**EXPLANATORY STATEMENT**

Issued by the Assistant Minister for Home Affairs and Parliamentary Secretary to the Minister for Home Affairs

*Customs Act 1901*

*Customs (Pacific Islands Rules of Origin) Regulations 2018*

The *Customs Act 1901* (the Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and from Australia.

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

The *Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018* (the PACER Plus Implementation Act) amends the Act to fulfil Australia’s obligations under Chapter 3 of the *Pacific Agreement on Closer Economic Relations Plus* (the PACER Plus), which deals with rules of origin. These rules determine whether goods imported into Australia from a Party to the PACER Plus are ‘Pacific Islands originating goods’ and are thereby eligible for preferential rates of customs duty. ‘Pacific Islands originating goods’ are goods imported from the territory of a Party to the PACER Plus that satisfy the new rules of origin contained in new Division 1GA of Part VIII of the Act, inserted by the PACER Plus Implementation Act.

The provisions of the PACER Plus Implementation Act will commence on the later of the day after that Act receives the Royal Assent, and the day the PACER Plus enters into force for Australia.

The purpose of the *Customs (Pacific Islands Rules of Origin) Regulations 2018* (the Regulations) is to prescribe matters relating to the rules of origin that will be required to be prescribed under the Act as amended by the PACER Plus Implementation Act. The relevant provisions for which the Regulations prescribe matters are set out in Attachment A.

The Regulations:

* explain the method used to determine the regional value content (a calculation used in determining whether a good is a Pacific Islands originating good) of goods for the purposes of some of the product-specific requirements set out in Annex 3-B to Chapter 3 of the PACER Plus;
* specify the valuation rules for different kinds of goods;
* set out the record keeping obligations that apply to Australian exporters and producers who export goods to a Party to the PACER Plus for which preferential tariff treatment may be claimed; and
* prescribe other matters that are required to be prescribed under new Division 1GA of Part VIII of the Act.

Details of the Regulations are set out in Attachment B. A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment C.

A separate *Customs (International Obligations) Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Regulations 2018* amend the *Customs (International Obligations) Regulations 2015* to make complementary amendments to enable a refund of duties paid in excess on Pacific Islands originating goods, or on goods that would have been such goods, in specified circumstances.

Government Departments conducted extensive public and targeted stakeholder consultations during the negotiations of the PACER Plus. The consultation process encompassed all matters set out in the Regulations. Details of these consultations were set out in the consultation attachment to the National Interest Analysis of the PACER Plus.

The Joint Standing Committee on Treaties also conducted an inquiry on the PACER Plus. The inquiry included written submissions and public hearings that resulted in a report recommending binding treaty action be taken.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commences at the same time as Schedule 1 to the PACER Plus Implementation Act commences, which is the later of the day after that Act receives the Royal Assent, and the day the PACER Plus enters into force for Australia.

OPC63265 – A

**ATTACHMENT A**

**Details of provisions in new Division 1L of Part VIII of the *Customs Act 1901* relevant to the *Customs (Pacific Islands Rules of Origin) Regulation 2018***

The *Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018* (the PACER Plus Act) will insert new Division 1GA into Part VIII of the *Customs Act 1901* (the Act). New Division 1GA contains the rules of origin under Chapter 3 of the *Pacific Agreement on Closer Economic Relations Plus* (the PACER Plus). These rules determine whether goods imported into Australia from a Party to the PACER Plus are Pacific Islands originating goods and are thereby eligible for preferential rates of customs duty.

Subdivision D of new Division 1GA deals with goods that are produced from non‑originating materials (relevant goods). Subdivision D contains new sections 153ZKO and 153ZKP.

New section 153ZKO(1) of the Act provides that goods are Pacific Islands originating goods if:

1. they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3‑B to Chapter 3 of the PACER Plus; and
2. they are produced entirely in the territory of one or more of the Parties, by one or more producers, from non-originating materials only or from non-originating materials and originating materials; and
3. the goods satisfy the requirements applicable to the goods in that Annex; and
4. either:
   1. the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
   2. Australia has waived the requirement for a Declaration of Origin for the goods.

