

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

Customs Act 1901

Customs (Prohibited Imports) Amendment (Chemical Weapons) Regulations 2024

Legislative Authority

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 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.

Subsection 50(1) of the Act provides that the Governor-General may, by regulation, prohibit the importation of goods into Australia. Subsection 50(2) of the Act provides that the Governor-General may exercise this power by prohibiting the importation of goods absolutely, in specified circumstances or from a specified place, or 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 in accordance with section 50.

Purpose

The purpose of the *Customs (Prohibited Imports) Amendment (Chemical Weapon) Regulations 2024* (the Amendment Regulations) is to amend the Prohibited Imports Regulations to better align import controls on chemical compounds and prescribed goods containing certain chemical compounds with the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (the Convention). The amendments allow for the timing of requests for permission for importation to better align with the reporting obligations under the Convention, and support the efficient analysis of chemical compounds in government laboratories.

The Amendment Regulations include amendments of regulation 5J of the Prohibited Imports Regulations, which deals with the importation of goods containing certain chemical compounds. The Amendment Regulations also insert a new regulation 20 in the Prohibited Imports Regulations, providing for the application of the amendments in the Amendment Regulations, which apply in relation to a permission given on or after the commencement of the amendments on 18 December 2024.

Background

Australia is a State Party to the Chemical Weapons Convention, having ratified the Convention and enforcing the *Chemical Weapons (Prohibition) Act 1994*. The Convention aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties and by requiring the destruction of all existing chemical weapons declared to the Organisation for the Prohibition of Chemical Weapons (OPCW). The Convention includes a verification regime for certain toxic chemicals and their precursors to ensure that such chemicals are only used for purposes not prohibited under the Convention.

The OPCW assists States Parties in implementing their obligations under the Convention. One of OPCW's functions is to conduct verification activities on chemical samples collected by OPCW inspectors from chemical production facilities, storage depots and other installations, or from the site of alleged use of chemical weapons. OPCW uses 'designated laboratories' to assist in its investigation and verification-related activities including in respect of the alleged use of chemical weapons.

As part of Australia's commitment to the Convention, Australia's Defence Science and Technology Group (DSTG) Laboratory has become an OPCW designated laboratory, requiring participation in proficiency testing. Designated laboratories must be able to perform off-site analysis of chemical samples collected by OPCW effectively and efficiently. The Prohibited Import Regulations require permission to be provided for the importation into Australia of goods containing chemical compounds listed in the Convention. The Prohibited Import Regulations also have minimum periods an application for permission must be received prior to importation which will be shortened by the Amendment Regulations. The permission is currently provided to importers for one year and includes reporting obligations. The Australian Safeguards and Non-Proliferation Office (ASNO) has yearly reporting obligations to OPCW.

Impact and effect

The effect of the Amendment Regulations is to reduce the regulatory burden on Australian industry and government agencies, provide for synchronising data collection from importers with reporting requirements to the OPCW, and aligning timing for import applications with the 30-day notice period in the Convention.

By providing an exception to the 30-day period for applications for the purposes of importing goods for analysis from OPCW, the DSTG Laboratory can conduct analysis on behalf of OPCW and participate in OPCW proficiency tests more effectively and efficiently.

The ability to grant or renew a license for less than 1 year will allow ASNO to synchronise the permit application requirements with the importers' reporting requirements. This will facilitate the collection of data to better fulfil Australia's reporting obligations to the OPCW

and lessen the administrative burden for both importers and ASNO. These changes will assist Australia in effectively meeting its Convention obligations.

The Amendment Regulations were initiated by ASNO, within the Department of Foreign Affairs and Trade, in consultation with the Department of Prime Minister and Cabinet. ASNO also consulted with Australian Border Force, the Department of Defence, and the Attorney-General's Department. No public consultation was undertaken as the amendment is technical in nature. The Office of Impact Assessment considers the amendment to have a minor impact, and provides deregulation benefits (OIA23-06039).

Details and operation

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

The Amendment Regulations commence on 18 December 2024.

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

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

Paragraph 54(2)(b) of the Legislation Act has the effect that if a legislative instrument is prescribed by regulation for the purposes of that paragraph, then the instrument is exempt from the operation of sunseting under Part 4 of the Legislation Act.

