

EXPLANATORY STATEMENT

Issued by the Authority of the Assistant Minister for Waste Reduction and Environmental Management

Agricultural and Veterinary Chemicals (Administration) Act 1992

Customs Act 1901

Therapeutic Goods Act 1989

Agricultural and Veterinary Chemicals (Administration) Regulations 1994

Minamata Convention on Mercury (Consequential Amendments) Regulations 2021

Purpose

The *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* (the Amendment Regulations) make amendments to the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* (AVCA Regulations), the *Customs (Prohibited Exports) Regulations 1958* (Prohibited Exports Regulations), *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) and *Therapeutic Goods Regulations 1990* (TG Regulations) to implement Australia's obligations under Articles 3(6), 3(8), 4(1) and 4(5) of the Minamata Convention on Mercury (Minamata Convention), once that Convention comes into force for Australia.

Authority

The Amendment Regulations is made under the *Agricultural and Veterinary Chemical (Administration) Act 1992*, the *Customs Act 1901* and the *Therapeutic Goods Act 1989*.

Agricultural and Veterinary Chemicals (Administration) Regulations 1995

Part 7A of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (AVCA Act) regulates the import, export, manufacture and, in some cases, use of agricultural chemical products, veterinary chemical products and the active constituents of such products.

Section 73 of the AVCA Act allows the Governor-General to make regulations prescribing all matters required or permitted by the AVCA Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the AVCA Act.

Section 69C of the AVCA Act allows the regulations to prohibit the import, manufacture, use or export of a chemical product, or an active constituent of a chemical product, where the active constituent is the subject of a prescribed international agreement. Prohibitions in regulations made for the purposes of section 69C may be absolute or subject to such conditions or restrictions as are prescribed. The prohibition is enforced by the offence at subsection 69C(5).

The Amendment Regulations, to the extent that they amend the AVCA Regulations, are made for the purposes of section 69C of the AVCA Act.

Customs (Prohibited Exports) Regulations 1958 and Customs (Prohibited Imports) Regulations 1956

Section 112 of the *Customs Act 1901* (Customs Act) allows the Governor-General to make regulations prohibiting the exportation of goods from Australia. Goods can be prohibited from being exported absolutely, in specified circumstances, to a specified place, or unless specified conditions or restrictions are complied with (subsection 112(2)).

Section 50 of the Customs Act allows the Governor-General to make regulations prohibiting the importation of goods to Australia. Goods can be prohibited from being imported absolutely, in specified circumstances, to a specified place, or unless specified conditions or restrictions are complied with (subsection 50(2)).

Section 270 of the Customs Act relevantly allows the Governor-General to make regulations prescribing all matters required or permitted by the Customs Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Customs Act.

The Amendment Regulations, to the extent that they amend the Prohibited Exports Regulations, are made for the purposes of section 112 of the Customs Act.

The Amendment Regulations, to the extent that they amend the Prohibited Imports Regulations, are made for the purposes of section 50 of the Customs Act.

Therapeutic Goods Regulations 1990

The *Therapeutic Goods Act 1989* (TG Act) provides for the establishment and maintenance of a national system of controls for the quality, safety, efficacy and timely availability of therapeutic goods that are used in, or exported from, Australia.

Section 63 of the TG Act allows the Governor-General to make regulations prescribing all matters required or permitted by the TG Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the TG Act.

Section 9K of the TG Act provides that the regulations may prohibit the import, export, manufacture or supply of therapeutic goods (subsection 9K(1)), or therapeutic goods that contain a specific ingredient or component (subsection 9K(3)), where the therapeutic good, or the ingredient or component, is the subject of a prescribed international agreement. A prohibition of a therapeutic good or an ingredient or component of a therapeutic good may be absolute or be subject to such conditions as are prescribed (subsection 9K(5)). Prohibitions in regulations made for the purpose of section 9K are enforced by offences and civil penalty provisions in section 9L.

The Amendment Regulations, to the extent that they amend the TG Regulations, are made for the purposes of section 9K of the TG Act.

Background

The Minamata Convention aims to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. Australia signed the Minamata Convention on 10 October 2013. The Convention entered into force globally on 16 August 2017. Australia is currently engaged in the treaty-making process to enable Government consideration as to whether it should proceed with ratification.

The Minamata Convention provides a range of obligations on parties, including measures to control the supply and trade of mercury, prohibiting specific sources of mercury such as primary mining, and setting limitations and controls on specific mercury-added products and manufacturing processes in which mercury or mercury compounds are used.

In accordance with the usual division of responsibilities, it has been agreed with jurisdictions that the Commonwealth will be responsible for making the necessary legislative changes to implement the following articles of the Convention, should Australia decide to ratify:

- Article 3(6) (prohibit export of mercury)
- Article 3(8) (prohibit import of mercury)
- Article 4(1) (prohibit export, import and manufacture of certain mercury-added products)
- Article 4(5) (prohibit the incorporation into assembled products of certain mercury-added products).

The Commonwealth's position is that, where possible, existing subject matter specific legislation should be used to implement Australia's obligations under the above Articles.

The regulatory regime that would be relevant for a particular import, export or manufacture will depend on the intended purpose of the mercury or mercury-added products to be imported, exported or manufactured. Specifically:

- the import or export of mercury, the import, export and manufacture of mercury-added products, and the incorporation of mercury-added products into other products, for therapeutic purposes, will be regulated by the TG Regulations;
- the import or export of mercury, and the import, export and manufacture of mercury-added products, for agricultural or veterinary purposes will be regulated by the AVCA Regulations;
- it is intended that the import or export of mercury for industrial purposes will be regulated by rules made under the IC Act.
- it is intended that the import, export or manufacture of mercury-added products for industrial purposes, and the incorporation of mercury-added products into other products for purposes other than therapeutic purposes, is to be regulated by rules made under the RAWR Act (mandatory product stewardship provisions).

