

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 31, 2015

Issued by the Authority of the Minister for Immigration and Border Protection

Customs Act 1901, Maritime Powers Act 2013, Migration Act 1958

Customs and Other Laws (Repeal and Consequential Amendments) Regulation 2015

Section 270 of the *Customs Act 1901* (Customs Act), section 122 of the *Maritime Powers Act 2013* (MPA) and section 504 of the *Migration Act 1958* (Migration Act) each provide that the Governor-General may make regulations prescribing matters which are required or permitted by the respective Acts to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the respective Acts.

The purpose of the *Customs and Other Laws (Repeal and Consequential Amendments) Regulation 2015* (the Regulation) is to repeal the *Customs Regulations 1926* (the 1926 Regulation) and amend references to the 1926 Regulation in the *Maritime Powers Regulation 2014* and the *Migration Regulations 1994*.

The 1926 Regulation prescribes matters which by the Customs Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to give effect to the Customs Act.

On 1 April 2015, the 1926 Regulation sunset in accordance with section 50 of the *Legislative Instruments Act 2003* (LIA) and two new Regulations, the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015* have been made to replace the 1926 Regulation.

The *Maritime Powers Regulation 2014* and the *Migration Regulations 1994* both prescribe certain matters by reference to the 1926 Regulation. Therefore, it is necessary to amend both of these Regulations to update references to the 1926 Regulation with references to the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015* where appropriate.

Details of the Regulation are set out in the [Attachment](#).

The Regulation commences on 1 April 2015.

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

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

OPC61175-B

Statement of Compatibility with Human Rights

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

Customs and Other Laws (Repeal and Consequential Amendments) Regulation 2015

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 purpose of the *Customs and Other Laws (Repeal and Consequential Amendments) Regulation 2015* (the Regulation) is to repeal the *Customs Regulations 1926* (the 1926 Regulation) and amend existing references to the 1926 Regulation in the *Maritime Powers Regulation 2014* and the *Migration Regulations 1994*.

The 1926 Regulation prescribes matters which by the Customs Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to give effect to the Customs Act.

On 1 April 2015, the 1926 Regulation will sunset in accordance with section 50 of the *Legislative Instruments Act 2003* (LIA) and two new Regulations, the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015* will be made to replace the 1926 Regulation.

The *Maritime Powers Regulation 2014* and the *Migration Regulations 1994* both prescribe certain matters by reference to the 1926 Regulation. Therefore, references to the 1926 Regulation in the *Maritime Powers Regulation 2014* will be repealed and substituted with a reference to the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015*. The references to the *Customs Regulations 1926* in the *Migration Regulations 1994* will be repealed and substituted with a reference to the *Customs Regulation 2015*.

The Regulation commences on 1 April 2015.

Human Rights implications

It is noted that several aspects of the *Maritime Powers Act 2013* (MPA) were assessed to engage human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. However the matters prescribed in the *Maritime Powers Regulation 2014* (MPR) for the purposes of sections 8 and 41 of the MPA, as amended by this Regulation, do not relate to any sections of the MPA that were assessed to engage any human rights and freedoms.

Conclusion

This Regulation does not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Minister for Immigration and Border Protection

Details of the Customs and Other Laws (Repeal and Consequential Amendments) Regulation 2015

Part 1 - Preliminary

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Customs and Other Laws (Repeal and Consequential Amendments) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on 1 April 2015.

Section 3 – Authority

This section provides the Regulation is made under the *Customs Act 1901*, the *Maritime Powers Act 2013* and the *Migration Act 1958*.

Section 4 – Schedule

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.

Schedule 1 – Repeals and amendments

Part 1 – Repeals

Customs Regulations 1926

Clause 1 – The whole of the regulations

This clause repeals the *Customs Regulations 1926* (1926 Regulation).

The 1926 Regulation prescribes matters which by the Customs Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to give effect to the Customs Act.

On 1 April 2015, the 1926 Regulation will sunset in accordance with section 50 of the *Legislative Instruments Act 2003* (LIA). In its place two new regulations will commence, being the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015*. The *Customs Regulation 2015* will streamline existing provisions from the 1926 Regulation and restructure provisions to simplify language that has been subject to multiple amendments since 1926. The *Customs (International Obligations) Regulation 2015* will separate out provisions relating to international obligations previously contained in the 1926 Regulation in order to exempt them from sunset in the future.

