

EXPLANATORY STATEMENT

Select Legislative Instrument 2015 No. 90

Issued under the Authority of the Minister for
Immigration and Border Protection

Customs Act 1901 and other Acts of the Commonwealth

*Customs and Other Legislation Amendment (Australian Border
Force) Regulation 2015*

Section 270 of the *Customs Act 1901* (the Customs 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.

In addition, the Governor-General may also make regulations pursuant to the authorising provisions contained in Attachment A.

The purpose of the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015* (the Amendment Regulation) is to amend the *Customs Regulation 2015*, the other regulations in the Immigration and Border Protection Portfolio, and the other Commonwealth Regulations, to give effect to the Government's decisions to abolish the Australian Customs and Border Protection (the ACBPS) and integrate its functions into the Department of Immigration and Border Protection (the Department), and to establish an Australian Border Force within the Department.

The amendments contained in the Amendment Regulation are a consequence of the amendments made by the *Australian Border Force Act 2015* (the Australian Border Force Act) and the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015* (the COLA Act).

The Australian Border Force Act establishes the statutory office of the Australian Border Force Commissioner and provides for related matters. In particular, the Australian Border Force Act provides that a person who holds the office as the Australian Border Force Commissioner is also the Comptroller-General of Customs and is to have the general administration of customs related matters.

The COLA Act repeals the *Customs Administration Act 1985*, which provides for both the ACBPS as a separate statutory authority and the statutory office of the Chief Executive Officer of Customs (the CEO). The COLA Act also:

- amends the Customs Act to confer on the Comptroller-General of Customs all of the powers and functions that were conferred on the CEO;
- confers on the Comptroller-General of Customs all of the powers and functions related to customs functions that are currently conferred on the CEO under other Commonwealth Acts; and

- amends all Commonwealth Acts that refer to the ACBPS and replaces these references with references to the Department as it will now perform customs functions.

Accordingly, the Amendment Regulation makes the same amendments to Commonwealth Regulations, made under Commonwealth Acts, to those that are made by the COLA Act to those Commonwealth Acts. The Amendment Regulation replaces all references in Commonwealth Regulations to the “CEO” with the “Comptroller-General of Customs” and references to the “ACBPS” with references to the “Department of Immigration and Border Protection”. The Amendment Regulation also makes other minor amendments to the Commonwealth Regulations to reflect the abolition of the ACBPS and the CEO, and removes redundant terms.

The amendments ensure that there is a seamless transfer of functions and powers from the ACBPS and the CEO to the Department and the Comptroller-General of Customs in both Commonwealth Acts and Regulations. The amendments do not change the functions performed or the powers exercised in Commonwealth Regulations. Details of the Amendment Regulation are set out in Attachment B.

A Statement of Compatibility with Human Rights has been prepared and completed for the Amendment Regulation and is at Attachment C.

No consultation was undertaken as the Amendment Regulation contains amendments that are minor and machinery in nature, and do not substantially alter existing arrangements.

The Customs Act and other Commonwealth Acts do not specify conditions that need to be satisfied before the power to make the provisions in the Amendment Regulation may be exercised.

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

The commencement dates for the Amendment Regulation are set out in table under section 2 of that Regulation. Table item 1 provides that sections 1 to 4 (and anything else in this instrument not elsewhere covered by this table) commences on the date after this instrument is registered, and table item 2 provides that Schedule 1 and 2 commences at the same time as the Australian Border Force Act, which is 1 July 2015.

Authorising provisions

Regulations may be made pursuant to the following authorising provisions:

- Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 102 of the *Australian Postal Corporation Act 1989* which provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 79 of the *Australian Sports Anti-Doping Authority Act 2006*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 133(1) of the *Aviation Transport Security Act 2004*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 22 of the *Carriage of Goods by Sea Act 1991*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 125 of the *Child Support (Registration and Collection) Act 1988* which provides, in part, that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing all matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 98(1) of the *Civil Aviation Act 1988* which provides, in part, that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing matters required or permitted by [that] Act to be prescribed, or prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 395 of the *Commonwealth Electoral Act 1918* which provides, in part, that the Governor-General may make regulations not inconsistent with [that] Act prescribing all matters which by [that] Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to [that] Act.
- Subsection 249(1) of the *Copyright Act 1968* which provides, in part, that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing

all matters that are required or permitted by [that] Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.

- Section 91 of the *Crimes Act 1914*, which provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to [that] Act.
- Subsection 270(1) of the *Customs Act 1901* which provides, in part, that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing all matters which by [that] Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to [that] Act.
- Subsection 520(1) of the *Environment Protection and Biodiversity Conservation Act 1999*, which provides that the Governor-General may make regulations prescribing all matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 164 of the *Excise Act 1901* which provides, in part, that the Governor-General may make regulations not inconsistent with [that] Act prescribing all matters which by [that] Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to [that] Act.
- Section 21 of the *Explosives Act 1961*, which provides that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing all matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 168(1) of the *Fisheries Management Act 1991*, which provides that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing all matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed in carrying out or giving effect to [that] Act.
- Subsection 43(1) of the *Imported Food Control Act 1992*, which provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by [that] Act, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 224(1) of the *Law Enforcement Integrity Commissioner Act 2006*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 209(1) of the *Maritime Transport and Offshore Facilities Security Act 2003*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.

- Subsection 504(1) of the *Migration Act 1958* which provides, in part, that the Governor General may make regulations, not inconsistent with [that] Act, prescribing all matters which by [that] Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 42 of the *Motor Vehicle Standards Act 1989* which provides, in part, that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 95 of the *National Health Security Act 2007*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 52 of the *National Transport Commission Act 2003*, which provides that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing all matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 339(1) of the *Navigation Act 2012*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 76 of the *Olympic Insignia Protection Act 1987*, which provides that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 13 of the *Overseas Missions (Privileges and Immunities) Act 1995*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 30(1) of the *Primary Industries Levies and Charges Collection Act 1991*, which provides that the Governor-General may make regulations not inconsistent with [that] Act, prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 111 of the *Product Stewardship Act 2011*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 79(1) of the *Public Service Act 1999*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.

- Subsection 87(1) of the *Quarantine Act 1908*, which provides, in part, that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing all matters which by [that] Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 12 of the *Quarantine Charges (Imposition-Customs) Act 2014*, which provides that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 18 of the *Taxation Administration Act 1953* which provides, in part, that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing all matters which by [that] Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to [that] Act.
- Section 300 of the *Telecommunications (Interception and Access) Act 1979*, which provides that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing matters required or permitted by [that] Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 63(1) of the *Therapeutic Goods Act 1989*, which provides that the Governor-General may make regulations, not inconsistent with [that] Act, prescribing matters required or permitted to be prescribed by [that] Act, or necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Subsection 60(1) of the *Torres Strait Fisheries Act 1984* which provides, in part, that the Governor-General may make regulations, not inconsistent with [that] Act prescribing matters required or permitted by [that] Act to be prescribed, or prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.
- Section 231(1) of the *Trade Marks Act 1995* which provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by [that] Act to be prescribed, or prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to [that] Act.

Details of the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015*

Section 1 – Name

This section provides that the title of the legislative instrument is the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015* (the Amendment Regulation).

Section 2 – Commencement

This section sets out the date, in which items in the Amendment Regulation are to commence.

Subsection 2(1) provides that, each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms. Relevantly, the note under the table explains that this table only relates to the provisions of the Amendment Regulation as originally made and that it will not be amended to deal with any later amendments of that Regulation.