Impact and Effect

The Amendment Regulations prohibit the import or export of mercury, and the import, export or manufacture of certain mercury-added products covered by the Convention consistently with the requirements of Articles 3 and 4 of the Convention by amending the AVCA Regulations and TG Regulations. It is also intended that rules will be separately made under the *Industrial Chemicals Act 2019* (IC Act) and the *Recycling and Waste Reduction Act 2020* (RAWR Act).

A person will be able to apply for approval to import or export mercury under the relevant subject specific legislation. The decision-maker will only be able to grant the approval consistently with the requirements of Article 3 of the Minamata Convention.

Consistent with Australia's obligations under Article 4 of the Convention, a person will not be able to apply for approval to import, export or manufacture mercury-added products, or to incorporate mercury-added products into other products.

The Amendment Regulations also impose a prohibition on the import of mercury under the Prohibited Imports Regulations, and update the existing prohibition on export of mercury in the Prohibited Exports Regulations, in order to ensure border controls are consistent with the Minamata Convention. However, for the purposes of the Minamata Convention, no permissions will need to be granted under the Customs legislation; rather the Prohibited Exports Regulations and the Prohibited Imports Regulations will simply recognise the permissions granted under the relevant subject specific legislation.

Pre-conditions to making the Amendment Regulations

The requirements in subsection 9K(6) of the TG Act and subsection 69C(2) of the AVCA Act were met prior to the Amendment Regulations being made.

Consultation

There is broad support for ratification of the Minamata Convention across government, business and industry and non-government organisations. Industry has flagged the importance of ratification in ensuring certainty about mercury controls in Australia and for alignment with trading partners. Impacts to industry are expected to be low due to global movements away from mercury-containing products.

Since 2010, six consultation rounds have been facilitated by the Department in relation to the ratification of the Minamata Convention:

1. Regulatory Impact Statement (RIS) for Australia's signing of the Convention (2013): Targeted consultation with government agencies (federal, state and territory), industry stakeholders and non-government organisations.
2. Public consultation paper (2014): seeking views from stakeholders and the wider public on potential domestic impacts of Australia's ratification of the Convention.
3. Cost-benefit analysis consultation (2015): Targeted consultation process seeking quantified estimates of the potential impacts of ratification on business and industry, the community and government.
4. Exposure draft RIS (2016-17): Exposure draft of the RIS and CBA released for public comment. Twenty-nine submissions were received.
5. Cost-benefit analysis consultation (2017): Further targeted consultation with key stakeholders following submissions to the exposure draft RIS.
6. Final RIS and cost-benefit analysis (2020): Given previous extensive and thorough consultation, the Office of Best Practice Regulation advised that the update to the RIS and CBA would require only targeted consultation.

Details and operation

Details of the Amendment Regulations are set out in Attachment A.

The Amendment Regulations commence on the later of the day after the Amendment Regulations are registered and the day the Minamata Convention on Mercury, done at

Minamata on 10 October 2013 (Minamata Convention), comes into force for Australia. However, the Amendment Regulations do not commence at all if the Minamata Convention does not come into force for Australia.

Other

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

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021*

Section 1 – Name

1. This section provides that the name of the instrument is the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* (the Amendment Regulations).

Section 2 – Commencement

2. This section provides that the Amendment Regulations commence on the later of the day after the Amendment Regulations are registered and the day the Minamata Convention on Mercury, done at Minamata on 10 October 2013 (Minamata Convention), comes into force for Australia. However, the Amendment Regulations do not commence at all if the Minamata Convention does not come into force for Australia.
3. The table in subsection 2(1) also requires the Minister to announce, by notifiable instrument, the day the Convention comes into force for Australia.
4. A note below the table advises that the table relates only to the provisions of the Amendment Regulations as originally made. It will not be amended to deal with later amendments of the Amendment Regulations. The purpose of this note is to clarify that the commencement of any subsequent amendments will not be reflected in this table.
5. Subsection 2(2) clarifies that any information in column 3 of the table is not part of the Amendment Regulations. Information may be inserted in this column, or edited in this column, in any published version of the Amendment Regulations. It is intended that the commencement date will be inserted into column 3 once the Minamata Convention comes into force for Australia and the Amendment Regulations commence.

Section 3 – Authority

6. This section provides that the Amendment Regulations are made under the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, the *Customs Act 1901* and the *Therapeutic Goods Act 1989*.

Section 4 – Schedules

7. This section provides that each instrument that is specified in a Schedule to the Amendment Regulations 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.
8. This enables the amendment of the *Agricultural and Veterinary Chemicals (Administration) Regulations 1994*, the *Customs (Prohibited Export) Regulations 1958*, the *Customs (Prohibited Import) Regulations 1956* and the *Therapeutic Goods Regulations 1990*.