Item 21 of the table under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* prescribes the following instruments made under the Customs Act as being exempt from sunseting for the purposes of paragraph 54(2)(b) of the Legislation Act:

- a regulation made solely for the purposes of section 50 or 112 of the Customs Act;
- a determination made under paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2) of that Act, or
- a tariff concession order made under Part XVA of that Act.

Sections 50 and 112 of the Customs Act provide for the making of regulations in relation to prohibited exports and prohibited imports. The majority of regulations made under these sections are exempt from sunseting because they relate to intergovernmental schemes or have the sole or primary purpose of giving effect to an international obligation of Australia. Subjecting these regulations to sunseting may conflict with Australia's international obligations and with ongoing intergovernmental arrangements. As such, the Prohibited Imports Regulations are exempt from sunseting under Part 4 of the Legislation Act.

Division 1 of Part 3 of Chapter 3 of the Legislation Act operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. That Division applies to automatically repeal the Amendment Regulations. As the

Amendment Regulations will be automatically repealed, the sunseting framework under Part 4 of the Legislation Act is not engaged.

Details of the *Customs (Prohibited Imports) Amendment (Chemical Weapons) Regulations 2024*

Section 1 – Name

This section provides that the title of the instrument is the *Customs (Prohibited Imports) Amendment (Chemical Weapons) Regulations 2024* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on 18 December 2024.

Section 3 - Authority

This section provides that the Amendment Regulations are made under the *Customs Act 1901*.

Section 50 of the Customs Act provides that the Governor-General may, by regulation, prohibit the importation of goods into Australia and that the Governor-General may exercise this power by prohibiting the importation of goods absolutely, in specified circumstances or from a specified place, or unless specified conditions or restrictions are complied with.

Section 4 - Schedules

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 legislative instrument that is amended is the *Customs (Prohibited Imports) Regulations 1956*.

Schedule 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item [1] Paragraphs 5J(2AB)(b) and (c)

The amendment in item [1]:

- repeals paragraphs 5J(2AB)(b) and (c); and
- substitutes new paragraph 5J(2AB)(b), which provides that permission for importation of prescribed goods remains in force for the period specified in the permission, which may be no more than one year from the day the permission is given.

The Australian Safeguards and Non-Proliferation Office (ASNO) is required to report to the Organisation for the Prohibition of Chemical Weapons (OPCW) on Australia's activities, including the production, processing, consumption, storage, import, and export quantities of specific chemicals. In order to meet this reporting requirement, ASNO requires permit holders to provide information on imports for the previous calendar year. This reporting requirement for permit holders currently exists in addition to the application for a grant or renewal of a permit.

Where the timing of a grant or renewal of a permit does not align with the timing of ASNO's reporting requirements, there is a lessening of compliance with these reporting requirements. ASNO have found greater compliance with reporting requirements when those requirements coincide with the permit application or renewal process.

Subregulation 5J(2AB) provides that the permission for the importation for prescribed goods containing a chemical compound or chemical compounds belonging to a group of compounds mentioned in Part 3 of Schedule 11 to the Prohibited Imports Regulations, (a) may be given for the importation of more than one shipment, (b) remain in force for one year from the day when it is given, and (c) may be renewed for up to three further periods of one year.

The amendment in item [1] of the Amendment Regulations provides for permission to import prescribed goods containing a chemical compound or a chemical compound belonging to a group of compounds to remain in force for less than one year from the day it is given. It removes the capability for permission to be renewed.

The ability to grant a license for less than one year will allow ASNO to synchronise the permit application requirements with the importers' reporting requirements, which would facilitate the collection of data to better fulfil Australia's reporting obligations to the OPCW and lessen the administrative burden for both importers and ASNO. These changes assist Australia in effectively meeting its obligations under the Convention.

Item [2] - Subregulation 5J(2B)

The amendment in item [2]:

- repeals current subregulation 5J(2B) of the Prohibited Imports Regulations; and
- substitutes new subregulation 5J(2B), which provides that an application for permission to import prescribed goods containing a chemical compound, or chemical compound belonging to a group of compounds, mentioned in Part 2 of Schedule 11 to the Regulations must be received at the ASNO at least 30 days before the day when it is proposed to import the goods.

