**EXPLANATORY STATEMENT**

**Select Legislative Instrument 2013 No. 126**

###### **Issued by authority of the Assistant Treasurer**

Subject – *A New Tax System (Goods and Services Tax) Act 1999*

*Excise Act 1901*

*Customs Act 1901*

*Customs and Other Legislation Amendment (LAG and Other Measures) Regulation 2013*

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999,* section 164 of the *Excise Act 1901* and section 270 of the *Customs Act 1901* provide that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Schedule 1 to the Regulation makes minor technical amendments to correct a section number in the *A New Tax System (Goods and Services Tax) Regulations 1999* and insert the missing number in the heading of *Excise Regulation 1925* and the *Customs Regulation 1926*.

Schedule 2 to the Regulation amends the *A New Tax System (Goods and Services Tax) Regulations 1999,* the *Excise Regulations 1925* and the *Customs Regulations 1926* to provide legislative authority for the arrangement that has been in place since 31 March 2007 for export verification procedures for liquids, aerosols, gels, creams and pastes (LAG products) purchased free of excise, customs duty, goods and services tax (GST) and Wine Equalisation Tax (WET) under the sealed bag scheme (SBS), by passengers departing Australia on international flights and voyages.

Under the SBS, travellers leaving Australia can purchase goods free of excise, customs duty, GST and WET that are sold at off‑airport duty free shops or certain retailers, provided proof of the export of such goods can be provided. Prior to 31 March 2007, export of the goods was generally substantiated by the SBS bags being presented past the outwards control point to an airside agent of the retailer.

Since 31 March 2007 international security restrictions set out in the *Aviation Transport Security Regulations 2005*, have prevented passengers from carrying LAG products onto international flights as cabin baggage unless the product is 100 millilitres or less and the products are sealed in one transparent, one litre plastic bag (or less).

With the agreement of the Australian Taxation Office (ATO) and the Australian Customs and Border Protection Service (Customs and Border Protection), off-airport duty, and GST and WET free retailers, sealed bag arrangements were implemented which are consistent with international airport security restrictions. Under these arrangements, travellers remove the invoice attached to the outside of the sealed bag for LAG products greater than 100 millilitres prior to packing the LAG products in their luggage. The passenger then presents the invoice to the airside agent of the retailer. The SBS rules in the *A New Tax System (Goods and Services Tax) Regulations 1999,* the *Excise Regulations 1925* and the *Customs Regulations 1926* do not currently provide for this arrangement*.*

The Regulation provides legislative support for the arrangement put in place by the ATO and Customs and Border Protection. It ensures that people who, on or after 31 March 2007, have acted in accordance with the arrangement are taken to have complied with the SBS rules set out in these three sets of regulations.

It was originally intended that these arrangements be replaced by more rigorous arrangements that would have required travellers to provide proof by way of a declaration on the goods dockets that would be handed to airside agents of the retailer. However, it is expected that in the near future, new screening technology will allow LAG products to again be taken onto international flights as cabin baggage.

The Government therefore decided that the existing sealed bag arrangement will continue to operate until the new screening technology is adopted. This decision was made on the basis of additional compliance and administrative costs that would result from adopting the more rigorous arrangements that would only have a limited life.

Schedule 1 commences on 16 February 2013. The amendments do not infringe Subsection 12(2) of the *Legislative Instruments Act 2003* as they do not adversely affect the rights of any person as at the date of registration, or impose liabilities on a person in respect of anything done or not done before the date of registration.

Schedule 2 to the Regulation which commences on the day after the Regulation is registered on the Federal Register of Legislative Instruments. The amendments in Schedule 2 apply to purchases made on or after 31 March 2007 and provide legislative support for the arrangements that have been in place since that date.

Public consultation with industry on the draft regulation and explanatory material was conducted between 3 April 2011 and 29 April 2011. A concern raised by the primary docket agency for the duty free industry is the compliance costs of replacing the existing arrangement with the more rigorous declaration requirement. However, the Government’s decision to remove the requirement for a declaration and use the existing arrangement as the on-going requirement has removed this concern. No other issues were raised by industry.

The Regulation is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

**Statement of Compatibility with Human Rights**

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

**Customs and Other Legislation Amendment (LAG and Other Measures) Regulation 2013**

These Legislative Instruments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to make some minor technical amendments and also provide legislative authority for an arrangement that has been in place since 31 March 2007 for export verification procedures for liquids, aerosols, gels, creams and pastes (LAG products) purchased free of excise, customs duty, goods and services tax and Wine Equalisation Tax, under the sealed bag scheme (SBS), by passengers travelling on international flights and voyages.

**Human rights implications**

Schedule 1 of the Regulation will commence retrospectively from 16 February 2013. It makes some minor technical corrections which do not affect any person’s rights.

Schedule 2 of the Regulation will apply to purchases made on or after 31 March 2007 and will not adversely affect the rights of international travellers as the Regulation merely confirms an existing arrangement. The arrangement is beneficial to travellers as it allows them to carry LAG products over 100 millilitres past the outwards control point at international airports without visual verification by the airside agent of the retailer. It has avoided a serious impact on the business viability of off-airport duty free stores and other retail businesses utilising the SBS.

The Legislative Instrument therefore does not engage any of the applicable rights or freedoms.

**Conclusion**

The Legislative Instrument is compatible with human rights as they do not raise any human rights issues.