

EXPLANATORY STATEMENT

Issued by Assistant Minister for Customs, Community Safety and Multicultural Affairs
Parliamentary Secretary to the Minister for Home Affairs

Customs Act 1901

*Customs (Prohibited Imports) Amendment (Chemical Weapons Convention)
Regulations 2020*

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 of goods into, and exportation of goods from, Australia.

Subsection 270(1) of 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 or as may be necessary or convenient to be prescribed for giving effect to the Act.

Section 50 of the Customs Act provides, in part, that the Governor-General may, by regulation, prohibit the importation of goods into Australia and that the power may be exercised by prohibiting the importation of goods absolutely, or by prohibiting the importation of goods from a specified place, or by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

The purpose of the *Customs (Prohibited Imports) Amendment (Chemical Weapons Convention) Regulations 2020* (the Regulations) is to amend the *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations) to prohibit the importation of certain toxic chemicals added to Schedule 1 of the Annex on Chemicals to the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (the Chemical Weapons Convention).

The Chemical Weapons Convention aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties. One hundred and ninety three States are Parties to the Chemical Weapons Convention, including Australia.

On 27 November 2019, a Conference of the States Parties approved the addition of the toxic chemicals to Schedule 1 of the Annex on Chemicals to the Chemical Weapons Convention. The toxic chemicals are ‘Novichok’ nerve agents that were used in the attacks in Salisbury and Amesbury in the United Kingdom in 2018, which resulted in the death of one person and the hospitalisation of several others.

The changes to the Chemical Weapons Convention enter into force for all States Parties, including Australia, on 7 June 2020. Australia is obligated to implement the changes in domestic law by that date.

In accordance with Australia’s obligations under the Chemical Weapons Convention, the Prohibited Imports Regulations currently prohibit the importation of various chemicals that

are listed in the Chemical Weapons Convention. The Regulations ensure that the toxic chemicals added to the Chemical Weapons Convention are also prohibited from importation.

The effect of the Regulations is that the importation into Australia of goods containing one or more of the toxic chemicals from a country that is a State Party to the Chemical Weapons Convention is prohibited unless the Minister for Foreign Affairs or an authorised person has given permission in writing to import the goods. The importation into Australia of goods containing one or more of the toxic chemicals from a country that is not a State Party to the Chemical Weapons Convention is prohibited absolutely.

Details of the Regulations are set out in Attachment A. A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment B.

In October and November 2019, the Australian Safeguards and Non-Proliferation Office (ASNO) in the Department of Foreign Affairs and Trade consulted with a wide range of tertiary institutions, research institutes and pharmaceutical companies about the impact of the changes on Australian research and industry.

The ASNO's consultations included the following non-government organisations: Chemistry Australia, Royal Australian Chemical Institute, Australian Pharmaceutical Manufacturers Association, Surface Coatings Association of Australia, Aerosol Association of Australia, Australian Chamber of Commerce and Industry, Australian Industry Group, Australian Society of Cosmetic Chemists, and Australian Paint Manufacturers' Federation.

The ASNO also consulted with approximately 140 businesses which are currently regulated by the ASNO.

None of the institutions, organisations or businesses that were consulted indicated that they used, produced or imported the toxic chemicals, or would be affected by the changes.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 7 June 2020.

OPC64574 - A

Details of the Customs (Prohibited Imports) Amendment (Chemical Weapons Convention) Regulations 2020

Section 1 – Name of Regulation

This section provides that the title of the Regulations is the *Customs (Prohibited Imports) Amendment (Chemical Weapons Convention) Regulations 2020* (the Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Regulations commences.

Table item 1 provides for the whole of the instrument to commence on 7 June 2020.

Section 3 – Authority

This section sets out the authority under which the Regulations are to be made, which is the *Customs Act 1901*.

Section 4 - Schedules

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

The instrument that is amended is the *Customs (Prohibited Imports) Regulations 1956*.

Schedule 1 – Amendments

Customs (Prohibited Imports) Regulations 1956

Item 1 Part 2 of Schedule 11 (at the end of the table)

This item inserts new table items 13, 14, 15 and 16 at the end of the table in Part 2 of Schedule 11 to the *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations).

Part 2 of Schedule 11 specifies chemical compounds for the purposes of regulation 5J of the Prohibited Imports Regulations.

Regulation 5J prohibits the importation of specified chemical compounds. Under subregulation 5J(2), the importation into Australia of goods containing specified chemical compounds from a country that is not a State Party to the Chemical Weapons Convention is prohibited absolutely.

Under subregulation 5J(2A), the importation into Australia of goods containing specified chemical compounds from a country that is a State Party to the Chemical Weapons Convention is prohibited unless (a) the Minister for Foreign Affairs or an authorised person has given permission in writing to import the goods; and (b) the permission is produced to the Collector.

New table items 13, 14, 15 and 16 contain three columns. The first column contains the table item number. The second column contains the specified chemical compound or group of compounds. The third column contains the CAS number.

Under subregulation 5J(1), the “CAS number”, for a chemical compound, means the Chemical Abstracts Service number, which is the registry number:

- (a) assigned to the compound by the Chemical Abstracts Service, Columbus, Ohio, United States of America; and
- (b) published by the Service in the journal *Chemical Abstracts*.