Under the Chemical Weapons Convention, Australia is obliged to notify OPCW of any proposed shipment of chemical compounds mentioned in Part 2 of Schedule 11. This notice must take place at least 30 days prior to the proposed shipment from the country of origin.

Current paragraph 5J(2B)(a) of the Prohibited Imports Regulations has the effect that the Minister or an authorised person must not give permission to import prescribed goods containing chemical compounds or a chemical compound belonging to a group of compounds mentioned in Part 2 of Schedule 11 unless an application for the permission is received at least 37 days prior to import.

The Convention does not provide an advance notification requirement (i.e. minimum notice period) for the transfer of chemical compounds mentioned in Part 3 or 4 of Schedule 11.

Current paragraph 5J(2B)(b) of the Prohibited Imports Regulations has the effect that the Minister or an authorised person must not give permission to import prescribed goods containing chemical compounds or a chemical compound belonging to a group of compounds mentioned in Part 3 or 4 of Schedule 11, unless an application for the permission is received at least 7 days prior to import.

Combined, these subregulations operate to impose longer time periods for applications to be received to meet the requirements for the import of chemical compounds mentioned in Parts 2, 3 and 4 of Schedule 11 than the requirements outlined in the Chemical Weapons Convention. This is an unnecessary regulatory burden on Australian industry and government agencies and is inconsistent with Australia's obligations under the Convention.

The amendment in item [2] repeals subregulation 5J(2B) and substitutes a new subregulation 5J(2B), which reduces the period an application for permission to import prescribed goods containing certain chemical compounds or a chemical compound belonging to a group of compounds mentioned in Part 2 of Schedule 11 to the Regulations must be received prior to importation, from 37 days to 30 days. The substitution of subregulation 5J(2B) also has the effect that the 7 day period an application must be received prior to importing chemical compounds mentioned in Part 3 or 4 of Schedule 11 is no longer required.

The effect of this amendment is to reduce the regulatory burden on Australian industry and government agencies. It aligns the application period in subregulation 5J(2B) with the 30 day notice period in the Convention and remove the 7 day period an application must be received prior to importing chemical compounds mentioned in Part 3 or 4 of Schedule 11.

Item [3] - Subregulation 5J(2D)

The amendment in item [3] inserts new subregulation 5J(2D) after current subregulation 5J(2C) of the Prohibited Imports Regulations.

Subregulation 5J(2B) of the Prohibited Imports Regulations provides that the Minister or an authorised person must not give permission to import prescribed goods unless an application for the permission is received for a specified period of time prior to importation.

Item [3] inserts new subregulation 5J(2D) to provide that subregulation 5J(2B) does not apply to an application made for the purposes of analysis of samples sent from, or on behalf of, the OPCW.

The Convention requires notification to OPCW at least 30 days prior to the transfer of chemical compounds mentioned in Part 2 of Schedule 11 between States Parties. This requirement does not apply to samples for analysis or proficiency testing sent to, from, or on behalf of, OPCW.

Timelines for analysis of samples sent by, or on behalf of the OPCW, are not detailed under the references to designated laboratories according to, but not limited to, paragraphs 55-57 of Part II of the Convention's Verification Annex. Furthermore, there is no requirement under the Chemical Weapons Convention to include such transfers in declarations to the OPCW. ASNO has not identified any requirement to provide advance notice for an import of a sample from, or on behalf of, the OPCW for the purposes of analysis or to participate in a proficiency test.

The effect of subregulation 5J(2D) is to allow the DSTG Laboratory to import and conduct analyses of chemical samples on behalf of OPCW and participate in OPCW proficiency tests more effectively and efficiently. If the DSTG Laboratory cannot undertake the proficiency tests and provide analysis of chemical compounds, it may lose its designated laboratory status, limiting Australia's capability to meet its obligations under the Convention.

