

EXPLANATORY STATEMENT

Issued by the Minister for Law Enforcement and Cybersecurity

Customs Act 1901

Commerce (Trade Descriptions) Act 1905

Trade and Customs Legislation Amendment (Miscellaneous Measures) Regulations 2018

The *Customs Act 1901* (the Customs 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.

The *Commerce (Trade Descriptions) Act 1905* (the CTD Act) concerns trade descriptions applied to certain imported and exported goods.

Subsection 270(1) of the Customs Act and subsection 17(1) of the CTD Act provide, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters, which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

Subsection 17(2) of the CTD Act provides that the regulations may prescribe penalties, not exceeding 50 penalty units, for offences against the regulations.

The *Trade and Customs Legislation Amendment (Miscellaneous Measures) Regulations 2018* (the Regulations) are authorised by the provisions of the Customs Act and the CTD Act as listed at [Attachment A](#).

The purpose of the Regulations is to amend the *Customs Regulation 2015* (the Customs Regulation), the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations), the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) and the *Commerce (Trade Descriptions) Regulation 2016* (the CTD Regulation) to improve and strengthen customs policies, as well as administrative practice.

Schedule 1 of the Regulations amends the CTD Regulation which sets out the labelling requirements for certain imported goods. The CTD Regulation replaced the previous *Commerce (Imports) Regulations 1940* and continued the labelling requirements for certain imported goods. However, due to a lack of head of power in the CTD Act, it did not include an offence provision for importing goods without the required label.

Section 17 of the CTD Act has since been amended so that it now provides that the regulations may prescribe penalties, not exceeding 50 penalty units, for offences against the CTD Regulation. Schedule 1 of the Regulations amends the CTD Regulation to insert an offence for contraventions of the labelling requirements for certain goods at the border with a corresponding penalty (operating as a maximum) of 50 penalty units. This is a strict liability offence.

Schedule 2 amends the PI Regulations and the PE Regulations in relation to drugs and drug precursors to ensure the currency of drug control measures in relation to import into, and export from, Australia, and to harmonise these controls with Australia's international obligations. The amendments are due in part to recent scheduling decisions by the United

Nations Commission on Narcotic Drugs, which added new substances to the *Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol*, the *Convention on Psychotropic Substances of 1971* and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988*. The amendments ensure Australia's continuing compliance with these treaties by adding the newly scheduled drug and drug precursor substances to the PI and PE Regulations.

The amendments also harmonise the PI Regulations with the controls currently in the *Criminal Code Regulations 2002*, by including in the PI Regulations goods, which are currently controlled under Schedule 4 of the *Criminal Code Regulations 2002*. Additional amendments to the PI Regulations include new synthetic drugs, which may pose a risk to public health.

Schedule 3 revises the wording of paragraph 99(3)(b) of the Customs Regulation to narrow the scope of eligibility for the temporary importation of certain classes of goods. This amendment restores the narrower operation of the provision that will only allow for the temporary importation of certain classes of goods for use at a public exhibition or for public entertainment.

Schedule 4 amends Regulation 4D of the PI Regulations to include the same types of unmanufactured tobacco and tobacco refuse mentioned in heading 2401 of Schedule 3 to the *Customs Tariff Act 1995* (the Customs Tariff Act) in the import control. This will ensure these tobacco products are subject to the same import controls as unmanufactured tobacco leaf. This amendment ensures consistency between import requirements for tobacco products and domestic requirements under the Excise Act 1901 (the Excise Act) for these products.

Schedule 5 amends the Customs Regulation to repeal a redundant customs duty refund circumstance.

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

A Statement of Compatibility with Human Rights (the Statement) has been prepared and completed for the Regulations in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment of the compatibility of the schedules with human rights is as follows:

- Schedule 1 is compatible to the extent that it may limit Article 14(2) of the ICCPR, however the limitations are considered reasonable, necessary and proportionate.
- Schedules 2 to 5 are compatible as they do not raise any human rights issues.

A copy of the Statement is at [Attachment C](#).

The Office of Best Practice Regulation has been consulted in relation to the amendments made by Schedules 1 to 5 of the Regulations and advises that a Regulatory Impact Statement is not required.