Annex 3‑B to Chapter 3 of the PACER Plus, amongst other matters, sets out the product specific rules, chemical reaction rules, and related requirements, that may need to be satisfy in order for relevant goods to satisfy a requirement under new subsection 153ZKO(1) of the Act.

One of the requirements that may be prescribed in the regulations is a change in tariff classification requirement. Under new subsection 153ZKO(3) of the Act, if a requirement that applies in relation to the relevant goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the relevant goods is taken to satisfy the change in tariff classification. The Regulations specify the circumstances under which goods are taken to satisfy the change in tariff classification.

Another of the requirements that may be prescribed in the regulations is a requirement in respect of Regional Value Content (RVC). Under new paragraph 153ZKO(6)(b), if a requirement that applies in relation to the relevant goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way, the regulations may prescribe how to work out the RVC of goods. The Regulations specify one method of calculating RVC.

For the purposes of new Division 1GA, new subsection 153ZKL(2) will provide that the value of goods is to be worked out in accordance with the regulations, and that the regulations may prescribe different valuation rules for different kinds of goods.

The Regulations prescribe how the value of materials is to be worked out for the purposes of new Division 1GA and in accordance with the PACER Plus.

Under new subsection 153ZKO(7) of the Act, if:

1. a requirement that applies in relation to the relevant goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way; and
2. the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
3. the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
4. the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and
5. the accessories, spare parts, tools or instructional or other information materials are non-originating materials;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph 153ZKO(7)(e) to be taken into account for the purposes of working out the RVC of the relevant goods.

For the purposes of new subsection 153ZKO(7) of the Act, the Regulations prescribe the circumstances under which the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph 153ZKO(7)(e) must be taken into account for the purposes of working out the RVC of the relevant goods.

Under new subsection 153ZKP(2) of the Act, if:

1. a requirement that applies in relation to the relevant goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way; and
2. the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the RVC of the relevant goods.

For the purposes of new subsection 153ZKP(2) of the Act, the Regulations prescribe the circumstances under which the value of the packaging material or container in which the goods are packaged must be taken into account for the purposes of working out the RVC of the relevant goods.

**ATTACHMENT B**

**Details of the *Customs (Pacific Islands Rules of Origin) Regulations 2018***

**Part 1–Preliminary**

**Section 1  Name**

This section provides that the name of the Regulations is the *Customs (Pacific Islands Rules of Origin) Regulations 2018* (the Regulations).

**Section 2  Commencement**

This section sets out, in a table, the date on which each of the provisions contained in the Regulations commence.

Table item 1 provides that the whole instrument to commence at the same time as Schedule 1 to the *Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018* (the PACER Plus Implementation Act) commences.

Schedule 1 to the PACER Plus Implementation Act will commence on the later of the day on which that Act receives the Royal Assent, and the day on which the PACER Plus done at Nuku’alofa, Tonga on 14 June 2017 enters into force for Australia.

**Section 3  Authority**

This section sets out the authority under which the Regulations is made, which is the *Customs Act 1901* (the Act).

**Section 4  Definitions**

This section defines terms frequently referred to throughout the Regulations:

1. ‘Act’ means the Act; and
2. ‘Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994’ means the Agreement of that name set out in Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994;

The following terms and expressions have the same meanings as in new Division 1GA of Part VIII of the Act:

1. ‘Agreement’, which is the PACER Plus as amended and in force for Australia from time to time;
2. ‘Declaration of Origin’, which is a declaration that is in force and that complies with the requirements of Article 15 of Chapter 3 of the PACER Plus;
3. ‘Harmonized System’, which is either of:
   1. the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or
   2. if the table in Annex 3‑B to Chapter 3 of the PACER Plus is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System, the later version of the Harmonized Commodity Description and Coding System;
4. ‘non-originating materials’, which are goods that are not originating materials;
5. ‘originating materials’, which are:
   1. goods that are originating goods, in accordance with Chapter 3 of the PACER Plus, and that are used in the production of other goods; or
   2. indirect materials; and
6. ‘Party’, which is, any State, separate customs territory or self-governing entity for which the PACER Plus is in force; and
7. ‘production’, which means the methods of obtaining goods including but not limited to growing, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, aquaculture, processing or assembling a good.