Table item 1 of the table under subsection 2(1) provides for sections 1 to 4 and anything in the Amendment Regulation, and not elsewhere covered by this table, to commence on the day after that Regulation is registered.

Table item 2 of the table under subsection 2(1) provides for Schedule 1 and 2 to commence at the same time as the *Australian Border Force Act 2015* (the Australian Border Force Act) commences. The Australian Border Force Act commences on 1 July 2015.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

Section 3 – Authority

This section sets out the list of Commonwealth Acts that authorise the making of the provisions contained in the Amendment Regulation.

Section 4 – Schedule(s)

This section provides that, each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

The purpose of this section is to provide for how amendments and transitional and saving provisions in this Amendment Regulation are to operate.

SCHEDULE 1 – AMENDMENTS OF THE CUSTOMS REGULATION 2015

This Schedule provides for consequential amendments to the *Customs Regulation 2015* (the Customs Regulation) resulting from the enactment of the Australian Border Force Act and the supporting *Customs and Other Legislation Amendment (Australian Border Force) Act 2015* (the COLA Act).

The enactment of the Australian Border Force Act and the COLA Act follows the Government’s decision to integrate functions of the Australian Customs and Border Protection Service (the ACBPS) into the Department of Immigration and Border Protection (the Department), to abolish the ACBPS and to establish the Australian Border Force.

The Australian Border Force Act gives effect to the Government’s decision by providing for the legislative basis for the standing up of the Australian Border Force within the Department and the establishment of the statutory office of the Australian Border Force Commissioner. In particular, the Australian Border Force Act provides for the Australian Border Force Commissioner to also be the Comptroller-General of Customs during the period in which he or she is appointed as the Commissioner.

Similarly, the COLA Act gives effect to the Government’s decision by repealing the *Customs Administration Act 1985* (the Customs Administration Act), which establishes the ACBPS as a Statutory Agency and the statutory office of the Chief Executive Officer of Customs (the CEO). The COLA Act also amends various Commonwealth Acts to confer on the Comptroller-General of Customs all customs related functions and powers that were conferred on the CEO.

Consistent to the latter amendments made by the COLA Act, this Schedule makes consequential amendments to the Customs Regulation to ensure that relevant prescribed functions and powers can be exercised and performed by the Australian Border Force Commissioner in his or her capacity as the Comptroller-General of Customs.

Accordingly, as the ACBPS and the statutory office of the CEO are abolished by operation of Schedule 2 to the COLA Act, all references to “Customs” and “CEO” in the Customs Regulation are redundant. The reference to “Customs” is redundant because it is expressed in the Customs Regulation to incorporate the ACBPS.

This Schedule also amends the Customs Regulation to replace those redundant references and expressions with more appropriate references and expressions under the new integrated organisational arrangements.

Customs Regulation 2015

Item 1

Section 4 of the Customs Regulation contains defined terms and expressions that are used throughout that Regulation.

The purpose of this amendment is to insert a definition of “Australian Border Force” for the purposes of the provisions as amended by items 5 to 10 of this Schedule below. The

“Australian Border Force” has the same meaning as in the Australian Border Force Act and means that part of the Department known as the Australian Border Force.

Items 2 and 3

The term “customs document” in section 4 of the Customs Regulation is defined to mean a document that are given, issued, or kept by Customs or any officer, or produced or delivered to Customs or any officer.

The purpose of these amendments is to replace the redundant references to “Customs” with a reference to “the Department”. The reference to “the Department” is appropriate because the Department administers the Customs Regulation.

These amendments have the effect of maintaining the scope of the function that is to be performed under the definition “customs documents” because the performance of that function is limited to purposes of the Customs Acts. The term “Customs Acts” is defined in section 4 of the *Customs Act 1901* (the Customs Act).

Item 4

The term “Customs flag” was defined under the Customs Regulation to be the prescribed flag used by “Customs”.

With the abolition of the ACBPS, the prescribed flag is to be used by the Australian Border Force under the new integrated organisational arrangements. As such, the definition of “Customs flag” is redundant and is repealed.

The repeal of this definition does not affect the use of the prescribed flag by the Australian Border Force because the Australian Border Force is not a separate entity, but rather a part of the Department (section 4(1) of the Australian Border Force Act refers).

Accordingly, other provisions in the Customs Regulation relating to the use of the prescribed flag are also amended by items 5 to 10 of this Schedule to reflect the use of that flag by the Australian Border Force.

Items 5 to 10

Sections 7 and 8 of the Customs Regulation prescribe the ensign and insignia displayed on aircrafts, and ships, in the service of the ACBPS, including the Customs flag. Relevantly, section 11 of the Customs Regulation sets out the design of the prescribed Customs flag.

As noted in item 4 above, the Australian Border Force will, under the new integrated organisational arrangement, use the prescribed flag. The amendments contained in these items are technical and are to reflect the design, and the use, of the prescribed flag by the aircrafts and ships in the service of the Australian Border Force.

These amendments do not change the overall design of the prescribed flag and are consequential to the amendments made by item 40 in Part 1 of the Schedule 1 to the COLA Act.

Items 11 to 16

Subsection 12(1) of the Customs Regulation prescribes the days on which, and the hours on those days between which, officers of Customs are to be available to perform a specified function in every State or Territory or otherwise than in a specified State or Territory. The table under subsection 12(1) sets out the specified functions that are to be performed by officers of Customs.

The purpose of these amendments is to replace the redundant references to “Customs” with more appropriate references under the new integrated organisational arrangements, being the Department or an officer of Customs. These references are more appropriate because they refer to the Agency or person that can perform the relevant function prescribed for the purposes of the Customs Acts.

These amendments have the effect of maintaining the scope of functions that are to be performed because the performance of those functions is limited to purposes of the Customs Acts.

Items 17 and 18

Subsection 12(2) of the Customs Regulation relevantly defines the term “Customs place” to include a place owned or occupied by Customs, and a place that is approved, in writing, by the CEO as a place for the examination of international mail.

The purpose of these amendments is to replace the redundant references to “Customs” and “CEO” with appropriate references that reflect the new integrated organisational arrangements.

In the context of paragraph 12(2)(a), the reference to “the Commonwealth for the use of purposes of the Customs Acts” is the appropriate reference because it maintains the use of relevant places by the Department.

In the context of paragraph 12(2)(f), item 18 provides for the place approved by the Minister for the examination of international mail to be the places specified by the Minister in the instrument in writing under subsection 183UA(2) of the Customs Act.

These amendments do not change the scope of the provisions amended, and are consistent with the amendments made by items 634, 635 and 638 in Part 1 of Schedule 1 to the COLA Act.

Items 19, 24 and 59

These items omit references to “Customs” in subsections 13(4) and 69(1), and paragraph 123(5)(a) of the Customs Regulation and substitute them with “the Commonwealth”.

The purpose of these amendments is to replace the redundant references to “Customs” with a reference to “the Commonwealth”, which is more appropriate because the context in which “Customs” was previously expressed relates to matters that were dealt with by the ACBPS on behalf of the Commonwealth.

Items 20, 23, 25, 26, 28, 30, 31, 33, 39, 40, 42, 46, 47, 48, 54, 55, 57, 60 and 62

These items omit references to “Customs” in the provisions, under Table A, of the Customs Regulation and where appropriate substitute them with “the Department”. Some references are removed because they are no longer necessary.