Part 2 – Amendments

Maritime Powers Regulation 2014

Clause 2 – Paragraph 6(d)

This clause repeals the reference to the 1926 Regulation in paragraph 6(d) of the *Maritime Powers Regulations 2014* (MPR) for the purposes of paragraph (g) of the definition of **monitoring law** in section 8 of the *Maritime Powers Act 2013* (MPA) and substitutes it with a reference to the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015*.

Section 8 of the MPA Act defines a **monitoring law** to mean:

- (a) the *Customs Act 1901*; or
- (b) the *Fisheries Management Act 1991*; or
- (c) the *Migration Act 1958*; or
- (d) the *Torres Strait Fisheries Act 1984*; or
- (e) section 72.13 or Division 307 of the *Criminal Code*; or
- (f) clause 8 of Schedule 1 to the *Environment Protection and Biodiversity Conservation Act 1999*; or
- (g) a law prescribed by the regulations.

For the purposes of the MPA, a **monitoring law** is a specified law under which officers may exercise maritime powers related to the monitoring of people or things, provided the powers are exercised for the purposes of administering or ensuring compliance with that law. Monitoring laws may include a range of maritime-related obligations and other regulatory matters.

The definition lists some primary monitoring laws in relation to which maritime powers are expected to be exercised. Paragraph (g) of the definition allows additional laws to be prescribed as monitoring laws, as appropriate.

Currently, section 6 of the MPR prescribes, amongst other laws, the 1926 Regulation. As a result, this clause repeals the reference to the 1926 Regulation and substitutes it with a reference to the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015*.

Clause 3 – Paragraph 8(d)

Section 41 of the MPA does not authorise the exercise of powers in relation to a ‘foreign vessel’ (as defined in section 8 of the MPA) at a place between ‘Australia’ (as defined in section 8 of the MPA) and another ‘country’ (as defined in section 8 of the MPA) unless the exercise of the powers occurs under certain circumstances.

In accordance with paragraph 41(1)(c) of the MPA, one of the circumstances in which powers may be exercised against a foreign vessel is in the contiguous zone of Australia to:

- (i) investigate a contravention of a customs, fiscal, immigration or sanitary law prescribed by the regulations that occurred in Australia (as permitted by Article 33 of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982); or
- (ii) prevent a contravention of such a law occurring in Australia.

Paragraph 8(d) of the MPR prescribes the 1926 Regulation for the purposes of subparagraph 41(1)(c)(i) of the MPA. As a result, this clause repeals the reference to the 1926 Regulation for the purposes of paragraph 8(d) of the MPR and substitutes it with a reference to the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015*.

Migration Regulations 1994

Clause 4 – Paragraph 2.06AAA(2)(c)

Subsection 43(1A) of the *Migration Act 1958* (Migration Act) provides that subject to the *Migration Regulations 1994* (MR) a maritime crew visa that is in effect is permission for the holder to enter Australia:

- (a) at a proclaimed port; or
- (b) if the health or safety of a person, or a prescribed reason, make it necessary to enter Australia in another way, that way; or
- (c) in a way authorised by an authorised officer.

An ‘authorised officer’ for the purposes of the Migration Act means an officer authorised in writing by the Minister or the Secretary for the purposes of that provision.

Subregulation 2.06AAA(2) of the MR currently provides that for subsection 43(1A) of the Migration Act, a maritime crew visa that is in effect is permission for the holder to enter Australia if:

- (a) the holder is on a non-military ship; and
- (b) the ship enters Australia at an excised offshore place that is a proclaimed port or a place for which permission has been given, in advance under section 58 of the *Customs Act 1901*, for the ship to be brought to that place; and
- (c) before the holder enters Australia, the operator of the ship has complied with the reporting requirements in sections 64, 64ACA and 64ACB of the *Customs Act 1901* in accordance with those sections and the *Customs Regulations 1926*.

This clause omits the reference to the *Customs Regulations 1926* and substitutes it with the *Customs Regulation 2015*.

Clause 5 – Subparagraph 2.06AAA(2)(note)

The note to subregulation 2.06AAA(2) currently provides that the *Customs Act 1901* (Customs Act) and the *Customs Regulations 1926* specify time limits within which the reporting, for the purposes of reporting requirements under the Customs Act is to be done.

This clause omits the reference to the *Customs Regulations 1926* and substitutes it with the *Customs Regulation 2015*.