

**EXPLANATORY STATEMENT****Select Legislative Instrument 2011 No. 21**

Subject: *Legislative Instruments Act 2003*

*Legislative Instruments Amendment Regulations 2011 (No. 1)*

Section 62 of the *Legislative Instruments Act 2003* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes a comprehensive regime for the management of Commonwealth legislative instruments and the *Legislative Instruments Regulations 2004* (the Principal Regulations) facilitates the operation of the Act by, among other things, providing exemptions from the whole or part of the Act. Part 6 of the Act provides a regime for the sunseting (automatic ceasing) of legislative instruments after 10 years of operation. The regime ensures that legislative instruments are reviewed regularly and kept up-to-date.

The purpose of the *Legislative Instruments Amendment Regulations 2011 (No. 1)* (the Regulations) is to amend the Principal Regulations to provide an exemption from the sunseting regime under the Act for Tariff Concession Orders (TCOs) made under Part XVA of the *Customs Act 1901* (the Customs Act).

Part XVA of the Customs Act enables the Chief Executive Officer of Customs to make TCOs for imported goods where there is no local industry that produces substitutable goods in the ordinary course of business. Once a TCO is in place, any person importing goods covered by the TCO can do so at a free rate of duty. The Customs Act provides a comprehensive system for the management of TCOs, which includes processes for making, revoking and reviewing TCOs. These mechanisms are more suited to the nature of TCOs than the sunseting regime provided for under the Act.

Regulation 9 of the Principal Regulations provides that an instrument mentioned in Schedule 3 to the Principal Regulations is declared not to be subject to sunseting for the purposes of the Act. The Regulations insert a new item 3AA after item 3 of Schedule 3 to the Principal Regulations to prescribe an exemption for tariff concession orders made under Part XVA of the Customs Act.

The Regulations are minor and of a machinery nature and do not alter existing arrangements. The Regulations were developed in consultation with the Minister for Home Affairs, who is responsible for the Customs Act, and the Attorney-General.

Details of the Regulations are set out in the Attachment.

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

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Details of the *Legislative Instruments Amendment Regulations 2011 (No. 1)*****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Legislative Instruments Amendment Regulations 2011 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendment of *Legislative Instruments Regulations 2004***

This regulation provides that the *Legislative Instruments Regulations 2004* (the Principal Regulations) are amended as set out in the Schedule.

**Schedule – Amendments****Item [1] – Schedule 3, item 3AA, after item 3**

Item 1 of the Regulations inserts new material into Schedule 3 to the Principal Regulations. Schedule 3 lists instruments made under particular provisions that are declared not to be subject to the sunseting regime provided under the *Legislative Instruments Act 2003* (the Act).

Item 1 inserts a new item 3AA in Schedule 3 to the Principal Regulations. Item 3AA provides an exemption from sunseting for tariff concession orders made under Part XVA of the *Customs Act 1901*.