Schedule 1 – Amendments

Agricultural and Veterinary Chemicals (Administration) Regulations 1995

9. Items 1 to 42 of the Amendment Regulations amend Part 3 of the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* (AVCA Regulations) to implement Australia's obligations under Articles 3(6), 3(8) and 4(1) of the Minamata Convention in respect of:
- elemental mercury (including certain mixtures and alloys) that is being imported or exported as a chemical product, or for use as an active constituent in a proposed or existing chemical product; and
 - the mercury-added products listed in Part 1 of Annex A of the Convention, where the product is being imported, exported or manufactured as a chemical product. The mercury-added product listed in Part 1 of Annex A that are most likely to be imported, exported or manufactured as a chemical product are pesticides, biocides and topical antiseptics.
10. The term *chemical product* is defined in section 4 of the AVCA Act to have the same meaning as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (AGVET Code Act), which defines the term to mean an *agricultural chemical product* or a *veterinary chemical product*, or both (section 3 of the AGVET Code Act). The definitions of agricultural chemical product and veterinary chemical product broadly reflect chemicals used for agricultural or veterinary purposes (sections 4 and 5 of the AGVET Code Act).
11. Where the mercury or mercury-added product being imported or exported (in the case of mercury) or imported, exported or manufactured (in the case of mercury-added products) is not a chemical product (within the meaning of the AVCA Act) or is not intended for use as an active constituent in a proposed or existing chemical product, the amendments proposed by items 1 to 42 do not apply. Instead, it is intended that such import, export or manufacture would be regulated by the subject matter specific legislation relevant to the particular purpose of the import, export or manufacture. This will be the *Therapeutic Goods Regulations 1990*, or rules made under either the *Industrial Chemicals Act 2019* or the *Recycling and Waste Reduction Act 2020*, depending on the purpose involved.

Item [1] – Subregulation 1.3(1)

12. Item 1 of Schedule 1 to the Amendment Regulations amends subregulation 1.3(1) of the AVCA Regulations to insert definitions for *mercury*, *mercury-added products*, *Minamata Convention*, *non-Minamata mercury* and *research mercury*.
13. The term *mercury* is defined as elemental mercury (Hg(0), CAS No. 7439-97-6), and includes mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight, but would exclude non-Minamata mercury. This definition is consistent with the definition of mercury in the Minamata Convention.

14. The intention is that, consistent with Australia's obligations under Article 3(6) and 3(8) of the Minamata Convention, only mercury that falls within this definition is subject to the new prohibitions on the import and export of mercury.
15. The term *mercury-added products* is relevant to implementing Australia's obligations under Articles 4(1) and 4(5) of the Minamata Convention. *Mercury-added products* is defined to only include those products that are listed in Part 1 of Annex A to the Minamata Convention and that contain mercury. These products relevantly include pesticides, biocides and topical antisepsics.
16. It does not include all products containing mercury or all products to which mercury is added. It also does not include the following products (which will generally not be relevant to the AVCA Regulations in any event):
- products essential for civil protection and military uses;
 - products for research, calibration of instrumentation, or for use as reference standards;
 - if no feasible mercury-free alternative for replacement is available – switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps for electronic displays, and measuring devices;
 - products used in traditional or religious practices;
 - vaccines containing thiomersal as preservatives.
17. This is because these products are excluded from the scope of the Minamata Convention. Similarly, Australia's obligations under Articles 4(1) and 4(5) of the Minamata Convention do not extend to all products containing mercury, or all products to which mercury is added. The concept of *mercury-added products* only covers those products for which Australia has international obligations under the Minamata Convention.
18. The term *Minamata Convention* is defined as the Minamata Convention on Mercury done at Minamata on 10 October 2013, as in force for Australia at the commencement of this definition.
19. A note included under the definition of *Minamata Convention* explains that the Convention is in the Australian Treaty Series and provides a link to the Australian Treaties Library.
20. The term *non-Minamata mercury* covers the categories of *research mercury*, naturally occurring trace quantities of mercury present in products such as non-mercury metals, ores or mineral products (including coal) or in products derived from such products, and unintentional trace quantities of mercury in chemical products.

21. The concept of *non-Minamata mercury* is relevant to the definition of *mercury*, as it covers the categories of mercury that are excluded from that definition, and therefore are not regulated under the AVCA Regulations. This is consistent with Australia's obligations under the Minamata Convention, which do not extend to these categories of mercury.
22. *Research mercury* is defined as mercury to be used for laboratory-scale research or as a reference standard. This is a subset of the broader *non-Minamata mercury* and therefore is not subject to the new prohibition on export of mercury. It is necessary to refer specifically to *research mercury* because the export of this category of mercury, though not subject to the Minamata controls, will continue to require a permission under the AVCA Regulations in line with existing regulatory arrangements.

Item [2] – Subregulation 1.3A(1) (at the end of the definition of *controlled chemical*)

23. The prohibitions and related approval mechanisms in Part 3 of the AVCA Regulations for the import, manufacture or export of certain active constituents and chemical products generally deal with controlled chemicals. A *controlled chemical* is currently defined in subregulation 1.3A(1) of the AVCA Regulations as:
 - a. an active constituent or chemical product listed in Part 2 of Schedule 1; or
 - b. a chemical product containing an active constituent referred to in paragraph (a); or
 - c. the chemical product listed as an item in Part 3 of Schedule 1.
24. Item 2 of Schedule 1 to the Amendment Regulations amends the definition of *controlled chemical* in subregulation 1.3A(1) of the AVCA Regulations to insert new paragraphs (d), (e) and (f) which would extend the definition of *controlled chemical* to expressly include expressly mercury that is to be used as an active constituent in a proposed or existing chemical product, mercury that is a chemical product itself, and a mercury-added product that is a chemical product. Both *mercury* and *mercury-added products* will be defined in subregulation 1.3(1) (see item 1).
25. New paragraphs (d) and (e) are required because, in order to implement Australia's obligations under Articles 3(6) and 3(8) of the Minamata Convention within the framework of the AVCA Regulations, it is necessary for mercury to be prescribed as a controlled chemical, to the extent that either:
 - the mercury is a chemical product itself; or
 - the intended use of the mercury is as an active constituent in a proposed or existing chemical product.
26. Similarly, new paragraph (f) is required because, in order to implement Australia's obligations under Article 4(1) of the Convention, it is necessary for the mercury-added products listed in Part 1 of Annex A to be prescribed as controlled chemicals, to the extent that they are chemical products.

