

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Customs, Community Safety and Multicultural Affairs, Parliamentary Secretary to the Minister for Home Affairs

Customs Act 1901

Biosecurity Act 2015

Customs and Biosecurity Amendment (Deferred Charges for Australian Trusted Traders) Regulations 2021

The *Customs Act 1901* (the Customs 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.

Section 132AA of the Customs Act sets out when import duty must be paid on goods imported into Australia, including that import duty is payable on goods at the time the goods are entered for home consumption, and that for goods prescribed by the regulations and entered for home consumption, import duty must be paid at the time worked out under the regulations made for the purposes of this item.

The *Biosecurity Act 2015* (the Biosecurity Act) provides the Commonwealth with powers to assess and manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, or the environment. Section 593 of the Biosecurity Act provides that the regulations may prescribe the time when a specified costs recovery charge is due and payable.

Subsection 270(1) of the Customs Act and subsection 645(1) of the Biosecurity Act provide that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Customs and Biosecurity Amendment (Deferred Charges for Australian Trusted Traders) Regulations 2021* (the Regulations) allows Australian Trusted Trader (ATT) importers to defer payment of additional taxes and charges in relation to certain imported goods instead of paying on a transactional basis.

The ATT program is a voluntary trade facilitation initiative for business that demonstrate a secure supply chain and compliant trade practices. Section 94A the *Customs Regulation 2015* regulates the deferral of the payment of import duty by eligible ATT importers. Eligible import duty must be paid on or before the 21st day after the end of the month in which the goods were entered for home consumption. When section 94A was introduced, several taxes and charges were excluded from its operation. Section 94A provides that import duty deferral does not apply where an AAT importer is liable to pay wine equalisation tax (WET), within the meaning of *A New Tax System (Wine Equalisation Tax) Act 1999* or luxury car tax (LCT), within the meaning of *A New Tax System (Luxury Car Tax) Act 1999* on the goods. This legislation stipulates that WET and LCT are paid on goods at the same time as import duty.

The policy position in 2018 was that WET and LCT must be paid at the time the goods are entered for home consumption, and cannot be deferred. Furthermore, the policy position in 2018 was that deferral does not apply to a charge imposed by the *Biosecurity Charges Imposition (Customs) Act 2015* to the extent that the charge is an import duty (agricultural processing charge); or a charge imposed under Schedule 8 of the *Primary Industries (Customs) Charges Act 1999* on forest products imported into Australia (wood levy). Wood levy and agricultural processing charge were also excluded from the operation of section 94A. Wood levy is also payable at the time the goods are entered for home consumption and, under section 108 of the *Biosecurity Regulation 2016*, agricultural processing charge is payable at the time when the charge is demanded.

In the 2020-21 Budget, the decision was made to also allow ATT importers to defer payment of LCT, WET, wood levy and agricultural processing charge. This further streamlines accounting for ATT importers and allow one combined payment on or before the 21st day after the end of the month in which the goods are entered for home consumption, rather than individual payments for each consignment of goods throughout the month.

The Regulations also clarifies that duty deferral for ATT importers is not available for excise-equivalent goods, which are alcohol, tobacco and petroleum products. Such goods are subject to customs duty at a rate equivalent to excise duty on the same products when manufactured in Australia. As the rates of duty on such goods is high, duty deferral should not apply in relation to these goods due to the risk to the revenue. Details of the proposed Regulations are set out in the [Attachment](#).

The Regulations were developed in consultation with the Department of Prime Minister and Cabinet, Department of the Treasury, Department of Agriculture, Water and the Environment, the Australian Taxation Office, eligible ATT and industry body representatives. Updates were provided at various ATT forums and to peak industry representatives and all parties supported the measure.

The Office of Best Practice Regulations were also consulted (OBPR ID 24570) and advised a Regulatory Impact Statement is not required.

Details of the Regulations are set out in the [Attachment A](#).

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at [Attachment B](#).

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

The Regulations commence on 1 July 2021.

OPC65179 - A

Details of the Customs and Biosecurity Amendment (Deferred Charges for Australian Trusted Traders) Regulations 2021

Section 1 - Name

This section provides that the title of the Regulations is the *Customs and Biosecurity Amendment (Deferred Charges for Australian Trusted Traders) Regulations 2021* (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.

The whole of the Regulations commence on 1 July 2021.

Section 3 - Authority

This section sets out the authority under which the Regulations are made, which is the *Customs Act 1901* (the Customs Act) and the *Biosecurity Act 2015* (the Biosecurity Act).

Section 4 - Schedules

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

The instruments that are amended are the *Customs Regulation 2015* (the Customs Regulation) and the *Biosecurity Regulation 2016* (the Biosecurity Regulation).

