

## **EXPLANATORY STATEMENT**

Issued by authority of the Comptroller-General of Customs

*Customs Act 1901*

### ***Customs (International Obligations) Amendment (Australia–Fiji Defence Cooperation Agreement) By Law 2025***

#### **Legislative Authority**

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.

Section 271 of the Customs Act provides, in part, that where an item of a Customs Tariff is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law, the Comptroller-General of Customs may make by-laws for the purposes of that item. A Customs Tariff is defined in section 4 of the Customs Act to mean an act imposing duties of customs. The *Customs Tariff Act 1995* (Customs Tariff Act) is a Customs Tariff for the purposes of the Customs Act.

#### **Background**

Schedule 4 to the Customs Tariff Act lists classes of goods to which concessional customs duty rates may apply and specifies the concessional customs duty rate applicable to such classes. Relevantly, by-laws made under section 271 (complemented by section 272) of the Customs Act prescribe goods for the purposes of items of Schedule 4 to the Customs Tariff Act and specify conditions under which the prescription of goods applies.

Table item 11 of Schedule 4 to the Customs Tariff Act provides that goods, as prescribed by by-law, that are for use by, or for sale to, persons the subject of a Status of Forces Agreement between the Government of Australia and the government of another country or other countries are eligible for the concessional customs duty rate of “Free”.

The *Agreement between the Government of Australia and the Government of the Republic of Fiji on Cooperation in the Field of Defence and the Status of Visiting Forces* (Agreement), signed on 20 October 2022, is a Status of Forces Agreement.

Article 9 of the Agreement, amongst other things, sets out an obligation that members of the Military Forces of the Republic of Fiji may import certain goods into the Receiving State free of duty. Those goods include a motor vehicle, personal effects, furniture and household goods, but does not include cigarettes, cigars, tobacco and spirituous liquors.

The *Customs (International Obligations) Amendment (Australia–Fiji Defence Cooperation Agreement) By Law 2025* (Amendment By-Law) amends the *Customs (International Obligations) By-Laws 2023* (International Obligations By-Laws) to implement customs commitments under Article 9 of the Agreement.

## **Purpose and effect**

The purpose of the Amendment By-Law is to amend the International Obligations By-Laws to prescribe new goods for which the concessional customs rate of duty under table item 11 of Schedule 4 to the Customs Tariff Act applies.

The amendments have the effect of enabling personal effects, furniture and household goods (but not cigarettes, cigars, tobacco, and spirituous liquors) imported into Australia by members of a Republic of Fiji Visiting Force or a dependent of a member, and one motor vehicle to be imported per member of a Republic of Fiji Visiting Force, to be eligible for the concessional customs duty rate of “Free”, provided conditions that are consistent with Article 9 of the Agreement are met.

## **Consultation**

The Department of Defence led negotiations with the Republic of Fiji. The Department of Defence consulted with the Department of the Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, and the Attorney-General’s Department. The Agreement was subject to public consultation as part of the parliamentary review by the Joint Standing Committee on Treaties (JSCOT).

The JSCOT sought submissions from the public after the Agreement was tabled on 19 March 2024 and one submission was received, which is accessible on the JSCOT website:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/Completed\\_inquiries](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Completed_inquiries)

JSCOT has recommended binding treaty action be taken.

## **Details and operations**

The Amendment By-Law is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

The entire Amendment By-Law commences in accordance with section (2) of that instrument.

Details of the Amendment By-Law are set out in **Attachment A**.

## **Other**

*Disallowance does not apply to the Amendment By-Law*

The combination of section 44 of the Legislation Act and table item 12 of regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOM Regulation) have the effect that section 42 of the Legislation Act (disallowance of legislative instruments) does not apply to a by-law made under section 271 of the Customs Act for the purposes of Schedule 4 to the Customs Tariff Act.

Instruments made under section 271 of the Customs Act are used to implement Government decisions, international agreements and industry policy. They are not subject to disallowance to preserve certainty in relation to these matters.

The Amendment By-Law is an instrument made under section 271 of the Customs Act, and as such, the Amendment By-Law is an instrument to which disallowance does not apply.

*Statement of Compatibility not required for the Explanatory Statement*

Paragraph 15J(2)(f) of the Legislation Act has the effect that, if an instrument is a disallowable legislative instrument, then the Explanatory Statement for the instrument must contain a statement of compatibility prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act). Furthermore, subsection 9(1) of the HRPS Act provides that the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the Legislation Act applies must cause a statement of compatibility to be prepared in respect of that legislative instrument.

The Amendment By-Law is an instrument to which section 42 of the Legislation Act does not apply. As such, a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the HRPS Act.

*Sunsetting does not apply to the Amendment By-Law*

The combination of section 54 of the Legislation Act and table item 1 of regulation 11 of the LEOM Regulation have effect that Chapter 3 of the Legislation Act (sunsetting of legislative instruments) does not apply to a legislative instrument the sole purpose of which, or a primary purpose of which, is to give effect to an international obligation of Australia.

