supports a suspicion of an internal concealment, the existing regime governing internal searches by a medical practitioner will apply.

Subsection 219SA(1) of the Customs Act provides that an internal non-medical scan may only be conducted using prescribed equipment. Section 219ZAB sets out the conditions for prescribing the body scan technology. Specifically, for internal non-medical scans, the regulations may only prescribe equipment that can produce an image that indicates a person is or may be internally concealing a suspicious substance. Section 219ZAB also sets out the conditions for prescribing equipment for external searches.

The Smiths Detection BSCAN 16HR DV is a non-invasive body scan device used to take a transmission radiograph of a fully-clothed individual to detect whether a suspicious substance has been concealed inside the individual's body.

The amending Regulation repeals and substitutes regulation 176AA of the Principal Regulations to:

- (a) prescribe the Smiths Detection B-SCAN 16HD-DV body scanner technology for the purposes of section 219SA(1) of the Customs Act; and
- (b) remove the equipment listed for the carrying out of an external search as this equipment is obsolete and no longer used for external searches.

The amending Regulation also amends regulation 176B of the Principal Regulations, which presently sets out the storage requirements in relation to the records of external searches, to extend these requirements to the storage of records of internal non-medical scans.

Section 219ZAB(3) of the Customs Act provides that before the Governor General makes a regulation prescribing equipment for the purposes of subsection 219SA(1), the Minister must obtain from the Chief Executive Officer of Customs (CEO) a statement that:

- (a) the equipment can safely be used to detect suspicious substances; and
- (b) use of the equipment poses no risk, or minimal risk, to the health of a person whom the equipment is used to search; and
- (c) a person does not require professional qualifications to operate the equipment.

The Minister has obtained a statement in respect of the Smiths Detection Body Scanner from the CEO.

Subsection 219ZAB(4) of the Customs Act provides that before the CEO makes the statement to the Minister, he or she must consult with the relevant Commonwealth authorities, if any, that have expertise or responsibilities relevant to the matters addressed by the statement.

In addition, subsection 219ZAB(5) requires that if the CEO does consult any relevant Commonwealth authorities, he or she must provide a copy of any advice received from those authorities before each House of Parliament within seven sitting days of that House after the day on which the statement is given to the Minister.<sup>(2)</sup>

The CEO has consulted the Department of Health and Ageing and the Australian Radiation Protection and Nuclear Safety Agency. The advice from those authorities will be laid before each House of Parliament within 7 sitting days of that House after the day on which the statement was given to the Minister.

As the amending Regulation are of machinery nature, no consultation was undertaken in relation to the amending Regulation.

The amending Regulation commence on the day after it is registered on the Federal Register of Legislative Instruments.

## **Statement of Compatibility with Human Rights**

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

### ***Customs Amendment Regulation 2012 (No. 1)***

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

#### *Overview of the Regulation*

This legislative instrument serves to prescribe body scanner technology pursuant to section 219ZAB of the *Customs Act 1901*, for the purposes of section 219SA(1).

The Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

#### *Human Rights implications*

This legislative instrument does not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### *Conclusion*

This legislative instrument does not raise any human rights issues.

Minister for Home Affairs