Schedule 1 - Amendment of the Customs Regulation 2015

Customs Regulation 2015

Item [1] - Section 4 (definition of excluded import duty)

This Item repeals the definition of excluded import duty. This is a consequence of the removal of the exclusion of excluded import duty from the duty deferral (see item 7 below).

Item [2] - After subparagraph 94A(1)(a)(i)

This Item expressly provides that duty deferral is not available for goods that are excise-equivalent goods. Alcohol, tobacco and petroleum products are subject to customs duty at a rate equivalent to excise duty on the same products when manufactured in Australia – such goods are referred to as ‘excise-equivalent goods’ (EEGs). EEGs are defined under subsection 4(1) of the Customs Act as ‘goods prescribed by the regulations for the purposes of this definition.’ Schedule 1 to the *Customs Regulation 2015* prescribes excise-equivalent

goods by reference to their tariff subheadings which cover alcohol, tobacco and petroleum products.

This amendment does not affect the operation of other provisions in the Customs Act whereby, with the exception of tobacco products, an importer may, in accordance with section 69 of the Act, pay customs duty on like customable goods and EEGs delivered into home consumption without entry for home consumption on a deferred basis. In such circumstances, by operation of subsection 132AA(4), the time of payment is determined in reference to paragraph 69(8)(h) of the Customs Act. This amendment clarifies that where an importer does not utilise section 69, the duty on EEGs will be payable at the time the goods are entered for home consumption in accordance with table item 1 in subsection 132AA(1).

Item [3] - At the end of subparagraph 94A(1)(a)(iv)

This Item inserts the word ‘and’ at the end of subparagraph 94A(1)(a)(iv). This is a technical amendment due to the repeal of subparagraph (v) in item 4 below.

Item [4] - Subparagraph 94A(1)(a)(v)

This Item repeals subparagraph 94A(1)(a)(v). The current effect of this subparagraph is that duty deferral is not available in relation to goods on which luxury car tax (LCT) or wine equalisation tax (WET) is payable.

This amendment removes the existing exclusion of such goods from the duty deferral mechanism. This means that LCT and WET becomes payable at the same time that customs duty is payable on the goods in accordance with:

- subsection 13-20(1) of the *A New Tax System (Luxury Car Tax) Act 1999*.; and
- subsection 23-5(1) of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

Item [5] - Paragraph 94A(1)(b)

This Item omits the words “,other than an excluded import duty,”. This amendment is consequential on the amendment in items 6 and 7 below.

Item [6] - Subsection 94A(2)

This Item repeals subsection 94A(2) which defines the term ‘excluded import duty.’ Excluded import duty is charge imposed under Schedule 8 of the *Primary Industries (Customs) Charges Act 1999* (PILCC Act) on forest products imported into Australia (wood levy) and a charge imposed under section 7 of the *Biosecurity Charges Imposition (Customs) Act 2015* (Biosecurity Charges Customs Act) (agricultural processing charge).

This amendment is consequential on the amendment in item 7 below.

Item [7] - Subsection 94A(3)

This Item omits the words “(other than an excluded import duty)” from this subsection. Currently, excluded import duty (wood levy and agricultural processing charge) is excluded from duty deferral which allows other import duty to be paid on or before the 21st day after the end of the month in which the goods were entered for home consumption.

The effect of this amendment is that section 94A applies to the wood levy, so that its payment will be deferred for ATT importers in accordance with the subsection 94A(3) and it can also be paid on or before the 21st day after the end of the month in which the goods were entered for home consumption. This is because wood levy is an import duty for the purposes of section 132AA of the Customs Act; the timing for payment of the wood levy is not dealt with in any other legislation.

The effect is also that the agriculture processing charges are no longer be excluded under section 94A from duty deferral. The deferral of this charge for ATT importers is actioned in amendments to the Biosecurity Regulations in Schedule 2 to the proposed Regulations.

Item [8] - In the appropriate position in Part 18

This Item inserts a new section in Part 18 of the Customs Regulation specifying that amendments made in Schedule 1 of the proposed Regulation apply in relation to goods entered for home consumption on or after the commencement of that Schedule. Part 18 of the Customs Regulation contains its transitional provisions.

Schedule 2 - Amendment of the Biosecurity Regulation 2016

Biosecurity Regulation 2016

Item [1] - After the heading to subsection 108(5)

Regulation 108(5) of the Biosecurity Regulation provides that a charge imposed by the Biosecurity Charges Customs Act or the *Biosecurity Charges Imposition (General) Act 2015* (Biosecurity Charges General Act) is due and payable when a demand for payment of the charge is made. Charges prescribed for the purposes of these Acts are set out in the *Biosecurity Charges Imposition (Customs) Regulation 2016* (the Biosecurity Charges Customs Regulation) and the *Biosecurity Charges Imposition (General) Regulation 2016* (the Biosecurity Charges General Regulation) respectively.