For Schedule 1 the Department undertook consultation with importers on the penalty regime during a consultation process conducted in October and November 2015.

All remaining measures are minor and machinery and, as such, no other external consultation was undertaken for these measures.

Schedule 1 to the proposed Regulations is proposed to commence the day after the end of the period of three months beginning on the day the instrument is registered, in line with the requirements of subsection 7(4) of the CTD Act.

Schedules 2 to 5 are proposed to commence on the day after this instrument is registered.

Authority for the measures

Subsection 270(1) of the *Customs Act 1901* (the Customs Act) provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

In addition, the following provisions may apply:

- Section 50 of the Customs Act, which provides, in part, that the Governor-General may, by regulation, prohibit the importation of goods into Australia. This power may be exercised by prohibiting the importation of goods absolutely, or by prohibiting the importation of goods unless specified conditions or restrictions are complied with;
- Section 112 of the Customs Act which provides, in part, that the Governor-General may, by regulation, prohibit the exportation of goods from Australia and that the power may be exercised by prohibiting the exportation of goods absolutely, or by prohibiting the exportation of goods unless specified conditions or restrictions are complied with;
- Subsection 162(1) of the Customs Act, which allows for temporary importation of certain classes of goods, as prescribed; and
- Section 163 of the Customs Act which provides for refunds, rebates and remissions of duty in respect of goods generally or goods included in a class of goods in such circumstances, and subject to such conditions and restrictions as are prescribed for these goods.

Section 17 of the *Commerce (Trade Descriptions) Act 1905* (the CTD Act) provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

In addition, the following provisions may apply:

- Section 7 of the CTD Act, which provides that the regulations may prohibit the importation or introduction into Australia of any goods unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed; and
- Subsection 17(2) of the CTD Act, which provides the head of power for regulations to prescribe penalties, not exceeding 50 penalty units, for offences against the regulations.

ATTACHMENT B**Details of the *Trade and Customs Legislation Amendment (Miscellaneous Measures) Regulations 2018*****Section 1 – Name of Regulation**

This section provides that the title of the proposed Regulations is the *Trade and Customs Legislation Amendment (Miscellaneous Measures) Regulations 2018* (the Regulations).

Section 2 – Commencement

This section provides that Schedule 1 to the proposed Regulations is to commence the day after the end of the period of 3 months beginning on the day this instrument is registered, in line with the requirements of subsection 7(4) of the *Commerce (Trade Descriptions) Act 1905*.

This section also provides that Schedules 2 to 5 are to commence on the day after this instrument is registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Commerce (Trade Descriptions) Act 1905* and the *Customs Act 1901*.

The purpose of this section is to set out the Acts under which the Regulations are to be made.

Section 4 – Schedules

This section provides for each instrument that is specified in a Schedule to this instrument to be amended or repealed as set out in the applicable items in the Schedule concerned, and for any other item in a Schedule to this instrument to have effect according to its own terms.

The purpose of this section is to provide for how amendments in these Regulations are to operate.

Schedule 1 – Trade Descriptions***Commerce (Trade Descriptions) Regulation 2016*****Background**

The *Commerce (Trade Descriptions) Act 1905* (the CTD Act) and the *Commerce (Trade Descriptions) Regulation 2016* (the CTD Regulation) set out labelling requirements at the border for the importation of certain goods.

The CTD Regulation repealed and remade the previous *Commerce (Imports) Regulations 1940* (the 1940 Regulations) which were scheduled to sunset on 1 April 2017. Regulation 26 of the 1940 Regulations provided that a person was guilty of an offence if they

contravened, or failed to comply with, any provision of the regulations, which was punishable by a penalty of \$40.

The CTD Regulation continued the enforcement of labelling requirements for certain goods at the border; however, an offence provision was not included due to a lack of head of power in the CTD Act. The required head of power was inserted into the CTD Act on 5 April 2017 by the *Customs and Other Legislation Amendment Act 2017*. As such, this Schedule amends the CTD Regulation to include the offence and corresponding penalty.

Item 1

This item repeals and substitutes existing section 8 of the CTD Regulation with new sections 8 and 8A.