**Part 2–Tariff change requirement**

**Section 5  Change in tariff classification requirement for non-originating materials**

Annex 3‑B to Chapter 3 of the PACER Plus, amongst other matters, sets out product specific rules, chemical reaction rules, and related requirements, that may need to be satisfied in order for goods to satisfy a requirement under new subsection 153ZKO(1) of the Act.

One of the requirements under Annex 3-B that may apply to goods is the change in tariff classification requirement. Under new subsection 153ZKO(3) of the Act, if a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification. The meaning of ‘non-originating material’ is set out in the notes for section 4 of the Regulations.

For the purposes of subsection 153ZKO(3), section 5 of the Regulations provides that a non‑originating material used in the production of goods that does not satisfy a particular change in tariff classification is taken to satisfy the change in tariff classification if:

1. it was produced entirely in the territory of one or more of the Parties from other non‑originating materials; and
2. each of those other non-originating materials satisfies the change in tariff classification, including by one or more applications of this section.

Paragraph 5(b) of the Regulations gives effect to the accumulation provisions contained in Article 5 of Chapter 3 of the PACER Plus, and applies where the non‑originating materials used to produce the final good do not satisfy the change in tariff classification.

In practice, in producing a final good, a producer may use goods that are produced in the territories of one or more Parties to the PACER Plus by one or more other producers. The components of these goods may be produced by yet another producer in another Party to the PACER Plus or may have been imported into that Party by another importer. It is possible that the change in tariff classification rule will not be satisfied at each step in the production process from the imported component to the final good, which may mean that the final good is non-originating.

In such circumstances, it will be necessary to examine each step in the production process of each non-originating material that occurs in each of the Parties in order to determine whether each step satisfies the change in tariff classification rule for the final good. If each material satisfies the change in tariff classification rule, then the material will be an originating material and the final good will be an originating good (subject to satisfying all other requirements of new Division 1GA of Part VIII of the Act). This is how paragraph 5(b) of the Regulations operates.

Example:  The following diagram relates to the production of particular goods made from non-originating materials that occurred entirely in a Party to the PACER Plus. The diagram and the accompanying text illustrate the application of paragraph 5(b) of the Regulations.

Goods

Non-originating

material 1

Non-originating

material 2

Non-originating

material 4

Non-originating

material 3

Non-originating

material 5

The goods are produced from non-originating materials 1 and 2.

*First application of paragraph 5(b) of the Regulations*

Non‑originating materials 1 and 2 must satisfy the change in tariff classification. Under paragraph 5(2)(a), the transformation of non-originating material 1 satisfies the relevant change in tariff classification requirement. However, under paragraph 5(2)(b), the transformation of non-originating material 2 does not satisfy the relevant change in tariff classification requirement, but it has been produced by non-originating materials 3 and 4.

*Second application of paragraph 5(b) of the Regulations*

Non‑originating materials 3 and 4 must satisfy the change in tariff classification. Under paragraph 5(2)(a), non-originating material 3 satisfies the relevant change in tariff classification requirement. However, under paragraph 5(2)(b), non-originating material 4 does not satisfy the relevant change in tariff classification requirement, but it has been produced by non-originating material 5.

*Third application of paragraph 5(b) of the Regulations*

For non-originating material 4 to be originating, non-originating material 5 must satisfy the change in tariff classification requirement. Under paragraph 5(2)(a), the transformation of non‑originating material 5 (into non‑originating material 4) satisfies the relevant change in tariff classification requirement.