New table item 13 contains the following chemical compounds or group of compounds and their corresponding CAS numbers:

P-alkyl (H or $\leq C_{10}$, including cycloalkyl) N-(1-(dialkyl ($\leq C_{10}$, including cycloalkyl) amino)) alkylidene (H or $\leq C_{10}$, including cycloalkyl) phosphonamidic fluorides and corresponding alkylated or protonated salts, including:

- (a) N-(1-(di-n-decylamino)-n-decylidene)-P-decylphosphonamidic fluoride; and 2387495-99-8
- (b) methyl-(1-(diethylamino) ethylidene) phosphonamidofluoridate 2387496-12-8

New table item 14 contains the following chemical compounds or group of compounds and their corresponding CAS numbers:

O-alkyl (H or $\leq C_{10}$, including cycloalkyl) N-(1-(dialkyl ($\leq C_{10}$, including cycloalkyl) amino)) alkylidene (H or $\leq C_{10}$, including cycloalkyl) phosphoramidofluoridates and corresponding alkylated or protonated salts, including:

- (a) O-n-Decyl N-(1-(di-n-decylamino)-n-decylidene) phosphoramidofluoridate; and 2387496-00-4
- (b) methyl (1-(diethylamino) ethylidene) phosphoramidofluoridate; and 2387496-04-8
- (c) ethyl (1-(diethylamino) ethylidene) phosphoramidofluoridate 2387496-06-0

New table item 15 contains the following chemical compound or group of compounds and the corresponding CAS number:

Methyl-(bis (diethylamino) methylene) phosphoramidofluoridate 2387496-14-0

New table item 16 contains the following chemical compounds or group of compounds and their corresponding CAS numbers:

The following carbamates:

- (a) the following quaternaries of dimethylcarbamoyloxy pyridines: 1-[N,N-dialkyl ($\leq C_{10}$)-N-(n-(hydroxyl, cyano, acetoxy) alkyl ($\leq C_{10}$)) ammonio]-n-[N-(3-dimethylcarbamoxy- α -picolinyl)-N,N-dialkyl ($\leq C_{10}$) ammonio] decane dibromide (n=1-8), including:

(i) 1-[N,N-dimethyl-N-(2-hydroxy) ethylammonio]-10-[N-(3-dimethylcarbamoxy- α -picolinyl)-N,N-dimethylammonio] decane dibromide 77104-62-2

- (b) the following bisquaternaries of dimethylcarbamoyloxy pyridines: 1, n-Bis [N-(3-dimethylcarbamoxy- α -picolyl)-N,N-dialkyl ($\leq C_{10}$) ammonio]-alkane-(2,(n-1)-dione) dibromide (n=2-12), including:

(i) 1,10-Bis[N-(3-dimethylcarbamoxy- α -picolyl)-N-ethyl-N-methylammonio] decane-2,9-dione dibromide 77104-00-8

Statement of Compatibility with Human Rights

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

Customs (Prohibited Imports) Amendment (Chemical Weapons Convention) Regulations 2020

This 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 Legislative Instrument

This Legislative Instrument amends Part 2 of Schedule 11 to the *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations) to prohibit the importation of certain toxic chemicals added to Schedule 1 of the Annex on Chemicals to the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (the Chemical Weapons Convention).

The Chemical Weapons Convention aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties. One hundred and ninety three States are Parties to the Chemical Weapons Convention, including Australia.

On 27 November 2019, a Conference of the States Parties approved the addition of the toxic chemicals to Schedule 1 of the Annex on Chemicals to the Chemical Weapons Convention. The toxic chemicals are ‘Novichok’ nerve agents that were used in the attacks in Salisbury and Amesbury in the United Kingdom in 2018, which resulted in the death of one person and the hospitalisation of several others.

The changes to the Chemical Weapons Convention will enter into force for all States Parties, including Australia, on 7 June 2020. Australia is obligated to implement the changes in domestic law by that date.

The item amended by this Legislative Instrument, Part 2 of Schedule 11 to the Prohibited Imports Regulations, is a list of toxic chemicals used in chemical warfare. Regulation 5J of the Prohibited Imports Regulations prohibits the import of these chemicals from a country that is a State Party to the Chemical Weapons Convention unless the importer has been granted the appropriate permission in writing by the Minister for Foreign Affairs or an authorised person. Imports from a country that is not a State Party to the Chemical Weapons Convention are prohibited absolutely.

Matters relating to permission (applications, grants/refusals, revocation) and relating to penalties for unlawful importation will be the same as currently applies to chemicals prohibited from import by regulation 5J of the Prohibited Imports Regulations in accordance with the Chemical Weapons Convention.

The prohibition on the importation of the listed chemicals is balanced against the ability to obtain permission for legitimate purposes. This Legislative Instrument does not introduce any new offences or penalties.

Human rights implications

This Legislative Instrument may engage the right to life in Article 6(1) of the *International Covenant on Civil and Political Rights*, specifically, the responsibility that a State Party has to take appropriate steps to protect the right to life.

The inherent right to life entails the right not to be deprived of life arbitrarily or unlawfully by the State or its agents. This amendment promotes the right to life as it lowers the risk and potential harm to life posed by nerve agents used as chemical warfare by prohibiting the import of the chemicals listed in the Schedule, unless authorised in accordance with the legislation.

Conclusion

This Legislative Instrument is compatible with human rights because it promotes the protection of human rights.

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Parliamentary Secretary to the Minister for Home Affairs