27. While mercury is currently listed in Part 2 of Schedule 1 to the AVCA Regulations, it is not sufficient to rely on this listing and the existing definition of *controlled chemical* (which covers active constituents and chemical products listed in Part 2 of Schedule 1). This is because the effect of paragraph (b) of the definition of controlled chemical would be that all chemical products where mercury is an active constituent would be controlled chemicals within the meaning of the AVCA Regulations. As Australia's obligations under the Minamata Convention only extend to the import and export of all elemental mercury (under Article 3) but only the import, export or manufacture of certain products that contain mercury (under Article 4), it is necessary to make specific provision for mercury.
28. As a consequence, the Amendment Regulations also repeal the current listing of mercury in Part 2 of Schedule 1 (see item 42).

Item [3] – Before paragraph 3.05(a)

29. Section 69C of the AVCA Act allows the regulations to prohibit the import, manufacture, use or export of a chemical product, or an active constituent of a chemical product, where the active constituent is the subject of a prescribed international agreement.
30. Item 3 of Schedule 1 to the Amendment Regulations amends regulation 3.05 of the AVCA Regulations to insert new paragraph 3.05(aa). New paragraph 3.05(aa) has the effect of prescribing the Minamata Convention as a prescribed international agreement for the purposes of section 69C of the AVCA Act.
31. This means that the AVCA Regulations are able to prohibit the import, export or manufacture of mercury or mercury-added products for the purposes of implementing Australia's obligations under the Minamata Convention.

Item [4] – Before subregulation 3.45(1)

32. Division 3.2 of Part 3 of the AVCA Regulations (regulations 3.45 to 3.65) makes provision for prohibitions to be imposed on the import of controlled chemicals in certain circumstances.
33. Regulation 3.45 makes provision for an absolute prohibition on the import into Australia of certain controlled chemicals. Subregulation 3.45(1) provides that the importation into Australia of a controlled chemical is prohibited if the relevant item in Schedule 1 states that its importation is prohibited in all cases.
34. As the prohibition in regulation 3.45 is absolute, a person cannot apply for a permit to import controlled chemicals where the relevant item in Schedule 1 states that its importation is prohibited in all cases.
35. Item 4 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment in item 5. Item 4 amends regulation 3.45 to insert a new subheading before subregulation 3.45(1). The new subheading differentiates the prohibition in existing subregulation 3.45(1) from new subregulation 3.45(1A) which prohibits the import of a

controlled chemical that is a *mercury-added product* (defined in item 1) in all cases (see item 5).

36. It is necessary to differentiate the two prohibitions because controlled chemicals that are mercury-added products will not be listed in Schedule 1 to the AVCA Regulations (see item 42) and therefore will not come within the existing prohibition in subregulation 3.45(1).

Item [5] – After subregulation 3.45(1)

37. Item 5 of Schedule 1 to the Amendment Regulations amends regulation 3.45 of the AVCA Regulations to insert new subregulation 3.45(1A).
38. New subregulation 3.45(1A) prohibits the import of a controlled chemical that is a mercury-added product in all cases. The term *mercury-added product* will be defined in subregulation 1.3(1) (see item 1).
39. The purpose of new subregulation 3.45(1A) is to implement Australia’s obligations under Article 4(1) of the Minamata Convention, which require Parties to not allow, by taking appropriate measures, the manufacture, import or export of the mercury-added products listed in Part I of Annex A.
40. The prohibition in new subregulation 3.45(1A) is an absolute prohibition; a person will not be able to apply for approval to import into Australia a mercury-added product that is a chemical product (within the meaning of the AVCA Act). This is consistent with Australia’s obligations under Article 4(1) of the Minamata Convention.
41. For mercury-added products that are not chemical products (within the meaning of the AVCA Act), the prohibition in new subregulation 3.45(1A) does not apply. Instead, an equivalent prohibition on the import into Australia of mercury-added products that are not chemical products will be imposed in the *Therapeutic Goods Regulations 1990* (TG Regulations) (for mercury-added products that are therapeutic within the meaning of the *Therapeutic Goods Act 1989* (TG Act) and it is intended that rules will be made under the *Recycling and Waste Reduction Act 2020* (RAWR Act) to an equivalent effect (for mercury-added products that are neither therapeutic goods within the meaning of the TG Act, nor chemical products within the meaning of the AVCA Act).

Item [6] – Subregulation 3.45(2)

42. Item 6 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 5.
43. Subregulation 3.45(2) of the AVCA Regulations currently prescribes the prohibition in subregulation 3.45(1) as a condition for the purposes of subsection 69C(1) of the AVCA Act.

44. Item 6 amends subregulation 3.45(2) to insert a reference to new subregulation 3.45(1A). This has the effect of prescribing the prohibition in new subregulation 3.45(1A) as a condition for the purposes of subsection 69C(1) of the AVCA Act.

Item [7] – Before subregulation 3.50(1)

45. Subdivision 3.2.2 of the AVCA Regulations deals with prohibiting the import into Australia of certain controlled chemicals subject to conditions.
46. Subregulation 3.50(1) provides that Subdivision 3.2.2 applies to a controlled chemical if the relevant item in Schedule 1 states that its importation is prohibited except with written permission. Subsection 3.50(2) has the effect that a controlled chemical to which Subdivision 3.2.2 applies is called an *import-prohibited chemical*.
47. Item 7 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 8. Item 7 amends regulation 3.50 to insert a new subheading before existing subregulation 3.50(1). The new subheading makes it clear that existing subregulation 3.50(1) only deals with controlled chemicals other than mercury.
48. This distinction is necessary because mercury will not be listed in Schedule 1 to the AVCA Regulations (see item 42) and therefore will not be covered by existing subregulation 3.50(1). Instead, new subregulation 3.50(1A) will separately provide that subdivision 3.2.2 also applies to a controlled chemical that is mercury (see item 8).