*Final result*

The result of the three applications of paragraph 5(b) is that goods produced from non‑originating materials 1 and 2 are originating goods. This is because the three applications of paragraph 5(b) will result in all materials (being non-originating materials 1 to 5) satisfying the change in tariff classification requirement and therefore transformed into originating materials.

**Part 3–Regional value content requirement**

**Section 6  Regional value content requirement**

Under new subsection 153ZKO(6) of the Act, if a requirement under Annex 3‑B to Chapter 3 of the PACER Plus that applies in relation to the goods is that the goods must have a Regional Value Content (RVC) of not less than a particular percentage worked out in a particular way:

1. the RVC of the goods is to be worked out in accordance with the PACER Plus; or
2. if the regulations prescribe how to work out the RVC of the goods, the RVC of the goods is to be worked out in accordance with the regulations.

For the purposes of subsection 153ZKO(6) of the Act, subsection 6(1) of the Regulations prescribes the formula for which RVC of goods is calculated.

Therefore, if it is a requirement in the table in Annex 3‑B to Chapter 3 of the PACER Plus that goods are required to meet a RVC of not less than a particular percentage, then the method in section 6 will need to be applied.

Subsection 6(1) of the Regulations provides that, for the purposes of subsection 153ZKO(6) of the Act, the RVC of goods is worked out using the formula:

RVC = Customs value – Value of non-originating materials   x   100

Customs value

where:

‘customs value’ means the customs value of the goods worked out under Division 2 of Part VIII of the Act; and

‘value of non-originating materials’ means the value, worked out under Part 4 of the Regulations, of the non‑originating materials used in the production of the goods.

Subsection 6(2) of the Regulations provides that RVC must be expressed as a percentage.

By way of an example using the above formula to calculate the RVC for canned coffee that is made from originating and imported ingredients and packaged in a steel can. Each can of coffee is on-sold by the importer to retailers for $1 and the value of the non-originating materials (including packaging) is $0.48. Using the formula, the RVC is calculated as follows:

RVC = $1 (Customs value) – $0.48 (Value of the non-originating material)   x   100

$1 (Customs value)

Therefore, the RVC for the canned coffee is 52%.

**Part 4–Determination of value**

Under new subsection 153ZKL(2) of the Act, the value of goods, for the purposes of new Division 1GA of Part VIII of the Act, is to be worked out in accordance with the regulations, and the regulations may prescribe different valuation rules for different kinds of goods.

Part 4 of the Regulations deals with the determination of the value of different kinds of goods that are materials used in the production of other goods for the purposes of new Division 1GA. The values of these materials are necessary to determine the RVC of goods for the purpose of satisfying a requirement under Annex 3‑B to Chapter 3 of the PACER Plus.

Part 4 of the Regulations contains sections 7 (Value of goods that are non‑originating materials), 8 (Value of accessories, spare parts, tools or instructional or other information materials) and 9 (Value of packaging material or container).

**Section 7  Value of goods that are non-originating materials**

For the purposes of new subsection 153ZKL(2) of the Act, subsection 7(1) of the Regulations provides that the value of non-originating materials used in the production of goods is:

1. for non-originating materials imported into the territory of a Party, the value of the non-originating materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994; or
2. for non‑originating materials acquired in the territory of a Party where the goods are produced, the earliest ascertainable price paid or payable for the non‑originating materials in the territory of the Party.

However, for the purposes of paragraph 7(1)(a) of the Regulations, in working out the value of a particular non-originating material, subsection 7(2) of the Regulations requires the following to be included:

1. the cost of freight of the non‑originating materials to the port or place of entry in the Party;
2. the cost of insurance related to that freight.