Table A

24(2)	59(1)(d)(i)	71 (heading)	80(5)(b)
82(a)	83(2)	83(3)	83(4)(b)
91(2)	91(3)(a)	91(5)	107(3) (note)
108 (heading)	108	110(1)	111(4)(a)
123	132(b)	137(2)(g)(ii)	

Similar to the amendments at item 2 and 3, the purpose of these amendments is to replace redundant references to “Customs” with a reference to “the Department”. The reference to “the Department” is the appropriate reference because the provisions above relate to matters that are to be dealt with by the Agency that administers the Customs Regulation, and the Department is that Agency.

These amendments do not change the functions performed or the powers exercised as prescribed in the relevant provision, but operates to enable the Department (or an officer of the Department) to perform those functions or exercise those powers.

These amendments are subsequent to the integration of customs functions into the Department, and to similar amendments made by Part 1 of Schedule 1 to the COLA Act.

Items 21, 27, 29, 34, 35, 36, 37, 41, 49, 56, 74 and 75

These items omit references to “Customs” in the provisions, under Table B, of the Customs Regulation and substitute them with “a Collector”.

Table B

30	31	82	83(1)
84(3)(b)	84(3) (table item 1, column headed “Circumstance”)	84(3) (table item 2, column headed “Particulars”)	85(3)(a)
91(3)(a)	91(3)(b)	108	111(4)(b)(ii)
Clause 1 of Schedule 4 (table item 2, column headed “Circumstance”)	Clause 1 of Schedule 4 (table item 3, column headed “Particulars”)		

The purpose of these amendments is to replace redundant references to “Customs” with a reference to “Collector”. The reference to “Collector” is the appropriate reference because the Collector is a natural person who can exercise powers and perform functions as prescribed in the provisions above.

The amendments do not change the function performed or the powers exercised as prescribed in the relevant provision, but operates to enable a Collector to perform those functions or exercise those powers.

These amendments are subsequent to the integration of Customs' functions into the Department, and to similar amendments made by Part 1 of Schedule 1 to the COLA Act.

Item 22

Section 33 of the Customs Regulation concerns the travelling expenses and circumstances for paying those expenses to a Collector travelling to and from a depot for the purpose of section 77N(3) of the Customs Act. In particular, subsection 33(1) clarifies that the travel is for more than 40 kilometres, by the most direct convenience route, from the nearest "Customs office".

The reference to "Customs office" in this context refers to Customs in its capacity as an entity (being the ACBPS) to lease and hold property. This capacity is no longer appropriate and is replaced with a "place owned and occupied by the Commonwealth for the purposes of the Customs Acts".

This amendment is subsequent to the integration of customs functions into the Department, and to amendments made by item 634 in Part 1 of Schedule 1 to the COLA Act.

Item 32, 44, 45 and 72

These are technical amendments to allow for information to be published on the Department's website, and do not change the scope of the function performed by the Department under the relevant provisions.

Amended paragraph 83(3)(b) of the Customs Regulation operates to enable export entry advice to be given at a place so allocated by a notice published on the Department's website.

Amended subparagraph 107(2)(e)(ii) of the Customs Regulation operates to enable applications for a refund, rebate or remission of duty to be left at a place so designated by a notice published on the Department's website.

Amend paragraph 148(1)(b) of the Customs Regulation operates to enable a notice of a Collector's sale to be published on the Department's website.

These amendments are necessary because references to "Customs Office" and "Customs House" are redundant as a result of the repeal of the Customs Administration Act.

Items 38, 50, 51, 52, 58, 77, 78, 79 and 80

These items omit references to "control of Customs" in the provisions, under Table C, of the Customs Regulation and substitute them with "customs control under the Act" or a similar reference.

Table C

90(2)(b)	109(1)	109(2) (table items 1 and 2, column headed “Period for making application”)	109(3)
123(4)	Clause 1 of Schedule 6 (table item 1, column headed “Circumstances”, paragraph (b))	Clause 1 of Schedule 6 (table item 2, column headed “Circumstances”)	Clause 1 of Schedule 6 (table item 3, column headed “Circumstances”, paragraph (a))
Clause 1 of Schedule 6 (table item 3, column headed “Circumstances”, paragraph (b))	Clause 1 of Schedule 6 (table item 4, column headed “Circumstances”, paragraph (c))		

The expression “the control of Customs” refers to the ACBPS established under the Customs Administration Act. The new terminology will be customs control under the Customs Act. The circumstances in which goods are subject to customs control will still be set out in section 30 of the Customs Act and these circumstances remain unchanged.

These amendments are subsequent to the integration of Customs’ function into the Department, and to amendments made by items in Part 1 of Schedule 1 to the COLA Act.

Item 43

This is a technical amendment to ensure the ongoing operation of the requirement in paragraph 92(2)(a) of the Customs Regulation that, shipment of goods in the form of baggage accompanying or intended to accompany a passenger on a ship or aircraft, must be taken through Customs personally by a passenger on departure from Australia.

This amendment does not change the scope of the requirement under paragraph 92(2)(a), but rather emphasises that the requirement relates to those goods that are carried personally by a passenger on departure from Australia.

Items 53, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71 and 76

These items omit references to “CEO” in the provisions, under Table D, of the Customs Regulation and substitute them with “Comptroller-General of Customs” or a similar reference.

Table D

109(6)	134(1)(b)	137(3)(b)	137(6)(c)
138(4)(b)	139(1)	139(2)	139(3) (heading)
139(3)	139(4)	139(5)	139(5)(b)(ii)
139(6) (heading)	139(6)	140(1)	140(3)

140(4)	140(7)	Clause 1 of Schedule 4 (table item 10, column headed "Circumstance", paragraphs (a) and (b))	
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The purpose of these amendments is to replace redundant references to "CEO" with a reference to "the Comptroller-General of Customs". The reference to "Comptroller-General of Customs" is the appropriate reference because he or she has the administration of the Customs Act (section 7 of the Customs Act refers).

These amendments do not change the scope in which relevant prescribed functions and powers are to be performed and exercised, and are subsequent to amendments made by Part 1 of Schedule 1 to the COLA Act, in particular items 7, and 26.

Item 73

The purpose of this amendment is to set out the saving, and transitional, provisions required to maintain and ensure that matters administered by Customs as a Statutory Agency, or those matters that were dealt with by the CEO continues in force, or deemed to be dealt with by the Department, a Collector, and the Comptroller-General of Customs, on 1 July 2015.

This item also contains other transitional provisions to ensure that other amendments made by this Schedule do not affect the continued operation of amended regulations.

Example 1:

New subsection 154(2) provides that the reference in paragraph (f) of the definition of "Customs place" in subsection 12(2) of the Customs Regulation to an instrument under subsection 183UA(2) of the [Customs] Act is a reference to such an instrument in force on or after 1 July 2015 (whether the instrument was made before, on or after that day).

This new subsection ensures that the amendments made by items 17 and 18 of Schedule 1 to the Amendment Regulation do not affect the continued operation of amended regulations.

Example 2:

New subsection 154(3) provides that an accommodation allowance paid before 1 July 2015 to an officer by Customs as mentioned in subsection 13(4) of the Customs Regulation is taken on and after that day to have been an accommodation allowance paid to the officer by the Commonwealth.

The ACBPS as established by section 4 of the Customs Administration Act previously paid accommodation allowance on behalf of the Commonwealth to officer of Customs whose performance of duties engaged the operation of section 13 of the Customs Regulation. The new subsection enables relevant payments to be paid on and after 1 July 2015 by the Department on behalf of the Commonwealth.

SCHEDULE 2-AMENDMENTS OF OTHER REGULATIONS

This Schedule provides for consequential amendments to various subordinate legislation of the Commonwealth resulting from the enactment of the Australian Border Force Act and the supporting the COLA Act.

