

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Customs (Prohibited Imports) Regulations 1956*

*Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019*

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.

Subsection 50(1) of the Act provides that the Governor-General may, by regulation, prohibit the importation of goods into Australia. Under section 50 this power may be exercised by prohibiting the importation of goods absolutely or in compliance with certain conditions or restrictions.

Subsection 50(2)(c) of the Act provides that the power in subsection 50(1) to make regulations prohibiting the import of goods into Australia may be exercised by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

Subregulation 4DA(1) of the Prohibited Imports Regulations prohibits the importation of tobacco products into Australia unless:

- (a) a permission to import the tobacco products has been granted in writing by the Minister or an authorised person and the permission is produced to the Collector; or
- (b) the Minister has approved the importation under subregulation 4DA(9).

The *Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019* (Instrument of Approval) is made under the authority of subregulation 4DA(9) of the Prohibited Imports Regulations which allows the Minister to approve, by legislative instrument, the importation into Australia of a tobacco product that meets one or more of the following conditions or restrictions:

- (a) the tobacco product is specified in, or included in a class of tobacco products specified in, the approval;
- (b) the tobacco product is imported by a person, or class of persons, specified in, the approval;
- (c) the tobacco product does not exceed a value or amount specified in the approval;
- (d) the tobacco product is imported in a way, or by a means, specified in the approval.

The purpose of the Instrument of Approval is to provide ongoing approvals for certain tobacco products where it is considered that applying for a case-by-case permission is not necessary.

For example, the Instrument of Approval will provide for ongoing approvals for the importation of tobacco products above the duty free limits by passengers and members of the

crew of ships and aircraft arriving in Australia, who are aged 18 years or older. The purpose of this approval is to ensure that international travellers entering Australia can continue to import into Australia duty paid tobacco without the need to apply for and obtain an import permit, which would be an unnecessary administrative burden in this context.

The Instrument of Approval will also establish on-going approvals for the importation into Australia of the following tobacco products:

- tobacco products on which duty is payable imported as part of the Unaccompanied Personal Effects of a passenger on, or a member of the crew of, a ship or aircraft arriving in Australia, if the passenger or member is at least 18 years of age;
- tobacco products imported into Australia for the purpose of transshipment;
- tobacco products imported for sale by military commissaries to persons the subject of a Status of Forces Agreement between the Government of Australia and the government of another country or other countries.

The Instrument of Approval also provides the Minister with the flexibility to add additional tobacco products to the instrument in the future, where certain tobacco products, such as emerging tobacco products, may be identified which should not be subject to the import prohibition introduced by new subregulation 4DA(1). This flexibility would also allow the Minister to quickly address changing patterns of illicit tobacco importation.

The Instrument of Approval is a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation was not undertaken for the Instrument of Approval as this instrument is consequential to the making of the *Customs (Prohibited Imports) Amendment (Collecting Tobacco Duties) Regulations 2019* which form part of a broader Commonwealth Government initiative to address recommendations of the October 2017 Black Economy Taskforce Final Report. In this report the Government announced a number of measures to combat illicit tobacco trade in Australia, including a prohibition on the importation of tobacco without a permit into Australia from 1 July 2019.

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

The Instrument of Approval commences on 1 July 2019.

## **Statement of Compatibility with Human Rights**

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

### **Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019**

The proposed 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 legislative instrument**

The purpose of the proposed legislative instrument is to provide ongoing approval to import tobacco products in line with the specified circumstances and restrictions provided in subregulation 4DA(9) of the *Customs (Prohibited Imports) Amendment (Collecting Tobacco Duties) Regulations 2019* (the Amendment Regulations).

The *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations) set out various goods the importation of which is prohibited absolutely or prohibited unless certain conditions, restrictions, requirements are complied with, such as the granting of a licence or permission. The Amendment Regulations introduce a prohibition on the importation of tobacco products into Australia without a permit, with limited exemptions from 1 July 2019.

#### **Background**

The Australian Government announced in the 2018-19 Budget that it would tighten tobacco border controls by introducing a prohibited import control for tobacco products through the *Black Economy Package – Combatting Illicit Tobacco*. The Amendment Regulations that introduce the prohibited import control on tobacco products were made on 21 March 2019.