In addition, for the purposes of paragraph 7(1)(a) or (b) of the Regulations, in working out the value of a particular non‑originating material, subsection 7(3) of the Regulations allows the following to be deducted:

1. the costs of freight, insurance, packing and all other costs incurred in transporting the non-originating materials, within or between the territories of the Parties, to the producer of the goods;
2. duties, taxes and customs brokerage fees on the non‑originating materials that:
   1. have been paid in the territory of one or more of the Parties; and
   2. have not been waived or refunded; and
   3. are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

1. the costs of waste and spoilage resulting from the use of the non‑originating materials in the production of the goods, reduced by the value of reusable scrap or by-products;
2. the costs of processing incurred in the territory of one or more of the Parties in the production of the non-originating materials;
3. the costs of originating materials used or consumed in the production of the non‑originating materials in the territory of one or more of the Parties.

The purpose of section 7 is to set out the associated costs and expenses in accordance with the PACER Plus that can be included, or deducted, when working out the value of non‑originating materials.

**Section 8  Value of accessories, spare parts, tools or instructional or other information materials**

Under new subsection 153ZKO(7) of the Act, if:

1. a requirement under Annex 3‑B to Chapter 3 of the PACER Plus that applies in relation to the goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way; and
2. the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
3. the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
4. the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and
5. the accessories, spare parts, tools or instructional or other information materials are non-originating materials;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph 153ZKO(7)(e) to be taken into account for the purposes of working out the RVC of the goods.

Where new paragraphs 153ZKO(7)(a), (b), (c), (d) and (e) of the Act are satisfied in relation to goods, section 8 of the Regulations provides that:

1. the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph 153ZKO(7)(e) of the Act must be taken into account for the purposes of working out the RVC of the goods under section 6 of the Regulations; and
2. for the purposes of sections 6 and 7 of the Regulations, those accessories, spare parts, tools or instructional or other information materials are taken to be non‑originating materials used in the production of the goods.

**Section 9  Value of packaging material or container**

Under new subsection 153ZKP(1) of the Act, if:

1. goods are packaged for retail sale in packaging material or a container; and
2. the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of Subdivision D of new Division 1GA of Part VIII of the Act.

However, if a requirement under Annex 3‑B to Chapter 3 of the PACER Plus that applies in relation to the goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way, and the packaging material or container is a non‑originating material, new subsection 153ZKP(2) of the Act provides that the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the RVC of the goods.

Where new paragraphs 153ZKP(2)(a) and (b) of the Act are satisfied in relation to goods, section 9 of the Regulations provides that:

1. the value of the packaging material or container in which the goods are packaged must be taken into account for the purposes of working out the RVC of the goods under section 6 of the Regulations; and
2. for the purposes of sections 6 and 7 of the Regulations, that packaging material or container is taken to be a non‑originating material used in the production of the goods.

**Part 5–Record keeping obligations**

Under new section 126AKF(1) of the Act, the regulations may prescribe record keeping obligations that apply in relation to goods that:

1. are exported to a Party; and
2. are claimed to be originating goods, in accordance with Chapter 3 of the PACER Plus, for the purpose of obtaining a preferential tariff in the Party.

Part 5 of the Regulations specifies the records that must be kept for goods exported to a Party to the PACER Plus and are claimed to be originating goods for the purpose of obtaining a preferential tariff treatment in accordance with the PACER Plus in that Party.

**Section 10  Exportation of goods to a Party—record keeping by exporter who is not the producer of the goods**

For the purposes of new subsection 126AKF(1) of the Act, subsection 10(1) of the Regulations provides that an exporter of goods mentioned in that subsection of the Act, who is not also the producer of the goods, must keep the following records:

1. records of the purchase of the goods by the exporter;
2. records of the purchase of the goods by the person to whom the goods are exported;
3. evidence that payment has been made for the goods;
4. evidence of the classification of the goods under the Harmonized System;
5. if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the exporter:
   1. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
   2. evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
6. if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the exporter:
   1. records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
   2. evidence of the value of the materials so purchased; and
   3. records of the production of the accessories, spare parts, tools or instructional or other information materials;
7. if the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter:
   1. records of the purchase of the packaging material or container; and
   2. evidence of the value of the packaging material or container;
8. if the goods are packaged for retail sale in packaging material or a container that was produced by the exporter:
   1. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
   2. evidence of the value of the materials so purchased; and
   3. records of the production of the packaging material or container;
9. a copy of the Declaration of Origin for the goods.

