

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs
Customs Act 1901

Customs (Prohibited Imports) Amendment (Signal Jammer Exemptions) Regulations 2023

The *Customs Act 1901* (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.

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

Section 50 of the Customs Act provides, in part, that the Governor-General may, by regulation, prohibit the importation of goods into Australia and that the power may be exercised by prohibiting the importation of goods absolutely or by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

The *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) control the importation into Australia of certain goods by prohibiting importation absolutely, or by making importation subject to a permission or licence.

Regulation 4 and table item 11 in Schedule 3 to the Prohibited Imports Regulations together prohibit the importation into Australia of an equipment (goods) of a kind in relation to which:

- an interim ban under subsection 167(1) of the *Radiocommunications Act 1992* (Radiocommunications Act) is in force; or
- a permanent ban under subsection 172(1) of the Radiocommunications Act is in force.

The kind of equipment includes signal jammers, which can prevent or disrupt mobile phone and satellite navigation services, which have the potential to adversely affect the public on a large scale.

The purpose of the *Customs (Prohibited Imports) Amendment (Signal Jammer Exemptions) Regulations 2023* (proposed Regulations) is to amend the Prohibited Imports Regulations to insert a new exemption to the import control applicable to the goods, permitting the importation of the goods if an exemption under a provision of the Radiocommunications Act, including (but not limited to) section 24, 25 or 26 of that Act, applies in relation to the importation by the person importing the goods. This exempts members of the Defence Force, Officers of the Defence Department, members of visiting forces, members of a civilian component of a visiting force, and authorised defence suppliers from import bans on certain equipment, such as signal jammers, provided the exemption including (but not limited to) section 24, 25 or 26 of the Radiocommunications Act applies to them. The amendments capture exemptions under Radiocommunications Act not otherwise currently captured on the face of the Prohibited Import Regulations.

Sections 24, 25 and 26 of the Radiocommunications Act exempt certain cohorts from the Radiocommunications Act when they are carrying out particular functions and duties. This includes

members of the Defence Force, Officers of the Defence Department, members of visiting forces, members of a civilian component of a visiting force, and authorised defence suppliers.

The new exemption to import control under the Prohibited Imports Regulations has the effect of complementing the exemptions under the Radiocommunications Act. The new exemption provides an enduring exemption to enable the importation into Australia of relevant goods provided an exemption under that Act, including the exemption under the section 24, 25 or 26 of that Act.

The proposed Regulations were developed in consultation with the Department of Defence, the Department of Home Affairs, The Australian Border Force, and the Department of Communications and the Australian Communications and Media Authority. No public consultation was undertaken as the amendments do not substantially alter existing arrangements.

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

The Customs Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

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

The Regulations commence immediately after the Regulations are registered on the Federal Register of Legislation.

Details of the proposed *Customs (Prohibited Imports) Amendment (Signal Jammer Exemptions) Regulations 2023*

Section 1 – Name

This section provides that the title of the Regulations is the *Customs (Prohibited Imports) Amendment (Signal Jammer Exemptions) Regulations 2023* (amendment Regulations).

Section 2 – Commencement

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

Table item 1 provides for the whole of the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

This section is the enabling provision for the Schedule to the amendment Regulations and provides that, each instrument that is specified in a Schedule to the amendment Regulations, would be 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 instrument that is amended is the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations).

Schedule 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item [1] – Schedule 3 (cell at table item 11, column headed “Conditions, restrictions and requirements”)

This item repeals and substitutes the cell at table item 11, column headed “Conditions, restrictions and requirements” in Schedule 3 to the Prohibited Imports Regulations.

Regulation 4 of the Prohibited Imports Regulations concerns goods that are prohibited unless conditions or restrictions are complied with. In particular, subregulation 4(2) provides that the importation into Australia of the goods specified in the second column of Schedule 3 is prohibited unless the conditions, restrictions or requirements specified in the third column of that Schedule opposite to the description of the goods are complied with.

For subregulation 4(2) of the Prohibited Imports Regulations, table item 11 in Schedule 3 to those Regulations set out an exception to the import controls that apply to the importation of an equipment (goods) of a kind in relation to which:

- an interim ban under subsection 167(1) of the *Radiocommunications Act 1992* (Radiocommunications Act) is in force; or
- a permanent ban under subsection 172(1) of the Radiocommunications Act is in force.

Previously, a person was permitted to import the goods if a determination in force under subsection 27(2) or 302(2) of the Radiocommunications Act applies in relation to the importation by the person.