The purpose of this item is to introduce an offence for importing goods that are required to have a trade description, without the required trade description. Together with the corresponding penalty, this offence is designed to deter importers from importing goods that do not bear the required trade description.

New section 8A provides for a penalty up to (and including) 50 penalty units in the CTD Regulation. A Court has discretion as to what penalty to apply, within that range, in any given case. Section 4D of the *Crimes Act 1914* would apply such that a new penalty expressed as “50 penalty units” is the maximum possible penalty. The proposed penalty is consistent with the current Commonwealth Government *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* developed by the Attorney-General’s Department (the guidelines), in relation to strict liability offences.

Consistent with the guidelines, application of strict liability to this offence is appropriate because:

- the offence is not punishable by imprisonment;
- the fine imposed is less than 60 penalty units for an individual;
- the offence will significantly enhance the effectiveness of the regulatory regime enforcing labelling requirements for certain goods at the border; and
- the offence will act as a deterrent against the contravention of the labelling requirements.

Providing the penalty in the CTD Regulation, rather than the CTD Act would provide the appropriate flexibility to review and amend penalties in a timely manner and enable the amount of the penalty to be tailored to each offence on a case-by-case basis within the penalty cap set in subsection 17(2). The regulation that proposes the imposition of a penalty would be subject to Parliamentary scrutiny and possible disallowance, as it is a disallowable instrument.

Schedule 2 – Drugs and drug precursors

Customs (Prohibited Exports) Regulations 1958

Items 1 - 20

Together these items implement scheduling decisions of the United Nations Commission on Narcotic Drugs (CND) 58th, 59th and 60th Sessions in 2015, 2016 and 2017, respectively. At these sessions, several new substances were added to the *Single Convention on Narcotic Drugs, 1961 as amended by the 1972 Protocol*, the *Convention of Psychotropic Substances of 1971* and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988*.

Items 1 to 20 ensure Australia's continuing compliance with these treaties by adding the newly scheduled drug and precursor substances to the *Customs (Prohibited Exports) Regulations 1958*.

Customs (Prohibited Imports) Regulations 1956

Items 21, 22, 24, 25, 27, 29, 30, 36, 38, 39, 42, 43, 47, 48, 49, 50

Together these items also implement scheduling decisions of the CND's 58th, 59th and 60th Sessions, which added several new substances to the *Single Convention on Narcotic Drugs, 1961*, the *Convention of Psychotropic Substances of 1971* and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988*.

These items ensure Australia's continuing compliance with these treaties by adding the newly scheduled drug and precursor substances to the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations).

In addition, references to some existing substances are amended by these items to provide clarification in relation to these substances. For example, item 24 expands the reference to alkoxyphenylethylamines in Schedule 4 table item 5B to include specific reference to the following:

- 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (otherwise known as 25B-NBOMe),
- 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (otherwise known as 25C-NBOMe),
- 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (otherwise known as 25I-NBOMe),
- 2,5-dimethoxy-4-isopropoxyphenethylamine (otherwise known as 2C-O-4) and
- 2,4,5-trimethoxyphenethylamine (otherwise known as 2C-O).

Items 22, 25, 33, 34, 35, 41, 44, 47, 50

Together these items add several new psychoactive substances to Schedule 4 of the PI Regulations, which are not captured under existing definitions, but which may pose a risk to public health.

Items 23, 24, 28

Together these items modify references to some existing substances to provide clarification. For example item 28 clarifies the reference to “cannabis” by inserting the words “, including extracts and tinctures of cannabis”.

Items 26, 31, 32, 37, 40, 45, 46

Together these items harmonise the PI Regulations with the controls currently in the *Criminal Code Regulations 2002*, by including in the PI Regulations goods which are currently controlled under Schedule 4 of the *Criminal Code Regulations 2002*. For example, item 46 adds 4-methylmethamphetamine, 4-MTMA 4-methylthiomethamphetamine and 4-MTPA 4-methylthiopropylamphetamine to Schedule 4 of the PI Regulations to better align the two regulations.

Items 51 – 52

These items repeal table item 3C in Schedule 8E and insert the wording into Schedule 7A.