The goods mentioned in section 126AKF of the Act are goods that are exported to a Party to the PACER Plus and are claimed to be originating goods for the purpose of obtaining a preferential tariff treatment in accordance with the PACER Plus in that Party.

For the records referred to in subsection 10(1) of the Regulations, subsection 10(2) requires that the records be kept for at least five years starting on the day of exportation.

Subsection 10(3) of the Regulations sets out the manner in which a record is to be kept. A record may be kept in any place, whether or not in Australia, and the exporter must ensure that:

* the record is kept in a form that would enable a determination of whether the goods are originating goods in accordance with the PACER Plus; and
* if the record is not in English, the record is kept in a place and form that would enable an English translation to be readily made; and
* if the record is kept by mechanical or electronic means, the record is readily convertible into a hard copy in English.

**Section 11  Exportation of goods to a Party—record keeping by the producer of the goods**

For the purposes of new subsection 126AKF(1) of the Act, subsection 11(1) of the Regulations provides that a producer of goods mentioned in that subsection of the Act, whether or not the producer is the exporter of the goods, must keep the following records:

1. records of the purchase of the goods;
2. if the producer is the exporter of the goods, evidence of the classification of the goods under the Harmonized System;
3. evidence that payment has been made for the goods;
4. evidence of the value of the goods;
5. records of the purchase of all materials that were purchased for use or consumption in the production of the goods and evidence of the classification of the materials under the Harmonized System;
6. evidence of the value of those materials;
7. records of the production of the goods;
8. if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the producer:
   1. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
   2. evidence of the value of the accessories, spare parts, tools or instructional or other informational materials;
9. if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the producer:
   1. records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
   2. evidence of the value of the materials so purchased; and
   3. records of the production of the accessories, spare parts, tools or instructional or other information materials;
10. if the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:
    1. records of the purchase of the packaging material or container; and
    2. evidence of the value of the packaging material or container;
11. if the goods are packaged for retail sale in packaging material or a container that was produced by the producer:
    1. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
    2. evidence of the value of the materials so purchased; and
    3. records of the production of the packaging material or container;
12. a copy of the Declaration of Origin for the goods.

For the records referred to in subsection 11(1) of the Regulations, similar to subsection 10(2), subsection 11(2) requires that records must be kept for at least five years starting on the day of exportation. Similar to subsection 10(3) of the Regulations, subsection 11(3) sets out the manner in which a record is to be kept.

**ATTACHMENT C**

**Statement of Compatibility with Human Rights**

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

***Customs (Pacific Islands Rules of Origin) Regulations 2018***

The Disallowable Legislative Instrument titled the *Customs (Pacific Islands Rules of Origin) Regulations 2018* (the Regulations) 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 of the Regulations**

On 14 June 2017, in Nuku’alofa in Tonga, representatives of Australia, New Zealand, the Cook Islands, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tonga and Tuvalu signed the *Pacific Agreement on Closer Economic Relations Plus* (the PACER Plus). On 7 September 2017, a representative from Vanuatu signed the PACER Plus.

As a result, the *Customs Act 1901* (the Customs Act) and the *Customs Tariff Act 1995* (Customs Tariff Act) is amended by the *Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018* (the PACER Plus Implementation Act) and the *Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018*, respectively, to fulfil Australia’s obligations under Chapter 3 of the PACER Plus.

Chapter 3 of the PACER Plus deals with rules of origin, which determine whether goods imported into Australia from the territory of a Party to the PACER Plus are Pacific Islands originating goods and thereby eligible for preferential rates of customs duty, and also set out record keeping obligations that apply to procedures and exporters of originating goods.

The rules to determine Pacific Islands originating goods are contained in new Division 1GA of Part VIII of the Customs Act, and the record keeping obligations are contained in new Division 4EA of Part VI of that Act. These new Divisions enable regulations to be prescribed.