Similar to the amendments made by Schedule 1 above, Schedule 2 amends various Commonwealth Regulations to enable the Comptroller-General of Customs to exercise customs related powers and perform customs related functions under those Regulations.

A New Tax System (Goods and Services Tax) Regulations 1999

Items 11 to 21

The provisions amended by items 1 to 19 and 21 contain references to customs related terms in the *A New Tax System (Goods and Services Tax) Regulations 1999* (the Goods and Services Tax Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Goods and Services Tax Regulations.

Item 11 repeals the heading of regulation 33-15.06 in the Goods and Services Tax Regulations and substitutes with a new heading that does not refer to “Customs”.

Items 2 to 9 substitute references to “Chief Executive Officer” and “Chief Executive Officer of Customs” in the relevant provisions with “Comptroller-General of Customs”. The new definition of “Comptroller-General of Customs” is inserted into the Goods and Services Tax Regulations by item 21 below.

These amendments do not change the scope of the customs related functions and powers prescribed in the Goods and Services Tax Regulations, but rather have the effect of enabling the Comptroller-General of Customs to perform those functions and exercise those powers so prescribed.

Item 10 repeals clause 2 of Schedule 5 to the Goods and Services Tax Regulations and substitutes a new clause. The new clause will provide for the sealed bag arrangement to be administered by the Australian Taxation Office and the Department, instead of the ACBPS. The arrangement will apply on 1 July 2015 (see item 20 below).

Items 11 to 14 and 16 to 19 omit references to “Customs barrier” in relevant provisions and substitute them with “customs barrier”. These are technical amendments so that “customs” is expressed as the customs function, and do not change the scope of the functions and powers prescribed in those provisions.

Item 15 amends the relevant provision Schedule 5 so that a passenger can present himself or herself to a natural person to satisfy the requirements set out in that provision.

Item 20 inserts saving, and transitional, provisions into Schedule 15 of the Goods and Services Tax Regulations. The purpose and effect of these provisions is to ensure that arrangements agreed to by the Chief Executive Officer of Customs, and authorisations in

force before 1 July 2015 continues in force after that day, and also for other ongoing matters to be transitioned from the Chief Executive Officer of Customs (or a person authorised by the Chief Executive Officer) to the Comptroller-General of Customs (or a person authorised by the Comptroller-General), after the commencement of the sections as inserted by this item into the Goods and Services Tax Regulations.

Item 21 inserts a new definition of “Comptroller-General of Customs” into the Dictionary of the Goods and Services Tax Regulation for the purposes of the provisions as amended by items 2 to 9.

Australian Postal Corporation Regulations 1996

Items 22 to 30

The provisions amended by these items contain references to customs related terms in the *Australian Postal Corporation Regulations 1996* (the Australian Postal Corporation Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Australian Postal Corporation Regulations with terms, which are consistent with the term that is expressed in section 90E of the *Australian Postal Corporation Act 1989*.

The amendments in items 22 to 26 and 28 to 30 are consequent to those amendments made by items 13, 15, 17, 18, 19 and 20 of Schedule 5 to the COLA Act, which in effect expresses “customs officer” as an officer exercising customs functions or performing customs functions.

Item 27 is a technical amendment to reflect the repeal of the Customs Administration Act by Schedule 2 of the COLA Act and the resulting abolition of the ACBPS.

Australian Sports Anti-Doping Authority Regulations 2006

Items 31 and 32

The reference to “Australian Customs Service” in paragraph 4.21(2)(c) of Schedule 1 to the *Australian Sports Anti-Doping Authority Regulations 2006* is redundant.

The purpose of item 32 is to replace the reference to “Customs” with “Department administered by the Minister administering Part XII of the *Customs Act 1901*”. The new reference distinguishes the Department from the Department of Industry and Science, which administers parts of the Customs Act.

Relevantly, item 31 provides a transitional provision for information, documents or things disclosed to the Australian Customs Services under subclause 4.21(2) of Schedule 1 before 1 July 2015 are taken and after that day to have been information, documents or things disclosed to the Department administered by the Minister administering Part XII of the Customs Act.

Aviation Transport Security Regulations 2005

Items 33 to 71

The provisions amended by items 33 to 70 contain references to customs related terms in the *Aviation Transport Security Regulations 2005* (the Aviation Transport Security Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Aviation Transport Security Regulations.

Item 33 repeals the definition of “Customs and Border Protection” in regulation 1.03 of the Aviation Transport Security Regulations.

Items 34 and 35 are technical amendments to reflect the new definition of “officer of Customs” in the Customs Act which, amongst other cohorts, also includes the combined APS employees in the Department after the integration of the ACBPS. Amendments contained in items 36 to 42 are subsequent to those made by items 34 and 35.

Item 43 inserts a new definition of “Comptroller-General of Customs” into subregulation 6.01(1) of the Aviation Transport Security Regulations because the Comptroller-General of Customs has, under amended section 7 of the Customs Act, general administration of that Act. This amendment is necessary to support the amendments in items 44 to 70 below.

Items 44 to 70 omit references to “Customs and Border Protection” in the relevant provisions of the Aviation Transport Security Regulations and substitutes them with “Comptroller-General of Customs”. In effect, these amendments replaces the “Customs and Border Protection” with the “Comptroller-General of Customs” as an issuing authority of Aviation Security Identification Cards (ASICs).

These amendments do not change the scope of the functions, and powers, prescribed in the relevant provisions, but enable the Comptroller-General of Customs to exercise those powers and perform those functions.

Item 71 inserts a transitional provision into the Aviation Transport Security Regulations such that:

- a thing done by, or in relation to, the Australian Customs and Border Protection Service under these Regulations before 1 July 2015 has effect on and after that day as if it had been done by, or in relation to, the Comptroller-General of Customs; and
- without limiting subregulation 10.01(1), if an ASIC program was in force in relation to the Australian Customs and Border Protection Service immediately before 1 July 2015, then, on and after that day, the program is taken to be in force in relation to the Department administered by the Minister administering Part XII of the *Customs Act 1901*.

Carriage of Goods by Sea Regulations 1998

Item 72

This item omits the reference to the term “Chief Executive Officer of Customs” in paragraph 4(a) of Article 1 in the Schedule of modification to the *Carriage of Goods by Sea Regulations 1998* (which amends the *Carriage of Goods by Sea Act 1991*) and substitutes with “Comptroller-General of Customs”.

Child Support (Registration and Collection) Regulations 1988

Item 73

This item repeals and substitutes paragraph 5F(a) of the *Child Support (Registration and Collection) Regulation 1988*. The substituted provision refers to the “Comptroller-General of Customs (within the meaning of the *Customs Act 1901*)” instead of the “Chief Executive Officer of Customs”.

Civil Aviation Safety Regulations 1998

Item 74

This item repeals and substitutes paragraph 92.160(2)(b) of the *Civil Aviation Safety Regulations 1998*. The substituted provision refers to the “Australian Border Force (within the meaning of the *Australian Border Force Act 2015*)” instead of the “Australian Customs Service”.

Copyright Regulations 1969

Items 75 to 79

The provisions amended by items 75 to 77 contain references to customs related terms in the *Copyright Regulations 1969* (the Copyright Regulations).

The purpose of these amendments is to replace all references to “the CEO” in the Copyright Regulations with the “Comptroller-General of Customs”.

Items 75 and 77 omit references to “CEO” in the relevant provisions of the Copyright Regulations and substitute with “Comptroller-General of Customs”. In addition, item 76 repeals the note under subregulation 21(2) of the Copyright Regulations as it is redundant.