Drugs, and substances such as growth hormones and peptides, have what is referred to as the ‘traveller exemption’ where a traveller who has a valid prescription can bring medications for their own use into Australia without requiring an import permit.

However, anabolic and androgenic substances do not have a traveller exemption, yet are utilised for legitimate medical purposes by Australians and visitors to Australia. This can place a burden on travellers attempting to obtain permission, especially the aged who are increasingly using these substances in hormone replacement therapy.

The transfer of anabolic and androgenic substances into Schedule 7A will align the control of these substances with growth hormones and peptides, while maintaining an exclusion from the traveller exemption for athletes and support persons.

Schedule 3 – Temporary importation of goods***Customs Regulation 2015***Item 1 – Paragraph 99(3)(b)

Certain goods may be temporarily imported into Australia without the payment of duty or taxes, provided particular conditions are met. Subsection 162(1) of the *Customs Act 1901* (the Customs Act) allows for temporary importation of certain classes of goods, as prescribed.

Paragraph 99(3)(b) of the Customs Regulation prescribes under subsection 162(1) of the Customs Act classes of goods as including: "goods imported for use at a public exhibition or for entertainment [...]."

The wording "for" as used in this paragraph was added when regulation 124 of the *Customs Regulations 1926* was remade in 2015. Prior to 2015, this class of goods only covered goods imported for use at public exhibition or for public entertainment. The previous form of wording used in regulation 124 of the *Customs Regulations 1926* had been in place, unaltered since before 1991, and is consistent with the approach of other international customs authorities.

In its current form, the provision does not operate as intended. The form of wording as currently used in paragraph 99(3)(b) of the Customs Regulation has unintentionally broadened the scope of eligibility to include goods for private/personal entertainment. This is a new class of goods that would otherwise be subject to customs duty and taxes. As such, the provision currently operates to allow for the import into Australia without the payment of duty or taxes goods such as:

- luxury furniture hired and temporarily imported for house parties; and
- personally owned aircraft temporarily imported for joy flights.

The amendment to paragraph 99(3)(b) of the Customs Regulation adds the word "public" before the word "entertainment". This restores the narrower operation of the provision and provides greater clarity, so that the paragraph only allows for the importation of goods for use at a public exhibition or for public entertainment.

Schedule 4 – Unmanufactured tobacco and tobacco refuse

Customs (Prohibited Imports) Regulations 1956

Background

Under regulation 4D of the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations), the importation into Australia of unmanufactured tobacco leaf mentioned in tariff subheading 2401.10.00 of Schedule 3 to the *Customs Tariff Act 1995* (the Customs Tariff Act) is prohibited unless the person importing the tobacco leaf:

- holds a dealer licence granted under Part IV of the *Excise Act 1901* (the Excise Act); or
- a manufacturer licence, to manufacture excisable tobacco or tobacco products, granted under Part IV of the Excise Act; and
- a permission in writing to import the leaf has been given by the Commissioner of Taxation; and
- the permission is produced to a Collector.

Heading 2401 of Schedule 3 to the Customs Tariff Act applies to unmanufactured tobacco and tobacco refuse, specifically:

- Tobacco, not stemmed/stripped (subheading 2401.10.00);
- Tobacco, partly or wholly stemmed/stripped (subheading 2401.20.00); and
- Tobacco refuse (subheading 2401.30.00).

Currently, the tobacco products mentioned in subheadings 2401.20.00 and 2401.30.00 of the Customs Tariff Act are not captured by Regulation 4D of the PI Regulations. This is inconsistent with the requirements of the Excise Act, which apply to all unmanufactured tobacco, including unmanufactured tobacco that is wholly or partly stripped or stemmed, and tobacco refuse. The difference in description between the Customs Tariff Act and the Excise Act means there are some types of unmanufactured tobacco that can be imported into Australia without proof of an Excise Act license, even though an Excise Act license is required to possess all types of unmanufactured tobacco within Australia.

This amendment aims to ensure consistency between import requirements and domestic Excise Act requirements for unmanufactured tobacco, so that unmanufactured tobacco imported without an Excise Act license can be stopped at the border.