Item [8] – After subregulation 3.50(1)

49. Item 8 of Schedule 1 to the Amendment Regulations amend regulation 3.50 of the AVCA Regulations to insert new subregulations 3.50(1A) and (1B).
50. New subregulation 3.50(1A) provides that, subject to new subregulation 3.50(1B), subdivision 3.2.2 applies to a controlled chemical that is mercury. The purpose of this amendment is to ensure that a controlled chemical that is mercury is an import-prohibited chemical, so that the prohibition on import except with written permission (in regulation 3.55) will apply to mercury. Mercury is not currently an import-prohibited chemical, as the existing Schedule 1 listing only applies to export.
51. This implements Australia's obligations under Article 3(8) of the Minamata Convention, which requires Parties to not allow the import of mercury unless certain conditions are met.
52. New subregulation 3.50(1B) provides that subdivision 3.2.2 does not apply to mercury that is imported from a Party to the Minamata Convention. This means that where mercury is imported from a country that is a Party to the Minamata Convention, the mercury is not an import-prohibited chemical and, therefore, does not require a permission. This exclusion reflects the scope of Australia's obligations under Article 3(8) of the Minamata Convention, which do not extend to imposing controls on imports from countries that are Parties to the Convention.

Item [9] – Paragraph 3.55(1)(c)

53. Subregulation 3.55(1) of the AVCA Regulations prohibits the import into Australia of an import-prohibited chemical unless an authorised officer or the Minister has given permission in writing to import the chemical (paragraph 3.55(1)(a)), the permission is produced to a Collector (paragraph 3.55(1)(b)), and any condition or restriction in the relevant item in Schedule 1 is satisfied (paragraph 3.55(1)(c)).
54. Item 9 of Schedule 1 to the Amendment Regulations amends paragraph 3.55(1)(c) to clarify that this requirement only applies to chemicals listed in Schedule 1. It is intended that any conditions or restrictions on imports of mercury with a permission will be specified in the permission itself. Under existing subparagraph 3.55(2)(a)(ii), it is a condition for the purposes of section 69C of the AVCA Act that a person does not import an export-prohibited chemical contrary to a condition or restriction specified in the permission.
55. This distinction is necessary because mercury will no longer be listed in Schedule 1 (see item 42) and therefore will no longer fall within existing paragraph 3.55(1)(c).

Item [10] – Paragraph 3.55(2)(c)

56. Subsection 3.55(2) of the AVCA Regulations prescribes conditions on imports of import-prohibited chemicals for the purposes of subsection 69C(1). These conditions are that a person must not import the chemical without written permission from an authorised officer or the Minister, or contrary to a condition or restriction specified in the permission (paragraph 3.55(2)(a)), a person who imports the chemical must not fail to produce the permission if asked to do so by a Collector (paragraph 3.55(2)(b)), and any condition or restriction set out in the relevant item in Schedule 1 (paragraph 3.55(2)(c)).
57. Item 10 of Schedule 1 to the Amendment Regulations amends paragraph 3.55(2)(c) to make it clear that this condition applies only to import-prohibited chemicals other than mercury. This distinction is necessary because mercury will no longer be listed in Schedule 1 (see item 42) and therefore will no longer fall within existing paragraph 3.55(2)(c). It is intended that any conditions or restrictions on the import of mercury will be specified in the permission itself.

Item [11] – Before subregulation 3.65(1)

58. Regulation 3.65 of the AVCA Regulations sets out when a permission can be granted to import an import-prohibited chemical into Australia. Existing subregulation 3.65(1) sets out requirements that must be satisfied relating to the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention) and other international Conventions.
59. Item 11 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 13. Item 11 amends regulation 3.65 to insert a new subheading before existing subregulation 3.65(1). The new subheading makes it clear that existing subregulation 3.65(1) only applies to import-prohibited chemicals other than mercury.

60. The requirements to grant a permission to import an import-prohibited chemical that is mercury will be set out in new subregulation 3.65(1A) (see item 13). It is necessary to make separate provision for mercury because the requirements that must be satisfied to grant a permission to import mercury need to reflect Australia's obligations under Article 3(8) of the Minamata Convention.

Item [12] – Subregulation 3.65(1)

61. Item 12 of Schedule 1 to the Amendment Regulations is also a consequential amendment to the amendment made by item 13. Item 12 amends existing subregulation 3.65(1) of the AVCA Regulations to insert 'specified in an item in Schedule 1' after 'import-prohibited chemical'.

62. This amendment is necessary to ensure that existing subregulation 3.65(1) does not apply to an import-prohibited chemical that is mercury. Permissions to import mercury will instead be governed by new subregulation 3.65(1A) (see item 13).

Item [13] – After subregulation 3.65(1)

63. Item 13 of Schedule 1 to the Amendment Regulations amends regulation 3.65 of the AVCA Regulations to insert new subregulation 3.65(1A).

64. New subregulation 3.65(1A) sets the requirements for when an authorised officer may grant a permission to import an import-prohibited chemical that is mercury from a non-Party to the Minamata Convention.

65. An authorised officer will only be able to grant a permission to import mercury to Australia if the officer is satisfied both that Australia has consented to the import, and that the exporting party has provided written certification that the mercury is not sourced from primary mercury mining and is not excess mercury from the decommissioning of chlor-alkali facilities.

66. The requirement for consent can be satisfied by either Australia providing the exporting Party with written consent to the specific import (i.e. on a case-by-case basis), or by Australia having a general notification of consent in force in accordance with Article 3(7) of the Minamata Convention.