Items 78 and 79, together, provide for a transitional provision such that:

- a direction given by the CEO under subregulation 21(1) and in force immediately before 1 July 2015 continues in force on and after that day under that subregulation as if it had been given by the Comptroller-General of Customs; and
- an instrument in force under subregulation 22B(1) immediately before 1 July 2015 has effect on and after that day as if it were an instrument of the Comptroller-General of Customs in force under that subregulation.

Crimes Regulations 1990

Item 80

This item repeals and substitutes the cell at column 2 of table item 4 in Schedule 4 to the *Crimes Regulations 1990*. The substituted cell refers to the “Australian Border Force Commissioner (within the meaning of the *Australian Border Force Act 2015*) or the Secretary of the Department administered by the Minister administering Part XII of the *Customs Act 1901*” to be instead of “the Australian Customs Service”.

In this context, it is appropriate to refer to a natural person who will be able to perform relevant functions prescribed, being the “Australian Border Force Commissioner” or the “Secretary of the Department administered by the Minister administering Part XII of the *Customs Act 1901*”. This reference is necessary to distinguish the Department from the Department of Industry and Science, which administers parts of the Customs Act.

Customs (International Obligations) Regulation 2015

Items 81 to 90

The provisions amended by items 81 to 89 contain references to customs related terms in the *Customs (International Obligations) Regulation 2015* (the Customs International Obligation Regulation).

The purpose of these amendments is to replace redundant customs related terms in the Customs International Obligation Regulation.

Items 81 and 82 contain amendments that replaces the reference to “Customs office” for the purpose of allowing applications for refund, rebate or other remission of duty under the Customs International Obligations Regulation to be left at a place designated for the lodgement of applications for these matters by notice published on the Department’s website.

Items 83 to 85 substitute references to “Customs” in the relevant provisions of the Customs International Obligation Regulation with “the Department”. The purpose of these amendments is to reflect the integration of the relevant functions into the Department.

Similarly, item 86 omits a reference to “Customs” in section 27 of the Customs International Obligation Regulation and substitutes with a more appropriate reference to “a Collector” whom can perform the relevant function and transmit electronic messages to applicants. The term “Collector” is defined in amended section 8 of the Customs Act.

Item 87 amends subsection 28(1) of the Customs International Obligation Regulation so that the relevant “control” is expressed as a customs function. The expression “customs control” is consistent with similar amendments made by the COLA Act.

Item 88 omits the reference to “CEO” in subsection 28(3) of the Customs International Obligation Regulation and substitutes with “Comptroller-General of Customs”.

Item 89 is a technical amendment and is consistent with the amendment made by item 582 in Part 1 of Schedule 1 to the COLA Act.

Item 90 inserts a transitional provision into the Customs International Obligations Regulation such that:

- an application left in accordance with subparagraph 26(2)(e)(ii) before 1 July 2015 is taken on and after that day to have been an application left in accordance with that subparagraph as amended by the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015*; and
- an electronic message transmitted by Customs before 1 July 2015 as mentioned in section 27 is taken on and after that day to have been an electronic message transmitted by a Collector.

Customs (Prohibited Exports) Regulations 1958

Items 91 to 94

The provisions amended by items 91 to 93 contain references to customs related terms in the *Customs (Prohibited Exports) Regulations 1958* (the Customs Prohibited Exports Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Customs Prohibited Exports Regulations.

Items 91 to 93 substitute references to “CEO” in the relevant provisions of the Customs Prohibited Exports Regulations with “Comptroller-General of Customs”.

Item 94 inserts a transitional provision into the Customs Prohibited Exports Regulations such that:

- the amendment of regulation 10B made by the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015* applies in relation to licences granted under regulation 10A before, on or after 1 July 2015; and
- a requirement made by the CEO before 1 July 2015 as mentioned in paragraph 10B(1)(c) or (e) that had not been complied with before that day is taken on and after that day to have been a requirement made by the Comptroller-General of Customs.

Customs (Prohibited Imports) Regulations 1956

Items 95 to 101

The provisions amended by items 95 to 98, 100 and 101 contain references to customs related terms in the *Customs (Prohibited Imports) Regulations 1956* (the Customs Prohibited Imports Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Customs Prohibited Imports Regulations.

Items 95, 98, 100 and 101 omit references to “CEO” in the relevant provisions and substitute with “Comptroller-General of Customs”.

Items 96 and 97 amend subregulations 4B(2) and 4BA(1) of the Customs Prohibited Imports Regulations so that the relevant “control” is expressed as a customs function. The expression “customs control” is consistent with similar amendments made by the COLA Act.

Item 99 inserts a transitional provision into the Customs Prohibited Imports Regulations such that:

- the amendment of regulation 5 made by the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015* applies in relation to licences granted under regulation 5 before, on or after 1 July 2015;
- a direction given by the CEO under paragraph 5(9)(b) and in force immediately before 1 July 2015 continues in force on and after that day under that paragraph as if it had been given by the Comptroller-General of Customs;
- a requirement made by the CEO before 1 July 2015 as mentioned in paragraph 5(9)(e) that had not been complied with before that day is taken on and after that day to have been a requirement made by the Comptroller-General of Customs;
- an application under subitem 5.8 of Part 3 of Schedule 6 that is pending immediately before 1 July 2015 is taken on and after that day to be an application to the Comptroller-General of Customs;
- a certificate issued by the CEO under subitem 5.10 of Part 3 of Schedule 6 and in force immediately before 1 July 2015 continues in force on and after that day under that subitem as if it had been issued by the Comptroller-General of Customs; and
- if before 1 July 2015 a person had informed the CEO of a change in the person’s circumstances as mentioned in subitem 5.11 of Part 3 of Schedule 6, then on and after that day the person is taken to have informed the Comptroller-General of Customs of the change.

Electoral and Referendum Regulations 1940

Items 102 and 103

These are technical amendments to reflect the integration of customs functions into the Department and do not change the scope and the purposes in which the information on the rolls given to the Secretary of the integrated Department, as the prescribed authority, may be used.

The Electoral Commissioner may now disclose information on the rolls to the Secretary to check the accuracy of other information which is received by the Department or a Collector (within the meaning of the *Customs Act 1901*).

Environment Protection and Biodiversity Conservation Regulations 2000

Items 104 to 107

The provisions amended by these items contain references to customs related terms in the *Environment Protection and Biodiversity Conservation Regulations 2000* (the EPBC Regulation).

The purpose of these amendments is to replace redundant references in the EPBC Regulation.

Items 104 and 105 omit references to “a Customs Officer” in the relevant provisions with “an officer of Customs”. These amendments do not change the scope of the prescribed functions and powers being exercised or performed under regulation 12.61 of this regulation, but enable those functions or powers to be performed or exercised by an “officer of Customs” as amended by item 14 in Part 1 of Schedule 1 to the COLA Act.

Items 106 and 107 remove the “Australian Customs Service” and the “ACBPS” as an Agency and body that identifying information may be disclosed to. No further amendments are required because the Department is already provided in the relevant provisions.

Excise Regulation 2015

Items 108 and 109

The provisions amended by these items contain references to customs related terms in the *Excise Regulation 2015* (the Excise Regulation).

The purpose of these amendments is to replace redundant customs related terms in the Excise Regulation.

Item 108 omits the reference to “Customs” in subparagraph 47(1)(d)(i) of the Excise Regulation with “the Department administered by the Minister administering Part XII of the *Customs Act 1901*”. This reference is to distinguish the Department from the Department of Industry and Science, which administers parts of the Customs Act.

Item 109 amends table item 7 in the table under clause 2 of Schedule 1 to the Excise Regulation so that the reference to “customs” is expressed as a reference to the customs function.