Item 1

Item 1 of Schedule 5 repeals the heading for Regulation 4D of the PI Regulations “**Importation of unmanufactured tobacco leaf**” and substitutes a new heading for this Regulation “**Importation of unmanufactured tobacco and tobacco refuse**”.

This new heading removes the words ‘tobacco leaf’ as this Regulation now applies to a range of other types of unmanufactured tobacco including tobacco that is not stemmed/stripped, tobacco that is partly or wholly stemmed/stripped, and tobacco refuse.

Item 2

This item amends subregulation 4D(1) to omit the words “leaf mentioned in subheading 2401.10.00”, and substitute these with “or tobacco refuse mentioned in heading 2401”.

This amendment ensures that Regulation 4D covers all the types of unmanufactured tobacco products and tobacco refuse included in heading 2401 to Schedule 3 of the Customs Tariff Act, specifically:

- Tobacco, not stemmed/stripped (subheading 2401.10.00);
- Tobacco, partly or wholly stemmed/stripped (subheading 2401.20.00); and
- Tobacco refuse (subheading 2401.30.00).

This amendment ensures the importation of these types of tobacco products would be regulated in accordance with Regulation 4D of the PI Regulations.

Item 3

This item amends Paragraphs 4D(1)(a) and (b) and Paragraph (5)(b) to omit the word “leaf” and substitute this with the word “tobacco”.

This amendment ensures these provisions capture the same types of unmanufactured tobacco product and tobacco refuse as covered by heading 2401 to Schedule 3 of the Customs Tariff Act, detailed at item 2.

Schedule 5 – Repeal of refund reason

Customs Regulation 2015

Item 1

Item 1 of Schedule 6 to the proposed Regulations amends subsection 109(2) of the *Customs Regulation 2015* (the Customs Regulation) to repeal item 4 of the table which states that for “a circumstance mentioned in item 20 of the table in clause 1 of Schedule 6” (of the Customs Regulation) the period for making an application for a refund or rebate of duty is “within 12 months after the day on which the duty was paid”.

The table at Schedule 6 of the Customs Regulation sets out circumstances in which a refund, rebate or remission of duty may be made by a Collector for the purpose of subsection 109(2). The circumstances listed in item 20 of this table are as follows:

- duty has been paid on goods; and
- the effect of the amendments made by the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014* is that duty is payable on the goods at a rate that is less than the rate which applied when the goods were entered for home consumption.

Table item 20 was inserted to allow for the refund of amounts of overpaid duty attributable to the period between 1 July 2014 and 17 July 2014. Applications under these provisions could only be made up until 17 July 2015 and as such, this refund circumstance can no longer be used.

Item 4 of the table at subsection 109(2) applies a 12 month period for making an application in a circumstance mentioned in item 20 of the table in clause 1 of Schedule 6 and stipulates no provision for extension of this application period.

The amendment made by item 4 of this Schedule repeals item 20 of the table in clause 1 of Schedule 6, and as such, removes the circumstance mentioned in item 4 of the subsection 109(2) table which specifies how this table item should apply. As a result of the amendment made by item 4 of this Schedule, item 4 of the subsection 109(2) table will no longer be operative and therefore will be repealed by this item.

Item 2

This item amends subsection 109(2) of the Customs Regulation to omit the words “items 1 to 4” from paragraph (b) of item 5 of the table in the column headed “Circumstance”, and substitute these words with “items 1 to 3”. This paragraph of the table currently has the effect that a refund or rebate of duty in any circumstance not mentioned in items 1 to 4 of the table

or item 8 of the table in clause 1 of Schedule 6, must be made within four years after the day on which the duty was paid (subject to items 6 to 8 of the table).

This item amends the list of table items at paragraph (b) of item 5 of the table as item 4 of the subsection 109(2) table will no longer appear in the table as a result of the amendment in item 1 of this Schedule, detailed above.

Item 3

Item 3 of Schedule 6 to the proposed Regulations repeals subsection 112(7) of the Customs Regulation.

This subsection currently provides that “the amount of a refund, or rebate, of duty on petrol, in a circumstance mentioned in item 20 of the table in clause 1 of Schedule 6, is to be based on the rate of duty that applied in relation to the petrol when the petrol was entered for home consumption.”

