

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs (Prohibited Exports) Amendment (COVID-19 Export Restrictions Repeal)  
Regulations 2020*

The *Customs Act 1901* (the Customs Act) is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and 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 112 of the Customs Act 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.

On 30 March 2020, a temporary control on the export of goods essential to preventing the spread of COVID-19 was introduced in regulations 13GI and 13GJ of the *Customs (Prohibited Exports) Regulations 1958*. The measure prohibited the exportation of these essential goods, including disposable face masks and hand sanitizer, to ensure availability of these goods for those with the greatest need in Australia. Several exemptions were included, for example for humanitarian purposes. A further aim of this export control was to dissuade consumers from engaging in widespread bulk purchase for the purpose of export.

The export control applied only when the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* is in force, including where it is extended. The export control successfully met the Government's objectives by providing a mechanism to combat the diversion of essential goods and reduce profiteering behaviour, while preserving legitimate commercial and humanitarian trade in these goods. Over the past few months, the Australian Border Force has seen a significant reduction in the number of detections of essential goods controlled under regulations 13GI and 13GJ. As the Government's objectives have been met, the export control should be repealed.

The *Customs (Prohibited Exports) Amendment (COVID-19 Export Restrictions Repeal) Regulations 2020* (the Amendment Regulations) repeal regulations 13GI and 13GJ.

Repealing the export control supports Australian companies that have recalibrated their operations to produce personal protective equipment for domestic and export markets thereby making these products more available in Australia and overseas. Removing the export control provides greater certainty for Australian businesses seeking to export these products and increase business confidence, thereby supporting Australia's economic recovery. The repeal

of the temporary export control assists Australia's international reputation as a reliable regional and global partner. Relevantly, countries across Europe, Asia and North America have removed their own similar restrictions to help reinvigorate global supply chains.

Formal consultation was not undertaken as evidence supports repeal of the export control which will benefit Australian individuals, businesses and the Australian economy. The Office of Best Practice Regulation advised no Regulation Impact Statement was required.

Details of the Amendment 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**.

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

The Amendment Regulations commence the day after registration.

*OPC64974 - A*

**Details of the Customs (Prohibited Exports) Amendment (COVID 19 Export Restrictions Repeal) Regulations 2020**

**Section 1 – Name of Regulations**

This section provides that the title of the Regulations is the *Customs (Prohibited Exports) Amendment (COVID 19 Export Restrictions Repeal) Regulations 2020* (the amendment Regulations).

**Section 2 – Commencement**

This section provides for the Amendment Regulations to commence the day after Registration.

**Section 3 – Authority**

This section provides that the Amendment Regulations are made under the *Customs Act 1901*.

**Section 4 – Schedules**

This section is a machinery clause that enables the Schedule to amend the *Customs (Prohibited Exports) Regulations 1958*.

**Schedule 1 – Amendments**

***Customs (Prohibited Exports) Regulations 1958***

**Item 1 – Subregulation 2(1) (definition of ABN)**

This item repeals the definition of ABN as this definition is only used in paragraph 13GJ(5)(b), which is repealed by the Amendments Regulations.

**Item 2 – Division 7 of Part 3**

This item repeals the Division. Division 7 contains regulations 13GI and 13GJ.

## **Statement of Compatibility with Human Rights**

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

### **Customs (Prohibited Exports) Amendment (COVID-19 Export Restrictions Repeal) Regulations 2020**

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**

The purpose of the *Customs (Prohibited Exports) Amendment (COVID-19 Export Restrictions Repeal) Regulations 2020* (the Regulations) is to amend the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations) to repeal the temporary prohibition on the export of essential goods to support the response to COVID-19 introduced on 30 March 2020.

The prohibition applied to exports of essential goods to support the response to COVID-19, including personal protective equipment such as disposable face masks and hand sanitizer. The aim of the prohibition was to control exports of these goods that limited the availability for those in Australia with the greatest need. The export prohibition further aimed to dissuade consumers from engaging in widespread bulk purchase for the purpose of export. The prohibition provided for a number of exceptions, including for humanitarian purposes.

The prohibition successfully met the Government's objectives by providing a mechanism to combat the diversion of essential goods and reduce profiteering behaviour, while preserving legitimate commercial and humanitarian trade in these goods. Over the past few months, the Australian Border Force has seen a significant reduction in the number of detections of essential goods.

Repealing the prohibition will support Australian companies that have recalibrated their operations to produce personal protective equipment for domestic and export markets thereby making these products more available in Australia and overseas. Removing the export control will provide greater certainty for Australian businesses seeking to export these products and increase business confidence, thereby supporting Australia's economic recovery. The repeal of the temporary export prohibition will assist Australia's international reputation as a reliable regional and global partner. Relevantly, countries across Europe, Asia and North America have removed their own similar restrictions to help reinvigorate global supply chains.

#### **Human rights implications**

To the extent the goods to which the prohibition applies are required for medical purposes and lower the risk and potential harm to life posed by the COVID-19 virus, the repeal of this prohibition may engage the right to health in Article 12 of *International Covenant on*

*Economic, Social and Cultural Rights (ICESCR) and the right to life in Article 6(1) of the International Covenant on Civil and Political Rights.*

The aim of the temporary export prohibition was to help to ensure the availability of these essential goods to persons in Australia, thereby promoting the right to health and the right to life of those persons. Since there is now an adequate supply of such goods for persons in Australia, repealing the prohibition will not adversely impact these rights. Further, these rights may be promoted by the repeal by providing certainty to businesses that manufacture and supply personal protective equipment, making more goods available to persons in Australia and overseas.

The repeal may also engage the right to work under Article 6 of the ICESCR. The repeal promotes this right by supporting the businesses that manufacture and supply the essential goods, and therefore the employees of such companies.

### **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights.

**The Hon Peter Dutton MP  
Minister for Home Affairs**