

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 210

Issued by the Authority of the Minister for Home Affairs

Customs Act 1901

Customs Amendment (Restricted Goods) Regulation 2013

Subsection 270(1) of the *Customs Act 1901* (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.

The purpose of the Regulation is to amend the *Customs Regulations 1926* (the Customs Regulations) to prescribe restricted goods for the purposes of section 233BABAE of the *Customs Act 1901* (the Customs Act).

Section 233BABAE of the Customs Act was inserted into the Customs Act in early 2013 by the *Customs Amendment (Miscellaneous Measures) Act 2013* and introduces a new offence for bringing into Australia, as opposed to importing, a category of goods known as ‘restricted goods.’

Currently and for example, prohibited imports such as child pornography that are detected in the personal effects of ship crew cannot be seized as prohibited imports unless there is an intention to import them. This is because such items are not considered to have landed, or intended to be landed, in Australia. In most instances there is no intention to import such items, so they are secured on board the ship and returned to the owner when the ship departs Australia. This new offence will not only introduce a strict liability offence of up to 1000 penalty units to bring restricted goods into Australia but also allow Australian Customs and Border Protection to seize these goods without warrant at a Customs place.

Subsection 233BABAE(3) provides restricted goods are goods which would be prohibited imports if they were imported into Australia and which are prescribed by regulation.

This regulation prescribes child pornography and child abuse material as restricted goods. Child pornography and child abuse material are prohibited imports under regulation 4A of the *Customs (Prohibited Imports) Regulations 1956*.

The Customs Act contains comprehensive definitions of child pornography and child abuse material and these definitions will be relied on for prescribing child pornography and child abuse material as restricted goods.

As the Regulation is of a minor or machinery nature, no consultation was undertaken in relation to the Regulation.

Sections 1 to 4 of the amending Regulation commence on the day after registration and Schedule 1 commences on the day on which Part 1 of Schedule 1 to the *Customs Amendment (Miscellaneous Measures) Act 2013* commences.

Statement of Compatibility with Human Rights

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

Customs Amendment (Restricted Goods) Regulation 2013

This legislative instrument is compatible with the human 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*.

Overview of the Regulation

The Act has introduced a new offence for bringing into Australia a new category of goods known as ‘restricted goods’. The regulations merely define what ‘restricted goods’ are for the purposes of the Act.

Human rights implication

Minimum guarantees in criminal proceedings

The Act has created a new offence with a civil penalty. As noted by the Parliamentary Joint Committee on Human Rights in its Fifth Report of 2012, where a civil penalty regime subjects a person to a high penalty and is intended to be punitive or deterrent in nature it may engage article 14 of the International Covenant on Civil and Political Rights (ICCPR).

As the Act creates a new offence with a high penalty intended to have a deterrent effect it engages the minimum guarantees in criminal proceedings contained in article 14 of the ICCPR. Although a new offence has been created, the Act does not affect or limit any of the existing human rights protections, including the minimum guarantees in criminal proceedings contained in Australian law.

Furthermore, in defining ‘restricted goods’ to mean an item of child pornography within the meaning of subsection 233BAB(3) of the Act, or an item of child abuse material within the meaning of subsection 233BAB(4) of the Act, the regulation seeks to further human rights by protecting the rights of the child consistent with our international obligations pursuant to the Convention on the Rights of the Child and other relevant instruments.

Conclusion

The regulation is compatible with human rights by supporting an Act that maintains all existing protections contained in Australian law and does not seek to limit the guarantees in any way.

Minister for Home Affairs