This provision will no longer be required due to the removal of the redundant refund circumstance, detailed at item 1 of this Schedule.

Item 4

This item repeals table item 20 of clause 1 of Schedule 6 of the Customs Regulation.

This table item specifies that a Collector may make a refund, rebate or remission of duty in circumstances where duty has been paid on goods; and the effect of the amendments made by the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014* is that duty is payable on the goods at a rate that is less than the rate which applied when the goods were entered for home consumption.

This item repeals table item 20 of clause 1 of Schedule 6 of the Customs Regulation, as these circumstances will no longer be required due to the removal of the redundant refund circumstance, detailed at item 1 of this Schedule.

Statement of Compatibility with Human Rights

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

Trade and Customs Legislation Amendment (Miscellaneous Measures) Regulations 2018

This Disallowable 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 Disallowable Legislative Instrument

Schedule 1—Trade descriptions

The *Commerce (Trade Descriptions) Act 1905* (the CTD Act) and the *Commerce (Trade Descriptions) Regulation 2016* (the CTD Regulation) set out labelling requirements at the border for the importation of certain goods.

The CTD Regulation repealed and remade the previous *Commerce (Imports) Regulations 1940* (the 1940 Regulations) which were scheduled to sunset on 1 April 2017.

The CTD Regulation continue the enforcement of labelling requirements for certain goods at the border; however, an offence provision was not included due to a lack of head of power in the Act. The required head of power was inserted into the Act on 5 April 2017 by the *Customs and Other Legislation Amendment Act 2017*. As such, the CTD Regulation are now being amended to include the offence and corresponding penalty.

The purpose of Schedule 1 is to introduce a strict liability offence and corresponding penalty to deter importers from importing goods not bearing a required trade description.

Schedule 1 provides for a penalty not exceeding 50 penalty units. A Court has discretion as to what penalty to apply, within that range. The penalty provision is consistent with current Commonwealth Government Guidelines (*Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* developed by the Attorney-General's Department).

Schedule 2—Drugs and drug precursors

Schedule 2 amends the *Customs (Prohibited Imports) Regulations 1956* (PI Regulations) and the *Customs (Prohibited Exports) Regulations 1958* (PE Regulations) in relation to drugs and drug precursors to maintain the currency of drug control measures on import into, and export from, Australia.

The amendments have been requested by the Minister for Health due in part to recent scheduling decisions by the United Nations Commission on Narcotic Drugs for the *Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol*, the *Convention on Psychotropic Substances of 1971* and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988*. The amendments would ensure

Australia's continuing compliance with these treaties by adding the newly scheduled drug and precursor substances to the PI and PE Regulations.

The amendments would also harmonise the PI Regulations with the controls currently in the *Criminal Code Regulations 2002* by including in the PI Regulations goods which are currently controlled under Schedule 4 of the *Criminal Code Regulations 2002*.

Additional listings are proposed for inclusion in the PI Regulations for identified new synthetic drugs which may pose a risk to public health.

We believe the restriction of access to these substances is balanced by the ability to obtain import or export permission for those substances where legitimate circumstances exist, such as medical necessity.

The outcome of these amendments would be that importation of the listed goods would be permissible with approval from the relevant authority, but the illicit movement of goods would become an offence.

Schedule 3—Temporary importation of goods

This Schedule amends section 99 of the *Customs Regulation 2015*.

Certain goods may be temporarily imported into Australia without the payment of duty or taxes provided certain conditions are met. Section 162 of the *Customs Act 1901* allows for temporary importation of certain classes of goods, as prescribed. Paragraph 99(3)(b) of the *Customs Regulation 2015* prescribes: "(b) goods imported for use at a public exhibition or for entertainment [...]" (emphasis added).

The wording "for" as used in this provision was added when regulation 124 of the *Customs Regulations 1926* was remade in 2015. This may have unintentionally altered the scope of goods eligible for temporary importation.

In its current form, the provision does not operate as intended. The purpose of this legislative instrument is to amend paragraph 99(3)(b) and restore the narrower operation of the provision that would only allow for the temporary importation of goods for use at a public exhibition or for public entertainment.