The Prohibited Import Regulations include two prohibited import controls for certain tobacco products. Regulation 4D provides that the importation of unmanufactured tobacco leaf is prohibited unless the person importing the tobacco holds the relevant dealer or manufacturer licence, or an import permission has been given by the Commissioner of Taxation.

Regulation 4U and Schedule 12 prohibit the importation of chewing tobacco, and snuffs intended for oral use, in an amount weighing more than 1.5 kilograms, without the relevant permission granted by the Minister administering Division 1A of Part V of the *Trade Practices Act 1974*. All other types of tobacco products can be imported into Australia without a permit.

From 1 July 2019, the Amendment Regulations will build on the two existing tobacco prohibited import controls for tobacco by inserting a new regulation in the Prohibited Imports Regulations, to prohibit the importation of tobacco products into Australia without the relevant permission and subject to certain conditions. As such, tobacco products will only be able to be imported into Australia with a valid import permit (except for international travellers using duty free allowances and specified tobacco items such as cigars and smokeless tobacco).

The proposed legislative instrument will allow the Minister to approve the importation of certain tobacco products into Australia where an application for an individual tobacco permit would be impractical and would place an unnecessary administrative burden on the Department of Home Affairs and Australian Border Force (ABF).

The legislative instrument would also provide the Minister with flexibility to add additional tobacco products in the future, where certain emerging tobacco products may be identified which should not be subject to the import prohibition introduced under subregulation 4DA(1) of the Regulations.

Tobacco products imported without a valid permit or in contravention of the approvals provided by the proposed instrument would be a prohibited import and would be able to be seized at the border without a warrant.

### **Human rights implications**

The proposed legislative instrument is essential to successfully implementing the Amendment Regulations which supports the Government's commitment to improve health outcomes for Australians and combat illicit tobacco. The Amendment Regulations are consistent with the *Tobacco Strategy 2012-2018* (endorsed by all Australian Health Ministers) to reduce the affordability of tobacco products by combating illicit tobacco. It is also consistent with the World Health Organization's *Framework Convention on Tobacco Control*, which commits nations to implement policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.

#### ***The right to enjoy the highest standard of physical and mental health.***

Article 12 of the International Covenant on Economic, Social and Cultural Rights serve to protect a person's right to the highest standards or physical and mental health.

Trade in illicit tobacco is extremely profitable, particularly as a result of ongoing excise increases. Once illicit tobacco has entered the domestic supply chain, there are few disincentives for those who engage in the illicit tobacco trade due to the difficulties in proving that an offence has been committed under current laws.

Illicit tobacco undermines public health measures to reduce the prevalence and uptake of smoking, bypassing important controls and standards relating to manufacturing, plain packaging and health labelling. Illicit tobacco can be manufactured in sub-standard processes, uses potentially poisonous ingredients, and inherently poses environmental and contamination risks.

ABF activities have detected poisons such as formaldehyde, and found rat faeces, inside illicit tobacco—posing a health and biosecurity risk to Australia.

By making tobacco products a prohibited import and only permitting the import of legitimate tobacco products in certain circumstances through the specified exemptions and the approvals proposed to be granted by the legislative instrument, the Amendment Regulations engage and enhance the right to enjoy the highest standard of physical and mental health. The measure will serve as a deterrent against the increasing illicit tobacco market, serving to further reduce the amount of illicit tobacco in Australia.

Further, the measure will improve physical and mental health outcomes, as the amount of illicit tobacco in Australia will be reduced, limiting public exposure to the potential harms

associated with illicit tobacco. The proposed legislative instrument will support the effectiveness of related health policies, such as tobacco plain packaging requirements.

### **Conclusion**

The proposed legislative instrument is compatible with the applicable rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The legislative instrument positively engages with the right to the highest standard of physical and mental health because it improves the health and safety standards in Australia by targeting the operability of the illicit tobacco trade and limiting the import of tobacco to legitimate tobacco products.

**Hon Peter Dutton, Minister for Home Affairs**