Explosives Transport Regulations 2002

Items 110 to 115

The provisions amended by items 110 to 114 contain references to customs related terms in the *Explosive Transport Regulations 2002* (the Explosives Transport Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Explosives Transport Regulations.

Item 110 amends paragraph 9(1)(f) of the Explosives Transport Regulations to express “customs” as a reference to the customs function.

Items 111 and 112 amends the definition of “Commonwealth agency” under subsection 26(3) of the Explosives Transport Regulations to repeal paragraph (a), which refers to “Australian Customs and Border Protection Service” and inserts a new paragraph (ca), which refers to “the Department administered by the Minister administering Part XII of the *Customs Act 1901*”. The use of this reference is to distinguish the Department from the Department of Industry and Science, which administers parts of the Customs Act.

Similarly, items 113 and 114 amends note 3 under subsection 27(2) of the Explosives Transport Regulations to omit the reference to “Australian Customs and Border Protection Service” and insert a reference to “the Department administered by the Minister administering Part XII of the *Customs Act 1901*”.

Item 115 inserts a transitional provision after Part 5 of the Explosive Transport Regulations so that an approved security plan of the Australian Customs and Border Protection Service that was in force under regulation 26 immediately before 1 July 2015 continues in force on and after that day as if it were an approved security plan of the Department administered by the Minister administering Part XII of the Customs Act.

Fisheries Management Regulations 1992

Items 116 to 118

The provisions amended by these items contain references to customs related terms in the *Fisheries Management Regulations 1992* (the Fisheries Management Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Fisheries Management Regulations.

Items 116 and 118 repeal and substitutes paragraphs 19J(b) and 19M(b) of the Fisheries Management Regulations. The new substituted paragraphs refer to the “Department administered by the Minister administering Part XII of the *Customs Act 1901*” instead of the “Australian Customs Service”. This reference is to distinguish the Department from the Department of Industry and Science, which administers parts of the Customs Act.

Item 117 repeals table item 3 in the table under section 19K of the Fisheries Management Regulations and does not replace it with another body because the Department is already listed in that table.

These amendments do not change the scope of the relevant provisions.

Hong Kong Economic and Trade Office (Privileges and Immunities) Regulation 1996

Items 119 and 120

The *Hong Kong Economic and Trade Office (Privileges and Immunities) Regulations 1996* (the HKETO Regulation) contain references to “Customs”, which are now redundant.

Item 119 omits the reference to “Minister responsible for Customs” in the definition of authorised person under subsection 2(1) of the HKETO Regulation and substitute with “Minister administering Part XII of the *Customs Act 1901*”. This reference is necessary to distinguish the Department from the Department of Industry and Science, which administers parts of the Customs Act.

Item 120 inserts a saving provision and a transitional provision into the HKETO Regulation such that:

- the amendments of these Regulations made by the *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015* do not affect the validity of any thing done by an authorised person under these Regulations before 1 July 2015; and
- an authorisation in force under paragraph (b) of the definition of authorised person in subregulation 2(1) immediately before 1 July 2015 continues in force on and after that day as if it were an authorisation by the Minister administering Part XII of the *Customs Act 1901*.

Imported Food Control Regulations 1993

Items 121 and 122

The provisions amended by these items contain references to customs related terms in the *Imported Food Control Regulations 1993* (the Imported Food Control Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Imported Food Control Regulations.

Item 121 repeals the definition of “Customs” in subregulation 3(1) of the Imported Food Control Regulations.

Item 122 omits references to “Customs” in the relevant provisions of the Imported Food Control Regulations and substitutes with “an officer of Customs”. This is because the reference to “Customs” in section 14 of the Imported Food Control Regulations concerns a function that is performed automatically by a Customs computer and section 126H of the Customs Act deems the obligation to provide information in accordance with section 14 of the Imported Food Control Regulations to have been done by an officer of Customs. This amendment does not change the scope of the relevant function.

Law Enforcement Integrity Commissioner Regulations 2006

Items 123 to 126

The provisions amended by these items contain references to customs related terms in the *Law Enforcement Integrity Commissioner Regulations 2006* (the LEIC Regulations).

The purpose of these amendments is to replace redundant customs related terms in the LEIC Regulations.

Items 123, 124 and 126 repeal regulations 3, 4, 6, and 9 of the LEIC Regulations because these provisions refer to the ACBPS and the statutory office of the CEO of Customs.

Item 125 omits the reference to “ACBPS” in the definition of “Integrated Cargo System” under subregulation 8(2) of the LEIC Regulations and substitutes with “Immigration and Border Protection Department” to reflect the administration of the Integrated Cargo System by the Department. This amendment does not change the scope in which the Integrated Cargo System is accessed under the LEIC Regulations.

Maritime Transport and Offshore Facilities Security Regulations 2003

Items 127 to 131

The provisions amended by items 127 to 130 contain references to customs related terms in the *Maritime Transport and Offshore Facilities Security Regulations 2003* (the MTOFS Regulations).

The purpose of these amendments is to replace redundant customs related terms in the MTOFS Regulations.

Items 127 and 129 omit references to “Australian Customs Service officers” in the example provided in paragraphs 6.05(1)(c) and 7.05(1)(c) of the MTOFS Regulations and substitute with “customs officers”. This term is defined in the *Maritime Transport and Offshore Facilities Security Act 2003* to mean an officer within the meaning of the Customs Act.

Item 128 inserts a new paragraph (e) into subregulation 6.07O of the MTOFS Regulations, which enables the Comptroller-General of Customs to apply to the Secretary of the Department administering the MTOFS Regulations to be authorised as an “issuing body” for the purposes of “Maritime Security Identification Card” (MSIC). The term “issuing body” is defined 6.07B of the MTOFS Regulations.

Item 130 is a technical amendment to refer to the correct cohort of persons in accordance with the new organisational arrangements within the Department.

Item 131 inserts a transitional provision into the MTOFS such that:

- a thing done by, or in relation to, the Australian Customs and Border Protection Service under these Regulations before 1 July 2015 has effect on and after that day as if it had been done by, or in relation to, the Comptroller-General of Customs;
- without limiting subclause 102(1), if the Australian Customs and Border Protection Service was an issuing body under Division 6.1A of Part 6 of these Regulations immediately before 1 July 2015, then, on and after that day, the Comptroller-General of Customs is taken to be an issuing body under that Division; and
- without limiting subclause 102(1), if an MSIC plan was in force in relation to the Australian Customs and Border Protection Service immediately before 1 July 2015, then, on and after that day, the plan is taken to be in force in relation to the Immigration and Border Protection Department.

Migration Regulations 1994

Items 132 to 138

The provisions amended by these items contain references to customs related terms in the *Migration Regulations 1994* (the Migration Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Migration Regulations.

Item 132 omits the reference to “report to Customs” in paragraphs (b) and (c) of the note under subsection 2.06AAA(2) of the Migration Regulations and substitutes with “report to the Department” to reflect a function of the Department under the Customs Act. These amendments are subsequent to the amendments made by items 103, 104, 130, 134, 137, 138, 141 and 144 in Part 1 of the Schedule 1 to the COLA Act.

Item 133 inserts the words “or the Australian Border Force Commissioner” after the word Secretary in the note under subregulation 5.20 of the Migration Regulations. This amendment is consequential to the amendments made by items 5 to 8 of Schedule 3 to the COLA Act.

Item 134 inserts the words “or the Australian Border Force Commissioner” after the word Secretary in the note under regulation 5.21 of the Migration Regulations. This amendment is consequential to the amendments made by items 5 to 8 of Schedule 3 to the COLA Act.