Schedule 4—Unmanufactured tobacco and tobacco refuse

This Schedule amends regulation 4D of the *Customs (Prohibited Imports) Regulations 1956*. Regulation 4D prohibits import of unmanufactured tobacco. Currently, regulation 4D applies to only one form of unmanufactured tobacco (tobacco, not stemmed/stripped) as classified under subheading 2401.10.00 of the *Customs Tariff Act 1995*. Regulation 4D does not include other forms of unmanufactured tobacco classified under sub-heading 2401.20.00 (tobacco, partly or wholly stemmed/stripped) and 2401.30.00 (tobacco refuse) of the *Customs Tariff Act 1995*. This is inconsistent with the licensing requirements under the *Excise Act 1901* which covers all forms of unmanufactured tobacco.

The purpose of the legislative instrument is to align the import prohibition of unmanufactured tobacco outlined in regulation 4D with the licensing requirements under the *Excise Act 1901* (the *Excise Act*) for the production, manufacture or dealing of any unmanufactured tobacco.

The legislative instrument broadens the scope of regulation 4D and ensures the import prohibition applies to all unmanufactured tobacco as classified under heading 2401 of the *Customs Tariff Act 1995* to be consistent with the licensing requirements of the *Excise Act*. Consistency between import requirements for unmanufactured tobacco and the licensing

requirements under the Excise Act ensures all unmanufactured tobacco imported without a license can be stopped at the Australian border.

Schedule 5–Repeal of refund reason

This Schedule repeals redundant provisions within the *Customs Regulation 2015* (Customs Regulation), which were inserted as a result of the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014* and are now no longer in use.

On 17 July 2014, the *Customs Tariff Amendment (Carbon Tax Repeal) Act 2014* received the Royal Assent, which retrospectively repealed the carbon tax from 1 July 2014. As such, provisions were included in the Customs Regulation to allow for the refund of amounts of overpaid duty attributable to the period between 1 July 2014 and 17 July 2014. Applications under these provisions could only be made up until 17 July 2015 and as such, this refund circumstance can no longer be used.

Human rights implications

Schedule 1 of the Regulation introduces an offence in proposed section 8A which provides that a strict liability offence is committed if proposed section 8 is contravened. The proposed offence may engage the right of a presumption of innocence under article 14(2) of the ICCPR. Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Importantly, a strict liability offence will not violate the presumption of innocence if it pursues a legitimate aim and is reasonable, necessary and proportionate to that aim.

The proposed offence in section 8A of Schedule 1 to the Regulations is aimed at stopping importers from importing goods not bearing a required trade description. Not having to prove fault in this circumstance aims to increase compliance with labelling requirements by providing a strong deterrent for those seeking to engage in this activity. Labelling requirements:

- protect legitimate traders from competitors who would mark or label their goods in a misleading manner;
- protect the Australian public health and public interest by requiring importers of manufactured goods to disclose an accurate description of their goods and the components or ingredients therein; and
- preserve the reputation of Australian industries by ensuring that inferior quality goods shall not be represented as something of a higher quality than is the case.

The strict liability nature of the offence is reasonable, necessary and proportionate to achieving these legitimate aims.

In addition, it remains incumbent on the prosecution to prove the physical elements of the offence beyond a reasonable doubt. Also, an accused will always have the defence of honest and reasonable mistake of fact available under section 9.2 of the *Criminal Code Act 1995*. If relied upon, this is an evidential burden on the defence to prove, on the balance of probabilities, that the accused had an honest and reasonable mistaken belief of fact, which, if those facts existed, would not have constituted an offence.

For these reasons, we consider the strict liability offence is not inconsistent with the presumption of innocence set out in article 14(2) of the ICCPR because it maintains all existing protections contained in Australian law.

Schedules 2, 3, 4 and 5 do 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*.

Conclusion

The Regulations are compatible with human rights. To the extent that Schedule 1 of the Regulation may limit Article 14(2) of the ICCPR, the limitations are reasonable, necessary and proportionate.

The Hon. Angus Taylor MP, Minister for Law Enforcement and Cybersecurity