

## EXPLANATORY STATEMENT

### Comptroller-General of Customs Instrument of Approval No. 1 of 2016

#### *Customs Act 1901*

#### **Background**

Part XA of the *Customs Act 1901* (the Act) establishes the regulatory framework for the Australian Trusted Trader programme (the ATT). The ATT pilot phase commenced on 1 July 2015 and closed to new expressions of interest from entities on 30 April 2016. From 1 July 2016 the ATT will be fully operational and open to all eligible participants in the international supply chain.

The ATT introduces a differentiated trust-based framework to streamline border clearance processes for entities that meet or exceed international supply chain security and trade compliance standards. This is consistent with the World Customs Organization Standards to Secure and Facilitate Global Trade (WCO SAFE Framework) which promotes:

- supply chain security and trade facilitation at a global level to allow certainty and predictability of trade moving across international borders; and
- standards that enable a harmonised and integrated approach to supply chain management for all participants in the international supply chain.

Participation in the ATT is voluntary and allows entities such as importers, exporters, customs brokers, freight forwarders and transport companies to nominate themselves to become Australian Trusted Traders.

The ATT regulatory framework consists of three elements:

1. The Act – which establishes the ATT and provides the necessary heads of power to implement key principles of the programme;
2. The *Customs (Australian Trusted Trader Programme) Rule 2015* (the Rule) – a legislative instrument that sets out details for and in relation to the operation of the ATT (including, amongst other things, qualification criteria and conditions of participation); and
3. Agreements – which further detail the benefits that the entity qualifies for, how certain benefits will apply to that entity and any terms and conditions specific to that entity's participation in the ATT.

Pursuant to section 176A of the Act, the Comptroller-General of Customs (C-G) may enter into a trusted trader agreement with an entity if:

- (a) the entity nominates itself to participate in the ATT; and
- (b) the C-G considers that it is reasonably likely that the entity will satisfy the qualification criteria set out in the rules.

In accordance with section 176B of the Act, a nomination to participate in the ATT may be made by an entity by document or electronically. Subsection 176B(3) provides that an electronic nomination must communicate such information as is set out in an approved statement. In accordance with subsection 4A(1A) of the Act, an approved statement is a statement that is approved, by instrument in writing, by the C-G.

Comptroller-General of Customs Instrument of Approval No. 1 of 2015 currently approves the “SELF-ASSESSMENT QUESTIONARE” (SAQ) as an approved statement for the purposes of communicating to the C-G an electronic nomination under subsection 176B(3) of the Act to participate in the ATT.

A total of 44 participants participated in the ATT pilot phase. Of these, 39 have completed the approved SAQ. Feedback in relation to the SAQ has been received from several of these pilot participants and members of the Trusted Trader Industry Advisory Group (IAG). Much of this feedback has centred on concerns that the SAQ is unclear in terms of the information it seeks, is repetitive in several parts and takes too long to complete. For example, feedback has included that the language of the SAQ is ‘overly legalistic’ and difficult to understand, and the questions may not clearly address the qualification criteria in the Rule. This has caused delays in completion of the SAQ and commencement of documentary validation.

In preparation for full implementation of the ATT, the SAQ has been significantly revised, taking into account feedback received from pilot participants and learning identified by the ATT staff responsible for reviewing the SAQ during the pilot phase.

### ***Instrument***

Comptroller-General of Customs Instrument of Approval No. 1 of 2016 revokes Comptroller-General of Customs Instrument of Approval No. 1 of 2015.

Recent amendments to the Act mean that an approved statement under the Act is no longer a legislative instrument. A non-legislative instrument is intended to be made with a commencement date of 1 July 2016 to approve the updated SAQ that reflects recommendations and feedback received during the pilot phase.

### ***Consultation***

Pilot participants and members of the IAG have been consulted on the development of the revised SAQ. The IAG consists of importers, exporters, service providers, industry sector representatives and representatives from relevant government agencies, such as the Department of Agriculture and Water Resources, the Department of Foreign Affairs and Trade, the Department of Industry and the Department of Infrastructure and Regional Development.

Consultation with these stakeholders has indicated support for the scope and nature of the revised SAQ, including feedback that the revised SAQ is easier to understand and is likely to be less time-consuming to complete.

