

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 61**

Issued by the Authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs Amendment Regulation 2012 (No. 3)*

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 Regulation is to amend the *Customs Regulations 1926* (the Principal Regulations) to correct incorrect tariff subheadings in Schedule 2 and to repeal a redundant refund circumstance.

#### *Incorrect subheadings*

Schedule 2 to the Principal Regulations lists those goods, for the purposes of regulation 185 of the Principal Regulations and section 269SJ of the Act, to which a Tariff Concession Order (TCO) should not extend. Goods to which a TCO applies are eligible for a “Free” rate of customs duty upon their importation into Australia. In column 2 of Schedule 2, the relevant goods to which a TCO should not extend are described by reference to the classification under a heading or subheading of Schedule 3 to the *Customs Tariff Act 1995* (the Tariff Act).

The *Customs Amendment Regulations 2011 (No. 4)* (the Amending Regulations) amended the Principal Regulations to implement changes to tariff subheadings that were consequential to the commencement of the *Customs Tariff Amendment (2012 Harmonized System) Changes Act 2011*. This Act gave effect to changes to the Tariff Act, resulting from the fourth review of the Harmonized System by the World Customs Organization, with a commencement date of 1 January 2012.

The Amending Regulations amended column 2 of items 54A, 54B and 54C of Schedule 2 to the Regulations to update references to the relevant subheadings. However, the subheadings that were inserted in relation to these items were incorrect. The Regulation substitutes the correct subheadings in these items of Schedule 2 and thereby ensures that goods to which a TCO should not extend are correctly identified.

#### *Redundant references*

Subregulation 126(1) of the Principal Regulations sets out various circumstances in which a refund of customs duty is payable for the purposes of section 163 of the Act. In particular, paragraph 126(1)(z) allows for a refund of customs duty where duty credits have been applied under the *ACIS Administration Act 1999* against customs duty that has already been paid.

Paragraph 74A(1)(b) of the *ACIS Administration Act 1999* allowed the use of ACIS duty credits in respect of circumstances where duty had already been paid on eligible goods. Subsection

74A(3) of that Act provides that ACIS credits expire on 31 December of the calendar year following the ending of a particular stage. In this case, stage 2 ended on 31 December 2010. As a consequence, ACIS credits expired on 31 December 2011 and as the credits can no longer be used from that date, there is no further requirement for the refund circumstance set out in paragraph 126(1)(z).

As the Regulation is of a machinery nature, no consultation was undertaken in relation to the Regulation.

The Regulation commences 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 Regulations 2012 (No. 3)***

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 Regulation amends the *Customs Regulations 1926* (the Principal Regulations) to correct incorrect tariff subheadings in Schedule 2 and to repeal a redundant refund circumstance.

The Regulation commences on the day after it is registered 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