The sole purpose of the International Obligations By-Laws is to give effect to international obligations of Australia in the form of customs commitments under multiple international agreements to which Australia is a party. Likewise, the sole purpose of the amendments contained in the Amendment By-Law is to give effect to the customs commitment under Article 9 of the Agreement. As such, Part 4 of Chapter 3 of the Legislation Act does not apply to the Amendment By-Law by operation of the combination of section 54 of the Legislation Act and table item 1 of regulation 11 of the LEOM Regulation.

In any case, section 48A of the Legislation Act repeals a legislative instrument whose only legal effect is to amend or repeal one or more other legislative instruments. The only legal effect of the Amendment By-Law is to amend the International Obligations By-Laws. As such, the Amendment By-Law will be repealed after it commences and amends the International Obligations By-Laws.

**Details of the *Customs (International Obligations) Amendment (Australia–Fiji Defence Cooperation Agreement) By Law 2025***

**Section 1 Name**

Section 1 provides that the name of the instrument is the *Customs (International Obligations) Amendment (Australia–Fiji Defence Cooperation Agreement) By Law 2025* (Amendment By-Law).

**Section 2 Commencement**

Section 2 sets out, in a table, the date on which the Amendment By-Law commences.

Table item 1 provides for the whole of the instrument to commence on the later of:

- (a) the day after the day the instrument is registered; and
- (b) the day the *Agreement between the Government of Australia and the Government of the Republic of Fiji on Cooperation in the Field of Defence and the Status of Visiting Forces*, done on 20 October 2022 comes into effect.

However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

The Minister for Home Affairs must announce, by notifiable instrument, the day the Agreement enters into force.

The Note under the table in subsection (1) indicates that the table only relates to the provisions of this instrument as originally made and will not be amended to deal with any later amendments of this instrument.

**Section 3 Authority**

Section 3 sets out the authority under which the Amendment By-Law is made, which is section 271 of the *Customs Act 1901* (Customs Act).

**Section 4 Schedules**

Section 4 is the enabling provision for the Schedule to the Amendment By-Law. 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 that any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 to the Amendment By-Law amends the *Customs (International Obligations) By-Laws 2023* (International Obligations By-Laws).

## Schedule 1—Amendments

### *Customs (International Obligations) By Laws 2023*

#### Item 1 Before section 14

Item 1 amends the International Obligations By-Laws to insert new section 13B.

The sole purpose of section 13B of the Customs By-Laws is to give effect to an obligation under the Agreement to enable certain goods imported by members of defence forces and their dependents covered by the Agreement to be eligible for the concessional customs duty rate of “Free”.

Schedule 4 to the *Customs Tariff Act 1995* (Customs Tariff Act) lists classes of goods to which concessional customs duty rates may apply and specifies the concessional customs duty rate applicable to such classes of goods. Relevantly, by-laws made under section 271 (complemented by section 272) of the Customs Act prescribe goods for the purposes of items of Schedule 4 to the Customs Tariff Act and specify conditions under which the prescription of goods applies.

Table item 11 of Schedule 4 to the Customs Tariff Act provides that goods, as prescribed by by-law, that are for use by, or for sale to, persons the subject of a Status of Forces Agreement between the Government of Australia and the government of another country or other countries are eligible for the concessional customs duty rate of “Free”.

On 20 October 2022, the Agreement, which is a Status of Forces Agreement, was signed.

Article 9 of the Agreement, amongst other things, sets out an obligation that members of the Republic of Fiji Visiting Force (including the civilian component) and in some situations their dependents, may import certain goods into the Receiving State free of duty. Those goods include a motor vehicle, personal effects, furniture and household goods, but do not include cigarettes, cigars, tobacco and spirituous liquors.

The purpose of new section 13B is to give effect to the aforementioned obligation under Article 9 of the Agreement.

Under new subsection 13B(1), section 13B may be cited as Customs By-law No. 2500016. It prescribes goods for the purposes of table item 11 of Schedule 4 to the Customs Tariff Act, which provides that goods, as prescribed by by-law, that are for use by, or for sale to, persons the subject of a Status of Forces Agreement between the Government of Australia and the government of another country are dutiable at the rate of “Free”.

New subsection 13B(2) sets out the following goods that are prescribed for the purposes of table item 11 of Schedule 4 to the Customs Tariff Act:

- (a) personal effects, furniture and household goods of a member or the member’s dependent;
- (b) a motor vehicle.

Subparagraphs 13B(2)(a)(ii) and (iii) make clear that cigarettes, cigars, tobacco and spirituous liquors are excluded. This reflects paragraph (3) of Article 9 of the Agreement which provides, in part, that members and dependents may import into the Receiving State (i.e. the Republic of

Fiji or Australia) reasonable quantities of personal effects, furniture and household goods other than motor vehicles, cigarettes, cigars, tobacco or spirituous liquors.