67. The requirements in new subregulation 3.65(1A) reflect Australia's obligations under Article 3(8) of the Minamata Convention.

Item [14] – Subregulation 3.65(2)

68. Item 14 of Schedule 1 to the Amendment Regulations is also a consequential amendment to the amendment made by item 13.

69. Existing subregulation 3.65(2) of the AVCA Regulations has the effect that if the authorised officer is not satisfied as to the matters mentioned in subregulation 3.65(1), the officer must refuse to grant a permission to import an import-prohibited chemical.

70. Item 14 amends subregulation 3.65(2) to insert a reference to new subregulation 3.65(1A). This has the effect that, if the authorised officer is not satisfied of the requirements in new subregulation 3.65(1A), the officer must refuse to grant a permission to import an import-prohibited chemical that is mercury.

Item [15] – Before subregulation 3.100(1)

71. Division 3.3 of Part 3 of the AVCA Regulations (regulations 3.100 to 3.120) makes provision for prohibitions to be imposed on the manufacture of controlled chemicals in certain circumstances.

72. Regulation 3.100 makes provision for an absolute prohibition on the manufacture in Australia of certain controlled chemicals. Subregulation 3.100(1) provides that the manufacture in Australia of a controlled chemical is prohibited if the relevant item in Schedule 1 states that its manufacture is prohibited in all cases.

73. As the prohibition in regulation 3.100 is absolute, a person cannot apply for a permit to manufacture controlled chemicals where the relevant item in Schedule 1 states that its manufacture is prohibited in all cases.

74. Item 15 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment in item 16. Item 15 amends existing regulation 3.100 to insert a new subheading before subregulation 3.100(1). The new subheading differentiates the prohibition in existing subregulation 3.100(1) from new subregulation 3.100(1A) which will prohibit the manufacture of a controlled chemical that is a mercury-added product in all cases (see item 16).

75. It is necessary to differentiate the two prohibitions because controlled chemicals that are mercury-added products will not be listed in Schedule 1 to the AVCA Regulations (see item 42) and therefore will not come within the existing prohibition in subregulation 3.100(1).

Item [16] – After subregulation 3.100(1)

76. Item 16 of Schedule 1 to the Amendment Regulations amends regulation 3.100 of the AVCA Regulations to insert new subregulation 3.100(1A).

77. New subregulation 3.100(1A) prohibits the manufacture of a controlled chemical that is a mercury-added product in all cases. The term *mercury-added product* will be defined in subregulation 1.3(1) (see item 1).

78. The purpose of new subregulation 3.100(1A) is to implement Australia's obligations under Article 4(1) of the Minamata Convention, which require Parties to not allow, by taking appropriate measures, the manufacture, import or export of the mercury-added products listed in Part I of Annex A.

79. The prohibition in new subregulation 3.100(1A) is an absolute prohibition; a person is not able to apply for approval to manufacture in Australia a mercury-added product that is a

chemical product (within the meaning of the AVCA Act). This is consistent with Australia's obligations under Article 4(1) of the Minamata Convention.

80. For mercury-added products that are not chemical products (within the meaning of the AVCA Act), the prohibition in new subregulation 3.100(1A) do not apply. Instead, an equivalent prohibition on the manufacture in Australia of mercury-added products that are not chemical products would be imposed in the TG Regulations (for mercury-added products that are therapeutic goods within the meaning of the TG Act) and it is intended that rules will be made under the RAWR Act to an equivalent effect (for mercury-added products that are neither therapeutic goods within the meaning of the TG Act, nor chemical products within the meaning of the AVCA Act).

Item [17] – Subregulation 3.100(2)

81. Item 17 of Schedule 1 to Amendment Regulations is a consequential amendment to the amendment made by item 16.
82. Subregulation 3.100(2) of the AVCA Regulations currently prescribes the prohibition in subregulation 3.100(1) as a condition for the purposes of subsection 69C(1) of the AVCA Act.
83. Item 17 amends existing subregulation 3.100(2) to insert a reference to new subregulation 3.100(1A). This has the effect of prescribing the prohibition in new subregulation 3.100(1A) as a condition for the purposes of subsection 69C(1) of the AVCA Act.

Item [18] – Before subregulation 3.200(1)

84. Division 3.6 of Part 3 of the AVCA Regulations (regulations 3.200 to 3.250) makes provision for prohibitions to be imposed on the export of controlled chemicals in certain circumstances.
85. Regulation 3.200 provides for an absolute prohibition on the export from Australia of certain controlled chemicals. Subregulation 3.200(1) provides that the export from Australia of a controlled chemical is prohibited if the relevant item in Schedule 1 states that its export is prohibited in all cases.
86. As the prohibition in regulation 3.100 is absolute, a person cannot apply for a permit to export controlled chemicals where the relevant item in Schedule 1 states that its export is prohibited in all cases.
87. Item 18 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment in item 19. Item 18 amends existing regulation 3.200 to insert a new subheading before subregulation 3.200(1). The new subheading differentiates the prohibition in existing subregulation 3.200(1) from new subregulation 3.200(1A) which will prohibit the export of a controlled chemical that is a mercury-added product in all cases (see item 19).

88. It is necessary to differentiate the two prohibitions because controlled chemicals that are mercury-added products will not be listed in Schedule 1 to the AVCA Regulations (see item 42) and therefore will not come within the existing prohibition in subregulation 3.200(1).

Item [19] – After subregulation 3.200(1)

89. Item 19 of Schedule 1 to the Amendment Regulations amends regulation 3.200 of the AVCA Regulations to insert new subregulation 3.200(1A).