### ***Commencement***

The instrument commences on 1 July 2016.

## Statement of Compatibility with Human Rights

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

*Comptroller-General of Customs Instrument of Approval No.1 of 2016*

This legislative instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Overview

Part XA of the *Customs Act 1901* (the Act) establishes the regulatory framework for the Australian Trusted Trader programme (the ATT). The ATT pilot phase commenced on 1 July 2015 and closed to new expressions of interest from entities on 30 April 2016. From 1 July 2016 the ATT will be fully operational and open to all eligible participants in the international supply chain.

The ATT introduces a differentiated trust-based framework to streamline border clearance processes for entities that meet or exceed international supply chain security and trade compliance standards. This is consistent with the World Customs Organization Standards to Secure and Facilitate Global Trade (WCO SAFE Framework) which promotes:

- supply chain security and trade facilitation at a global level to allow certainty and predictability of trade moving across international borders; and
- standards that enable a harmonised and integrated approach to supply chain management for all participants in the international supply chain.

Participation in the ATT is voluntary and allows entities such as importers, exporters, customs brokers, freight forwarders and transport companies to nominate themselves to become Australian Trusted Traders.

The ATT regulatory framework consists of three elements:

4. The Act – which establishes the ATT and provides the necessary heads of power to implement key principles of the programme;
5. The *Customs (Australian Trusted Trader Programme) Rule 2015* (the Rule) – a legislative instrument that sets out details for and in relation to the operation of the ATT (including, amongst other things, qualification criteria and conditions of participation); and
6. Agreements – which further detail the benefits that the entity qualifies for, how certain benefits will apply to that entity and any terms and conditions specific to that entity's participation in the ATT.

Pursuant to section 176A of the Act, the Comptroller-General of Customs (C-G) may enter into a trusted trader agreement with an entity if:

- (c) the entity nominates itself to participate in the ATT; and
- (d) the C-G considers that it is reasonably likely that the entity will satisfy the qualification criteria set out in the rules.

In accordance with section 176B of the Act, a nomination to participate in the ATT may be made by an entity by document or electronically. Subsection 176B(3) provides that an

electronic nomination must communicate such information as is set out in an approved statement. In accordance with subsection 4A(1A) of the Act, an approved statement is a statement that is approved, by instrument in writing, by the C-G.

Comptroller-General of Customs Instrument of Approval No. 1 of 2015 currently approves the "SELF-ASSESSMENT QUESTIONARE" (SAQ) as an approved statement for the purposes of communicating to the C-G an electronic nomination under subsection 176B(3) of the Act to participate in the ATT.

A total of 44 participants participated in the ATT pilot phase. Of these, 39 have completed the approved SAQ. Feedback in relation to the SAQ has been received from several of these pilot participants and members of the Trusted Trader Industry Advisory Group (IAG). Much of this feedback has centred on concerns that the SAQ is unclear in terms of the information it seeks, is repetitive in several parts and takes too long to complete. For example, feedback has included that the language of the SAQ is 'overly legalistic' and difficult to understand, and the questions may not clearly address the qualification criteria in the Rule. This has caused delays in completion of the SAQ and commencement of documentary validation.

In preparation for full implementation of the ATT, the SAQ has been significantly revised, taking into account feedback received from pilot participants and learning identified by the ATT staff responsible for reviewing the SAQ during the pilot phase.

#### ***Instrument***

Comptroller-General of Customs Instrument of Approval No. 1 of 2016 revokes Comptroller-General of Customs Instrument of Approval No. 1 of 2015.

Recent amendments to the Act mean that an approved statement under the Act is no longer a legislative instrument. A non-legislative instrument is intended to be made with a commencement date of 1 July 2016 to approve the updated SAQ that reflects recommendations and feedback received during the pilot phase.

#### **Human rights implications**

Comptroller-General of Customs Instrument of Approval No.1 of 2016 does not engage or impact on, or limit the human rights and freedoms recognised or declared in international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Conclusion**

Comptroller-General of Customs Instrument of Approval No.1 of 2016 is compatible with human rights.

**Minister for Immigration and Border Protection**