Subparagraph 13B(2)(b) makes clear that motor vehicles are prescribed for the purposes of table item 11 of Schedule 4 to the Customs Tariff Act. This reflects paragraph (4) of Article 9 of the Agreement which provides, in part, that members may import into the Receiving State one motor vehicle free of duty. “Duty” means any duty, tax, fee, charge or levy (including, relevantly, customs duty) payable on importation except those that are no more than charges for services rendered.

New subsection 13B(3) provides that table item 11 of Schedule 4 to the Customs Tariff Act applies to goods under new paragraph 13B(2)(a) subject to the conditions that:

- (a) the goods were imported during the period of six months beginning on the day the person importing the goods (the person covered by paragraph (2)(a)) first arrived in Australia;
- (b) the goods remain in the use, ownership and possession of the person, or are to be consumed by the person; and
- (c) the goods must not be transferred to another person, operated, sold, traded, exchanged, hired out, donated or otherwise disposed of for financial gain in Australia, unless prior written approval has been obtained from a Collector.

This reflects paragraph (3) of Article 9 of the Agreement which provides that a member of a Visiting Force or its Civilian Component, or a dependent of the member, may import free of duty reasonable quantities of personal effects, furniture and household goods, other than motor vehicles, cigarettes, cigars, tobacco and spirituous liquors, provided that:

- (a) they are imported at the time of first arrival of the member of a Visiting Force or its Civilian Component or Dependent in the Receiving State, or within six months thereafter; and
- (b) they remain in the use, ownership and possession of, or are consumed by that person.

This also reflects paragraph (5)(b) of Article 9 of the Agreement which provides that the goods may not be transferred to another person, operated, sold, traded, exchanged, hired out, donated or otherwise disposed of for financial gain in the Receiving State without the express approval of the Government of the Receiving State and in compliance with the laws of the Receiving State.

New subsection 13B(4) provides that table item 11 applies to the motor vehicles referred to in new paragraph 13B(2)(b) subject to both of the following conditions:

- (a) only one motor vehicle may be imported by a member;
- (b) the motor vehicle imported by a member must not be transferred to another person, operated, sold, traded, exchanged, hired out, donated or otherwise disposed of for financial gain in Australia unless prior written approval has been obtained from a Collector.

This reflects paragraph (4) of Article 9 of the Agreement which provides, in part, that members may import into the Receiving State one motor vehicle free of duty and taxes in accordance with the legislation of the Receiving State.

This also reflects paragraph (5)(b) of Article 9 of the Agreement which provides that the goods may not be transferred to another person, operated, sold, traded, exchanged, hired out, donated or otherwise disposed of for financial gain in the Receiving State without the express approval

of the Government of the Receiving State and in compliance with the laws of the Receiving State.

Subsection 13B(5) sets out the definitions for the purpose of the by-law.

*Agreement* means the *Agreement between the Government of Australia and the Government of the Republic of Fiji on Cooperation in the Field of Defence and the Status of Visiting Forces*, done on 20 October 2022. The Agreement has two Parties, which are the Government of Australia and the Government of the Republic of Fiji.

The expression *civilian component* has the same meaning as in the Agreement. That is, the civilian personnel accompanying the Visiting Force who are employed by or in its service having functions relating to defence matters and who are neither nationals of, nor ordinarily resident in, the Receiving State, but does not include contractors.

For the expression *civilian component*, the expression of *Receiving State*, as defined under paragraph (1) of Article 1 of the Agreement, means the State of the Party in whose territory a Visiting Force is located.

The expression *dependent* has the same meaning as in the Agreement. That is, a person who:

- (a) is not a member of a Visiting Force or its civilian component;
- (b) is neither a national of nor ordinarily a resident in the Receiving State; and
- (c) is accompanying a member of a Visiting Force or its civilian component and is:
  - (i) the spouse of the member;
  - (ii) wholly or mainly maintained by the member;
  - (iii) in the custody, care or charge of the member; or
  - (iv) a relative of the member ordinarily residing with the member.

For the expression *dependent*, the expression of *spouse*, as defined under paragraph (1) Article 1 of the Agreement, means another person who:

- (a) is married to a member under the law of the Sending State; or
- (b) is not married to a member, but has a relationship with a member as a couple living together on a genuine domestic basis as recognised by the law of the Sending State.

For the expression *spouse*, the expression of *Sending State*, as defined under paragraph (1) of Article 1 of the Agreement, means the State of the Party to which the Visiting Force belongs.

The expression *member* means a member of a Republic of Fiji Visiting Force or of its civilian component.

The expression *Visiting Force* has the same meaning as in the Agreement. That is, any individual, body, contingent or detachment of the Force of one Party, who, with the consent of the other Party, is present in the territory of the other Party pursuant to cooperative activities under Article 3 of the Agreement.

The definitions for these terms reflect the definitions provided for the terms in paragraph (1) of Article 1 of the Agreement.

The note to the definition of Agreement indicates, as at 2025, the text of this Agreement is accessible through the Australian Parliament House website at the [www.aph.gov.au](http://www.aph.gov.au)