90. New subregulation 3.200(1A) prohibits the export from Australia of a controlled chemical that is a mercury-added product in all cases. The term *mercury-added product* will be defined in subregulation 1.3(1) (see item 1).

91. The purpose of new subregulation 3.200(1A) is to implement Australia's obligations under Article 4(1) of the Minamata Convention, which requires Parties to not allow, by taking appropriate measures, the manufacture, import or export of the mercury-added products listed in Part I of Annex A.

92. The prohibition in new subregulation 3.200(1A) is an absolute prohibition; a person is not able to apply for approval to export from Australia a mercury-added product that is a chemical product (within the meaning of the AVCA Act). This is consistent with Australia's obligations under Article 4(1) of the Minamata Convention.

93. For mercury-added products that are not chemical products (within the meaning of the AVCA Act), the prohibition in new subregulation 3.200(1A) does not apply. Instead, an equivalent prohibition on the export from Australia of mercury-added products that are not chemical products would be imposed in the TG Regulations (for mercury-added products that are therapeutic goods) and it is intended that rules will be made under the RAWR Act to an equivalent effect (for mercury-added products that are neither therapeutic goods within the meaning of the TG Act, nor chemical products within the meaning of the AVCA Act).

Item [20] – Subregulation 3.200(2)

94. Item 20 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 19.

95. Subregulation 3.200(2) of the AVCA Regulations currently prescribes the prohibition in subregulation 3.200(1) as a condition for the purposes of subsection 69C(1) of the AVCA Act.

96. Item 20 amends existing subregulation 3.200(2) to insert a reference to new subregulation 3.200(1A). This has the effect of prescribing the prohibition in new subregulation 3.200(1A) as a condition for the purposes of subsection 69C(1) of the AVCA Act.

Item [21] – Before subregulation 3.205(1)

97. Subdivision 3.6.2 of the AVCA Regulations deals with prohibiting the export from Australia of certain controlled chemicals subject to conditions.
98. Subregulation 3.205(1) provides that Subdivision 3.6.2 applies to a controlled chemical if the relevant item in Schedule 1 states that its export is prohibited except with written permission. Subsection 3.205(2) has the effect that a controlled chemical to which Subdivision 3.6.2 applies is called an *export-prohibited chemical*.
99. Item 21 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 22. Item 21 amends existing regulation 3.205 to insert a new subheading before existing subregulation 3.205(1). The new subheading makes it clear that existing subregulation 3.205(1) only deals with controlled chemicals other than mercury.
100. This distinction is necessary because mercury will not be listed in Schedule 1 to the AVCA and therefore will not come within existing subregulation 3.205(1). Instead, new subregulation 3.205(1A) will separately provide that subdivision 3.6.2 also applies to a controlled chemical that is mercury and a chemical product that is research mercury (see item 22).

Item [22] – After subregulation 3.205(1)

101. Item 22 of Schedule 1 to the Amendment Regulations amends regulation 3.205 of the AVCA Regulations to insert new subregulation 3.205(1A).
102. New subregulation 3.205(1A) provide that subdivision 3.6.2 applies to both a controlled chemical that is mercury, and a chemical product that is research mercury. The purpose of this amendment is to ensure that mercury and research mercury are both export-prohibited chemicals, so that they will both be subject to the prohibition on export except with written permission (in regulation 3.55). Both *mercury* and *research mercury* will be defined in subregulation 1.3(1).
103. Ensuring that mercury is subject to the prohibition on export except with written permission implements Australia's obligations under Article 3(6) of the Minamata Convention, which requires Parties to not allow the export of mercury unless certain conditions are met.
104. Research mercury does not come within the scope of Australia's obligations under the Minamata Convention and is not subject to the Minamata controls. However, the current regulatory arrangements require written permission for the export of all categories of mercury, including research mercury. This is achieved by mercury being listed in Schedule 1. As mercury will no longer be listed in Schedule 1, it is necessary to expressly provide that research mercury is subject to the prohibition on export except with written permission, so as to retain the existing regulatory arrangements for this category of mercury.

Item [23] – Subregulation 3.205(2)

105. Subregulation 3.205(2) of the AVCA Regulations provides that a controlled chemical to which subdivision 3.6.2 applies is called an *export-prohibited chemical*.
106. Item 23 of Schedule 1 to the Amendment Regulations amend subregulation 3.205(2) to provide that research mercury is also an export-prohibited chemical. This is necessary as research mercury will not be a controlled chemical within the meaning of the term in subregulation 1.3A(1) (due to mercury being removed from Schedule 1) and will therefore not fall within existing subregulation 3.205(2).

Item [24] – Paragraph 3.210(1)(c)

107. Subregulation 3.210(1) of the AVCA Regulations prohibits the export from Australia of an export-prohibited chemical unless an authorised officer or the Minister has given permission in writing to export the chemical (paragraph 3.210(1)(a)), the permission is produced to a Collector (paragraph 3.210(1)(b), and any condition or restriction in the relevant item in Schedule 1 is satisfied (paragraph 3.210(1)(c)).
108. Item 24 of Schedule 1 to the Amendment Regulations amends paragraph 3.210(1)(c) to clarify that this requirement only applies to chemicals listed in Schedule 1. It is intended that any conditions or restrictions on exports of mercury or research mercury with a permission will be specified in the permission itself. Under existing subparagraph 3.210(2)(a)(ii), it is a condition for the purposes of section 69C of the AVCA Act that a person does not export an export-prohibited chemical contrary to a condition or restriction specified in the permission.
109. This distinction is necessary because mercury will no longer be listed in Schedule 1 (see item 42) and therefore would no longer fall within existing paragraph 3.210(1)(c).