Item [4] - After regulation 19

Item [4] inserts new regulation 20 in the Prohibited Imports Regulations. Regulation 20 has the effect that the amendments of the Prohibited Import Regulations by the Amendment Regulations apply in relation to a permission given or renewed on or after the commencement of the Amendment Regulations. The Amendment Regulations commence on 18 December 2024.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Imports) Amendment (Chemical Weapons) Regulations 2024

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) Amendment (Chemical Weapon) Regulations 2024* (Amendment Regulations) amend the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) to align import controls on prescribed goods containing certain chemical compounds with the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (Chemical Weapons Convention).

Australia is a State Party to the Chemical Weapons Convention, having ratified the Convention by passing the *Chemical Weapons (Prohibition) Act 1994*. The Chemical Weapons Convention aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by State Parties and by destroying all existing chemical weapons declared to the Organisation for the Prohibition of Chemical Weapons (OPCW). One hundred and ninety-three States are Parties to the Chemical Weapons Convention. The Chemical Weapons Convention allows States Parties to determine how they will implement their treaty obligations as to the importation of the toxic chemicals and precursors listed in its Annex on Chemicals.

The OPCW assists States Parties in implementing their obligations under the Chemical Weapons Convention. One of OPCW's functions is to conduct verification activities, including analyses of chemical samples collected by OPCW inspectors from chemical production facilities, storage depots and other installations, or from the site of alleged use of chemical weapons. OPCW uses 'designated laboratories' to assist in its investigations and verification-related activities including in respect of the alleged use of chemical weapons.

As part of Australia's commitment to the Chemical Weapons Convention, Australia's Defence Science and Technology Group (DSTG) Laboratory has become an OPCW designated laboratory, able to receive samples from OPCW for analysis. To be 'designated', a State Party laboratory must participate in OPCW's proficiency testing program at least once per calendar year. Designated laboratories must be able to perform off-site analysis of

chemical samples collected by OPCW inspectors from chemical production facilities, storage depots and other installations, or from the site of an alleged use of chemical weapons. Designated laboratories offer the necessary assurance to States Parties that chemical analyses needed to make determinations or to clarify issues occurring during OPCW deployments are carried out competently, impartially, and with unambiguous results. As such, designated laboratories must be able to carry out analysis in a timely manner.

Subregulation 5J(2A) of the Prohibited Import Regulations prohibits the importation into Australia of goods containing one or more prescribed chemical compounds from a country that is a State Party to the Chemical Weapons Convention unless the Minister for Foreign Affairs or an authorised person has given permission in writing to import the goods. For a subset of the prescribed chemical compounds, this permission may not be given by the Minister or an authorised person unless an application for the permission is received at the Australian Safeguards and Non-Proliferation Office (ASNO). This application needs to be made at least 37 days before the day when it is proposed to import the goods.

The Amendment Regulations reduce the 37-day period for applications seeking permission from ASNO down to a 30-day minimum period. It also introduces new subregulation 5J(2D) which provides exemptions to the 30-day minimum application timeframe if the prescribed goods are imported for the purposes of analysis of samples from or on behalf of the OPCW. This allows the DSTG Laboratory to conduct analysis on behalf of OPCW and participate in OPCW proficiency tests effectively and in a timely fashion.

The Amendment Regulations also change permissions granted under subregulation 5J(2A) and (2AA) so that they only remain in force for no more than 1 year, and no longer have the ability to renew for up to 3 further periods of 1 year. The ability to grant an import permission for less than 1 year allows the ASNO to synchronise the permit application requirements with the importers' reporting requirements. This facilitates the collection of data to better fulfil Australia's reporting obligations to the OPCW and lessens the administrative burden for both importers and ASNO. This assists Australia to effectively meet its Chemical Weapon Convention obligations.

The effect of the Amendment Regulations is to reduce the regulatory burden on Australian industry and government agencies, provide for synchronising data collection from importers with reporting requirements to the OPCW, and aligning timing for import applications in subregulation 5J(2B) with the 30 day notice period in the Chemical Weapons Convention.

The Amendment Regulations were initiated by ASNO, within the Department of Foreign Affairs and Trade, in consultation with the Department of Prime Minister and Cabinet. ASNO also consulted with Australian Border Force, the Department of Defence, and the Attorney-General's Department.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights because it does not engage human rights.

**The Hon Tony Burke MP
Minister for Home Affairs**