This Item inserts new subsection 108(4A) in the Biosecurity prescribing a new time of payment for the charges in relation to a biosecurity matter prescribed by item 1 or 2 of the table in section 9 of Biosecurity General Charges Regulation or item 1 or 2 of the table in section 9 of the Biosecurity Customs Charges Regulation is due and payable. These items impose a charge in relation to an import declaration that covers goods that have been brought into Australian territory on an aircraft or a vessel. These charges are effectively the excluded import duty referred to in subsection 94A(2) of the Customs Regulation which is repealed by item 6 of Schedule 1 above.

An import declaration is a communication to the Department of Home Affairs by document or electronically as mentioned in section 71A of Customs Act.

Subsection 108(4A) provides that these charges are payable on or before the 21st day after the end of the month in which the import declaration is made, if, at the time an entity enters the import declaration is made, a trusted trader agreement (within the meaning of the Customs Act) is in force, and not suspended, between the Comptroller-General of Customs (within the meaning of the Customs Act) and the entity. This amendment extends duty deferral to these charges in relation to ATT importers, consistent with the duty deferral of import duty, LCT and WET by section 94A of the Customs Regulation.

Item [2] - Subsection 108(5)

This Item inserts the words “, other than a charge covered by subsection (4A) of this section,” after the words “*Biosecurity Charges Imposition (General) Act 2015*”.

This amendment gives effect to the policy that the deferral only applies to the charges in items 1 and 2 in the table under section 9 of both the Biosecurity General Charges Regulation and the Biosecurity Customs Charges Regulation in the circumstances set out in new subsection 108(4A). The remaining charges in the table in section 9 of both of these Regulations remain payable in accordance with subsection 108(5).

Item [3] - At the end of the instrument

This item inserts a ‘Chapter 10 – Transitional Matters’ and a provision outlining that the amendments made in Schedule 2 of the proposed Regulation apply in relation to goods entered for home consumption on or after the commencement of that Schedule.

Statement of Compatibility with Human Rights

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

Customs and Biosecurity Amendment (Deferred Charges for Australian Trusted Traders) Regulations 2021

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

Overview of the Legislative Instrument

These Regulations allow Australian Trusted Trader (ATT) importers to defer payment of additional taxes and charges on certain imported goods instead of paying on a transactional basis.

The ATT program is a voluntary trade facilitation initiative for business that demonstrate a secure supply chain and compliant trade practices. Section 94A the *Customs Regulation 2015* regulates the deferral of the payment of import duty by eligible ATT importers. Eligible import duty must be paid on or before the 21st day after the end of the month in which the goods were entered for home consumption. When section 94A was introduced, several taxes and charges were excluded from its operation. Section 94A provides that import duty deferral does not apply where an AAT importer is liable to pay wine equalisation tax (WET), within the meaning of *A New Tax System (Wine Equalisation Tax) Act 1999* or luxury car tax (LCT), within the meaning of *A New Tax System (Luxury Car Tax) Act 1999* on the goods. This legislation stipulates that WET and LCT are paid on goods at the same time as import duty.

The policy position in 2018 was that WET and LCT must be paid at the time the goods are entered for home consumption, and cannot be deferred. Furthermore, the policy position in 2018 was that deferral does not apply to a charge imposed by the *Biosecurity Charges Imposition (Customs) Act 2015* to the extent that the charge is an import duty (agricultural processing charge); or a charge imposed under Schedule 8 of the *Primary Industries (Customs) Charges Act 1999* on forest products imported into Australia (wood levy). Wood levy and agricultural processing charge were also excluded from the operation of section 94A. Wood levy is also payable at the time the goods are entered for home consumption and, under section 108 of the *Biosecurity Regulation 2016*, agricultural processing charge is payable at the time when the charge is demanded.

The Regulations remove the exclusions on WET, LCT, the wood levy and agricultural processing charge. This means that all these taxes and charges must be paid on or before the 21st day after the end of the month in which the goods were entered for home consumption. Extending payment deferral to the above charges further streamlines accounting for ATT importers and allows one combined payment of import duty and other charges in the month after the goods are entered for home consumption, rather than individual payments for each consignment of goods throughout the month.

The Regulations also clarify that duty deferral for ATT importers is not available for excise-equivalent goods, which are alcohol, tobacco and petroleum products. Such goods are subject to customs duty at a rate equivalent to excise duty on the same products when manufactured

in Australia. As the rates of duty on such goods is high, duty deferral should not apply in relation to these goods due to the risk to the revenue.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Jason Wood
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Parliamentary Secretary to the Minister for Home Affairs