Item 135 repeals and substitutes Division 988.1 of Schedule 2 to the Migration Regulations. The new substituted Division 988.1 does not contain clauses 988.111, 988.112 and 988.113 because the officer performing the function of signing non-citizens who are members of a crew on to or off a non-military ship is now an officer of the Department.

Item 136 inserts the phrase “or the Australian Border Force Commissioner [or a delegate of the Australian Border Force Commissioner]” after the words “of the Department of Immigration and Border Protection” in Form 2 under Schedule 10 to the Migration Regulations. This amendment is consequential to the amendment made by item 21 of Schedule 3 to the COLA Act.

Item 137 inserts the words “Australian Border Force Commissioner” after the phrase “[or Delegate]” in Form 2 under Schedule 10 to the Migration Regulations. This amendment is consequential to the amendment made by item 21 of Schedule 3 to the COLA Act.

Item 138 inserts the words “or the Australian Border Force Commissioner” after the words “delegate of the Secretary” in Form 3 under Schedule 10 to the Migration Regulations. This amendment is consequential to the amendment made by items 55 to 58 of Schedule 3 to the COLA Act.

Motor Vehicle Standards Regulations 1989

Item 139

This is a technical amendment to reflect the repeal of the Customs Administration Act and does not change the requirement of the form in Schedule 1 to insert the date that the vehicle is imported into Australia in accordance with the Customs Act.

National Health Security Regulations 2008

Item 140

This item repeals and substitutes paragraph (c) of the definition of “law enforcement agency” under subregulation 3.03(3) of the *National Health Security Regulations 2008* (the National Health Security Regulations). The new substituted paragraph (c) provides for “the

Department administered by the Minister administering Part XII of the *Customs Act 1901*” to be a law enforcement agency for the purposes of Part 3 of the National Health Security Regulations. This reference to “Department administered by the Minister administering Part XII of the *Customs Act 1901*” distinguishes the Department of Immigration and Border Protection from the Department of Industry and Science, which administers parts of that Act.

National Transport Commission (Road Transport Legislation-Vehicle Standards) Regulations 2006

Items 141 and 142

The provisions amended by these items contain references to customs related terms in the *National Transport Commission (Road Transport Legislation-Vehicle Standards) Regulations 2006* (the NTCRTLVS Regulations).

The purpose of these amendments is to replace redundant customs related terms in the NTCRTLVS Regulations.

Item 141 repeals and substitutes paragraph 34(3)(e) of Schedule 2 to the NTCRTLVS Regulations. The new substituted paragraph requires a vehicle in the service of the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*), instead of an Australian Customs Service vehicle, to be fitted with horns and alarms in accordance with clause 34 of that Schedule.

Item 142 repeals and substitutes paragraph (e) of the definition of “exempt vehicle” under subregulation 118(1) of Schedule 2 to the NTCRTLVS Regulations. The new substituted paragraph provides for a vehicle in the service of the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*), instead of an Australian Customs Service vehicle, to be an exempt vehicle for the purposes of clause 118 of that Schedule.

Navigation Regulation 2013

Items 143 to 179

The provisions amended by these items contain references to customs related terms in the *Navigation Regulation 2013* (the Navigation Regulation).

The purpose of these amendments is to replace redundant customs related terms in the Navigation Regulation.

Item 143 inserts a definition of “Comptroller-General of Customs” into section 4 of the Navigation Regulation for the purposes of the provisions, as amended by items 149, 153, 154, 156, 162, 164, 168 and 170 in this Schedule, the person who holds that title can be ascertained.

Items 144 and 145 repeal the definition of “CVMP” in section 4 of the Navigation Regulation as well as note 3 in that section due to the reference to “Customs” in that note. In addition, item 146 repeals and substitutes the heading of Part 2 to the Navigation Regulation to read “Australian Border Force vessel management plans”.

Items 147, 148, 150 to 142, 154, 155, and 157 to 178 are subsequent to amendments made by item 144 to 146 above replace the redundant term to “CVMP” with the new reference to the “Australian Border Force vessel management plan”.

Items 154, 162, 164, 168, 170 and 178 are amendments to matters relating to the Australian Border Force vessel plan that are to be dealt with by the Comptroller-General of Customs.

Item 179 inserts new transitional provisions in to the Navigation Regulation such that:

- an application under subsection 6(1) that was pending immediately before 1 July 2015 is taken on and after that day to be an application under that subsection for acceptance of an Australian Border Force vessel management plan for an Australian Border Force vessel or for a person in relation to an Australian Border Force vessel; and
- an application under subsection 10(1) that was pending immediately before 1 July 2015 is taken on and after that day to be an application under that subsection for an acceptance of a variation of an Australian Border Force vessel management plan for an Australian Border Force vessel or for a person in relation to an Australian Border Force vessel.

Olympic Insignia Protection Regulations 1993

This item is a technical amendment and omits the reference to “CEO” in the *Olympic Insignia Protection Regulations 1993* and substitutes with “Comptroller-General of Customs”.

Primary Industries Levies and Charges Collection Regulations 1991

This is a technical amendment to reflect the abolition of the ACBPS as a result repeal of the Customs Administration Act by Schedule 2 to the COLA Act. The note is redundant because the legal entity subject to such agreement to collect import charges will no longer exist.

Product Stewardship (Televisions and Computers) Regulations 2011

This is a technical amendment to provide for the Department’s new webpage, in the note to the definition of “product code”, following the implementation of the new organisational arrangements within the Department and also remove the redundant reference to the ACBPS.

Public Service Regulations 1999

This is a technical amendment to remove a function of Australian Public Service Commissioner, which allows him or her to inquire into alleged breaches of Code of Conduct by the CEO of Customs and APS employees assisting the CEO. This amendment is necessary because both the ACBPS and the statutory office of the CEO of Customs are abolished as a result of the repeal of the Customs Administration Act by Schedule 2 to the COLA Act.

Quarantine Charges (Imposition–Customs) Regulation 2014

Items 184 to 186

The provisions amended by items 183 and 184 contain references to customs related terms in the *Quarantine Charges (Imposition–Customs) Regulation 2014* (the QCIC Regulation).

The purpose of these amendments is to replace redundant customs related terms in the QCIC Regulation.

Item 184 repeals the definition of “Customs” into section 4 of the QCIC Regulation.

In addition, item 185 omits the reference to “administered by Customs” in the definition of “Integrated Cargo System” under section 4 of the QCIC Regulation and substitutes with “administered by the Department administered by the Minister administering Part XII of the *Customs Act 1901*” to reflect the administration of the Integrated Cargo System by the Department. This reference is necessary to distinguish the Department from the Department of Industry and Science, which administers parts of the Customs Act. This amendment does not change the scope in which entries are lodged on the Integrated Cargo System.

Item 186 inserts a transitional provision into Part 2 of the QCIC Regulations such that, an entry lodged before 1 July 2015 on the Integrated Cargo System (within the meaning of this regulation as in force immediately before that day) is taken on and after that day to have been an entry lodged on the Integrated Cargo System (within the meaning of this regulation as in force on that day).

Quarantine Regulations 2000

Items 187 to 193

The provisions amended by these items contain references to customs related terms in the *Quarantine Regulations 2000* (the Quarantine Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Quarantine Regulations.

Item 187 repeals the definition of “Customs” into regulation 4 of the Quarantine Regulations.