The purpose of the Regulations is to prescribe matters relating to the rules of origin that are required to be prescribed under new Division 1GA of Part VIII, and new Division 4EA of Part VI, of the Customs Act. In particular, the Regulations:

* explain the method used to determine the regional value content (a calculation used in determining whether a good is a Pacific Islands originating good) of goods for the purposes of some of the product-specific requirements set out in Annex 3‑B to Chapter 3 of the PACER Plus;
* specify the valuation rules for different kinds of goods;
* set out the record keeping obligations that apply to Australian exporters and producers who export goods to a Party to the PACER Plus for which preferential tariff treatment may be claimed; and
* prescribe other matters that are required to be prescribed under new Division 1GA of Part VIII of the Act.

The Regulations commences at the same time as Schedule 1 to the PACER Plus Implementation Act commences, which is the later of the day after that Act receives the Royal Assent, and the day the PACER Plus enters into force for Australia.

**Human rights implications**

The Regulations engages the following right:

* the right to protection against arbitrary and unlawful interferences with one’s privacy or home in Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

To the extent the Regulations facilitate the collection and disclosure of information, the Regulations engage the right to privacy under Article 17 of the ICCPR. Article 17(1) sets out:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

Under Article 15 of Chapter 3 of the PACER Plus, a Declaration of Origin document completed by the exporter or producer or an authorised representative of the exporter or producer shall support a claim that goods are eligible for preferential tariff treatment in accordance with the PACER Plus. The key information that must be included in a ‘Declaration of Origin’ document as detailed in Article 15 of, and Annex 3‑A to, Chapter 3 of the PACER Plus, includes personal information.

The PACER Plus Implementation Act, in part, inserts new sections 126AKF, 126AKG and 126AKH into the Customs Act to enable regulations to prescribe record keeping obligations that apply in relation to originating goods, in accordance with the PACER Plus, exported from Australia to another Party to the PACER Plus.

The regulations prescribed for record keeping obligations are contained in Part 5 of the Regulations, which amongst other things require records and evidence of the purchase of material, value of material, production goods, and Declaration of Origin, etc. to be kept for at least five years starting on the day of exportation of the goods. The records required to be kept accord with Article 12 of Chapter 3 of the PACER Plus.

Part 5 of the Regulations together with new sections 126AKF, 126AKG and 126AKH of the Customs Act operate to allow a Party to the PACER Plus to which Pacific Islands originating goods are exported to assist with the verification of the origin of such goods. This may include the collection and disclosure of personal information, including those set out in a ‘Declaration of Origin’ document, for limited purposes. This information may be disclosed to a Pacific Islands customs official (within the meaning of the Customs Act) for the purpose of verifying a claim for a preferential tariff in a Party to the PACER Plus.

Through the amendments to the Customs Act made by the PACER Plus Implementation Act, the collection and disclosure of personal information in relation to goods claiming to be originating goods, will be permitted. Further, the collection and disclosure of personal information is authorised under Australian law and the above-mentioned new sections of the Customs Act and the Regulations do not alter the existing protections.

The verification of the eligibility for preferential treatment is required under the PACER Plus and the above-mentioned new sections of the Customs Act and the Regulations are directed at the legitimate purpose of facilitating and supporting Australia’s international obligations under the PACER Plus. This collection and disclosure of personal information will only be permitted for the limited purpose of verifying a claim made by a person for preferential tariff treatment making it a reasonable and proportionate response to a legitimate purpose. As such, the collection and disclosure of personal information in these circumstances will not constitute an unlawful or arbitrary interference with privacy.

**Conclusion**

The Regulations are compatible with human rights because to the extent that it may engage the right to privacy, it will not constitute an unlawful or arbitrary interference with privacy.

**Senator the Hon. Linda Reynolds CSC**

**Assistant Minister for Home Affairs and Parliamentary Secretary to the Minister for Home Affairs**