Table item [1] of the amendment Regulations amends the circumstances under which the goods may be imported into Australia. Under the new circumstances, the goods must not be imported by a person unless:

- (a) a determination in force under subsection 27(2) or 302(2) of the Radiocommunications Act applies to the person in relation to the equipment; or
- (b) an exemption under another provision of the Radiocommunications Act, including (but not limited to) section 24, 25 or 26 of that Act, applies to the person in relation to the equipment

The circumstance under paragraph (a) would replicate the intention under the current circumstance for the importation of the goods. The circumstance in paragraph (b) is a new circumstance and enables an exemption to import control where an exemption under a provision of the Radiocommunications Act, including (but not limited to) section 24, 25 or 26 of that Act, applies to the person in relation to the equipment.

Subsections 24(1A), (1B) and 26(1A) and (1B) of the Radiocommunications Act exempt certain cohorts from the Radiocommunications Act when they are carrying out particular functions and duties. This includes members of the Defence Force, Officers of the Defence Department, members of visiting forces, members of a civilian component of a visiting force, and authorised defence suppliers.

Section 25 exempt a person from the Radiocommunications Act where the person is performing a function or duty in relation to the operation of a facility that is:

- jointly operated by the Commonwealth and a foreign country; and
- a special defence undertaking for the purposes of the *Defence (Special Undertakings) Act 1952*.

The effect of this amendment is that members of the Defence Force, Officers of the Defence Department, members of visiting forces, members of a civilian component of a visiting force, and authorised defence suppliers are exempted from the import ban under regulation 4 of the Prohibited Imports Regulations and table item 11 in Schedule 3 to those Regulations, provided the exemption including (but not limited to) section 24, 25 or 26 of the Radiocommunications Act applies to them.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Imports) Amendment (Signal Jammer Exemptions) Regulations 2023

This Disallowable Legislative Instrument is 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 Disallowable Legislative Instrument

The *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) controls the importation of goods by prohibiting importation absolutely, or by making lawful importation subject to a permission or licence. Regulation 4 and table item 11 in Schedule 3 to the PI Regulations together prohibit the importation into Australia of an equipment (goods) of a kind in relation to which:

- an interim ban under subsection 167(1) of the *Radiocommunications Act 1992* (Radiocommunications Act) is in force; or
- a permanent ban under subsection 172(1) of the Radiocommunications Act is in force.

The kind of goods includes signal jamming devices, which can prevent or disrupt mobile phone and satellite navigation services, which have the potential to adversely affect the public on a large scale. The importation of such goods are prohibited unless specified conditions, restrictions or requirements are complied with.

The purpose of the *Customs (Prohibited Imports) Amendment (Signal Jammer Exemptions) Regulations 2023* (the Regulations) is to amend item 11 in Schedule 3 to the PI Regulations to insert a new exemption to the import control applicable to the goods, permitting the importation of the goods if an exemption under a provision of the Radiocommunications Act, including (but not limited to) section 24, 25 or 26 of that Act, applies in relation to the person importing the goods. This would exempt certain members of the Defence Force, officers of the Defence Department, members of visiting forces, members of a civilian component of a visiting force, and authorised defence suppliers from import bans on certain equipment, such as signal jammers, provided an exemption under section 24, 25 or 26 of the Radiocommunications Act applies to them.

The change to the PI Regulations complements the exemption provisions contained in the Radiocommunications Act, mitigating legal risk and exposure for defence operations carried out by certain persons when performing their functions and duties. This includes for instance when visiting forces are intending to bring electromagnetic jammers to defence operations and joint exercises being conducted in Australia.

Human rights implications

The Regulations may have the potential to engage the right to freedom of expression in Article 19 of the *International Covenant on Civil and Political Rights*, to the extent that they permit the importation of goods, such as signal jammers, which are capable of preventing or disrupting mobile phone and satellite navigation services in Australia. However the Regulations do not limit the right to freedom of expression, as they only regulate the

importation of such goods, and importation will continue to prohibited unless specified conditions, restrictions or requirements are complied with. The use of the goods will continue to be subject to regulation under the Radiocommunications Act.

In this regard, the Regulations only permit the importation of such goods in circumstances where relevant exemption provisions in the Radiocommunications Act apply for certain defence operations.

Conclusion

The Regulations are compatible with human rights because, to the extent that the use of imported goods may engage with the right to freedom of expression, that use remains subject of limitations and protections provided for under the Radiocommunications Act.

Hon Clare O'Neil MP
Minister for Home Affairs