In addition, items 188 and 189 repeals and inserts a new definition of “custom import entry” into regulation 4 of the Quarantine Regulations. The new inserted term is defined to mean a communication, mentioned in section 71A of the Customs Act, to the Department administered by the Minister administering Part XII of that Act. The reference to Part XII of the Customs Act is necessary to distinguish the Department from the Department of Industry and Science, which administers parts of the Customs Act. Item 190 also makes subsequent amendments to the reference to that definition.

Item 191 omits the reference to “Customs” to reflect the abolition of the ACBPS.

Item 193 repeals paragraph 53(c) of the Quarantine Regulations to remove a cross reference to a redundant section of the Customs Act. The amendment contained in item 192 is consequential to this amendment.

Taxation Administration Regulations 1976

This item repeals and substitutes paragraph 13(3)(a) of the *Taxation Administration Regulations 1976*. The new substituted paragraph provides for the “Comptroller-General of Custom (within the meaning of the *Customs Act 1901*)”, instead of the “Chief Executive of Customs, to be a prescribed person for the purposes of subparagraph 14S(4)(b)(ii) of the *Taxation Administration Act 1953*.”

In effect, this amendment does not change the scope of departure prohibition orders, but rather enables the Comptroller-General of Customs to be a person prescribed to receive information relating to departure prohibition orders.

This amendment is subsequent to items 7 and 26 in Schedule 1, and items 186 and 187 in Schedule 6, to the COLA Act.

Telecommunications (Interception and Access) Regulations 1987

This is a technical amendment to reflect the abolition of the ACBPS and is consequential to the amendment made by item 162 of Schedule 5 to the COLA Act, which amends the definition of “enforcement agency” under subsection 5(1) of the *Telecommunications (Interception and Access) Act 1979* and ensures that the Department whom now administers the integrated border control functions is a law enforcement agency for the purpose of that Act and the *Telecommunications (Interception and Access Regulation 1987* made under that Act.

Therapeutic Goods (Medical Devices) Regulations 2002

This item omits the reference to “the control of the Australian Customs Service” in paragraph (b) of under the column headed “Kinds of medical devices” in table item 1.4 of the table in Part 1 of Schedule 4 to the *Therapeutic Goods (Medical Devices) Regulations 2002* and substitutes with “customs control under the *Customs Act 1901*”. The purpose of this amendment is to express the relevant control of the medical device in the requirement as a customs function. The amendment is consistent with similar amendments made by the COLA Act and does not change the scope of the control over the medical devices.

Therapeutic Goods Regulations 1990

This item omits the reference to “the control of the Customs” in column 2 of table item 4 in the table under Schedule 5 to the *Therapeutic Goods Regulations 1990* and substitutes with “customs control under the *Customs Act 1901*”. The purpose of this amendment is to express the relevant control of goods in the requirement as a customs function. The amendment is consistent with similar amendments made by the COLA Act and does not change the scope of the control over the imported goods.

Torres Strait Fisheries Regulations 1985

Items 198 and 199

The provisions amended by these items contain references to customs related terms in the *Torres Strait Fisheries Regulations 1985* (Torres Strait Fisheries Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Torres Strait Fisheries Regulations.

Item 198 repeals and substitutes paragraph 24(b) of the Torres Strait Fisheries Regulations. The new substituted paragraph enables the Australian Fisheries Management Authority (the AFMA) to disclose identifying information for the purpose of subclause 54(1) of Schedule 2 to the *Torres Strait Fisheries Act 1984* to “Department administered by the Minister administering Part XII of the *Customs Act 1901*”. This reference is necessary to distinguish the Department from the Department of Industry and Science, which administers parts of the Customs Act.

Item 199 repeals table item 3 of the table under regulation 25 of the Torres Strait Fisheries Regulations remove the ACBPS as a Statutory Agency that the AFMA may authorise the disclosure of personal information to. No further amendments are required because the Department is already listed in the table of bodies that the AFMA may authorise the disclosure of personal information to. These amendments do not change the scope of the information that may be disclosed.

Trade Marks Regulations 1995

Items 200 to 218

The provisions amended by items 200 to 212 and 214 to 218 contain references to customs related terms in the *Trade Marks Regulations 1995* (the Trade Marks Regulations).

The purpose of these amendments is to replace redundant customs related terms in the Trade Marks Regulations.

Items 200 to 212 and 214 to 218 omit references to “Customs CEO” in relevant provisions of the Trade Marks Regulations and substitute with “the Comptroller-General of Customs”.

Item 213 inserts a saving, and transitional, provision into the Trade Marks Regulations such that:

- an instrument in force under subregulation 13.5(1) of the Trade Marks Regulations immediately before 1 July 2015 has effect on and after that day if it were an instrument of the Comptroller-General of Customs in force under that subregulation;
- a notification under subregulation 17A.42E(1) of the Trade Marks Regulations before 1 July 2015 is taken on and after that day to have been a notification under that subregulation to the Comptroller-General of Customs;
- a fee paid before 1 July 2015 to the Customs CEO as mentioned in subregulation 21.22(2) of the Trade Marks Regulations is taken on and after that day to have been a fee paid to the Comptroller-General of Customs;

- a direction of the Customs CEO that was in force under subregulation 21.22(3) of the Trade Marks Regulations immediately before 1 July 2015 continues in force on and after that day as if it were a direction of the Comptroller-General of Customs; and
- an advice or notification by the Customs CEO under regulation 21.23 of the Trade Marks Regulations before 1 July 2015 is taken on and after that day to have been a notification under that regulation by the Comptroller-General of Customs.

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 (Australian Border Force) Regulation 2015

The legislative instrument, entitled *Customs and Other Legislation Amendment (Australian Border Force) Regulation 2015* (the Amendment Regulation), is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The Amendment Regulation makes consequential amendments to the *Customs Regulation 2015* (the Customs Regulation) and a number of Commonwealth Regulations to replace the term references to the term “Australian Customs and Border Protection Service” (the ACBPS), the “Chief Executive Officer of Customs” (the CEO), “control of Customs”, and related terms and with new terms.

The amendments contained in the Amendment Regulation are part of an overall package of legislative amendments that are to be made to give effect to the Government’s decision to abolish the ACBPS and integrate its functions into the Department of Immigration and Border Protection (the Department) and to establish an Australian Border Force within the Department. The package of legislative amendments also includes the *Australian Border Force Act 2015* (the Australian Border Force Act) and the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015* (the COLA Act).

The Australian Border Force Act creates the statutory office of the Australian Border Force Commissioner, and related matters. In particular, subsection 11(3) of the Australian Border Force Act provides that, while a person holds office as the Australian Border Force Commissioner, the person is also the Comptroller-General of Customs. The Comptroller-General of Customs is provided under the *Customs Act 1901* (the Customs Act), as amended by the COLA Act, to have the general administration of that Act.

The COLA Act abolishes the ACBPS and the CEO, and amends Commonwealth Acts to reflect the exercise of power and performance of function by the Comptroller-General of Customs, and related matters. The latter amendments replace references to the ACBPS, the CEO, control of Customs, and related terms with terms to reflect the new organisational arrangement resulting from the integration of customs’ functions into the Department.

Consistent with amendments made by the COLA Act to Acts of the Commonwealth, the Amendment Regulation makes amendments to relevant Commonwealth Regulations to correspond with those amendments made by the COLA Act.

The amendments contained in the Amendment Regulation do not change the scope of customs related functions performed and powers exercised under Commonwealth Regulations.

The Amendment Regulation commences at the same time the as the Australian Border Force Act commences. The Australian Border Force Act commences on 1 July 2015.

Human rights implications

The Amendment Regulation does not engage or impact on, or limit 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

The Amendment Regulation is compatible with human rights.

Minister for Immigration and Border Protection