Item [25] – Paragraph 3.210(2)(c)

110. Subsection 3.210(2) of the AVCA Regulations prescribes conditions on exports of export-prohibited chemicals for the purposes of subsection 69C(1) of the AVCA Act. These conditions are that a person must not export the chemical without written permission from an authorised officer or the Minister, or contrary to a condition or restriction specified in the permission (paragraph 3.210(2)(a)), a person who exports the chemical must not fail to produce the permission if asked to do so by a Collector (paragraph 3.210(2)(b)), and any condition or restriction set out in the relevant item in Schedule 1 (paragraph 3.210(2)(c)).
111. Item 25 of Schedule 1 to the Amendment Regulations amends existing paragraph 3.210(2)(c) to make it clear that this condition applies only to export-prohibited chemicals other than mercury. This distinction is necessary because mercury will no longer be listed in Schedule 1 (see item 42) and therefore will no longer fall within existing paragraph 3.210(2)(c). It is intended that any conditions or restrictions on the import of mercury will be specified in the permission itself.

Item [26] – Regulation 3.225

112. Regulation 3.225 of the AVCA Regulations requires an authorised officer to grant an application to export an export-prohibited chemical if the relevant item in Schedule 1 for the chemical identifies the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticide in International Trade (Rotterdam Convention) and the export is to a non-party to that Convention.
113. Item 26 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 27. Item 26 amends existing regulation 3.225 so that the existing provision would become subregulation 3.225(1). This is necessary because item 27 will insert a new subregulation 3.225(2) dealing with research mercury.

Item [27] – At the end of regulation 3.225

114. Item 27 of Schedule 1 to the Amendment Regulations amends regulation 3.225 of the AVCA Regulations to insert new subregulation 3.225(2). New subregulation 3.225(2) provides that an authorised officer must grant an application for permission to export research mercury if the export is to a non-party to the Rotterdam Convention. *Research mercury* will be defined in subregulation 1.3(1) (see item 1).
115. This amendment is necessary to retain the existing regulatory arrangements for research mercury, as mercury will no longer be listed in Schedule 1 and therefore will not come within existing regulation 3.225.

Item [28] – Before subregulation 3.230(1)

116. Regulation 3.230 of the AVCA Regulations sets out when a permission can be granted to export an export-prohibited chemical from Australia. Existing subregulations 3.230(1) and (2) set out requirements that must be satisfied relating to, respectively, the Stockholm Convention and the Rotterdam Convention. Existing subregulation 3.230(3) sets out the requirements that must be satisfied if subregulation 3.230(1) and (2) do not apply to the export, but another Convention does.
117. However, the requirements in existing subregulation 3.230(3) are not appropriate for the Minamata Convention, as they do not reflect Australia's obligations under Article 3(8) of the Minamata Convention. Accordingly, it is necessary to amend regulation 3.230 to set specific requirements that must be satisfied to grant a permission to export mercury. Item 30 of Schedule 1 to the Amendment Regulations makes the required amendment in this respect.
118. Item 28 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 30. Item 28 amends existing regulation 3.230 to insert a new subheading before existing subregulation 3.230(1). The new subheading makes it clear that existing subregulation 3.230(1) only applies to export-prohibited chemicals specified in Schedule 1 and that the requirements relate to the Stockholm Convention.
119. Mercury will no longer be specified in Schedule 1 (see item 42) so will not be subject to the requirements in subregulations 3.230(1) and (2).

120. The requirements to grant a permission to export an export-prohibited chemical that is mercury will instead be set out in new subregulations 3.230(2A) and (2B) (see item 30).
121. As research mercury will not be subject to the Minamata controls, permissions to export this category of mercury will be governed by new subsection 3.230(2C) (see item 30). This has the effect of retaining the existing regulatory arrangements for research mercury.

Item [29] – Before subregulation 3.230(2)

122. Item 29 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 30. Item 29 amends regulation 3.230 of the AVCA Regulations to insert a new subheading before existing subregulation 3.230(2). The new subheading makes it clear that existing subregulation 3.230(2) only applies to export-prohibited chemicals specified in Schedule 1 and that the requirements relate to the Rotterdam Convention.
123. Mercury will no longer be specified in Schedule 1 (see item 42) so will no longer be subject to the requirements in subregulations 3.230(1) and (2).
124. The requirements to grant a permission to export an export-prohibited chemical that is mercury will instead be set out in new subregulation 3.230(2A) and (2B) (see item 30).
125. As research mercury will not be subject to the Minamata controls, permissions to export this category of mercury will be governed by new subregulation 3.230(2C) (see item 30). This has the effect of retaining the existing regulatory arrangements for this category of mercury.

Item [30] – After subregulation 3.230(2)

126. Item 30 of Schedule 1 to the Amendment Regulations amend regulation 3.230 of the AVCA Regulations to insert new subregulations 3.230(2A), (2B) and (2C). These new provisions set out the criteria for granting a permission to export mercury that is a controlled chemical, or that is research mercury.
127. Consistent with Australia's obligations under Article 3(6) of the Minamata Convention, there are different criteria for the export of mercury that is a controlled chemical depending on whether the proposed export is to a Party to the Convention or a non-Party to the Convention.
128. New subregulation 3.230(2A) has the effect that where the proposed export of mercury that is a controlled chemical is to a country that is a Party to the Minamata Convention, an authorised officer will only be able to grant a permission for the export if the officer is satisfied both that the importing Party has provided written consent to the export, and that the mercury is being exported for a use allowed to the importing Party under the Convention or for environmentally sound interim storage (as set out in Article 10 to the Convention).

129. New subregulation 3.230(2B) has the effect that where the proposed export of mercury that is a controlled chemical is to a country that is not a Party to the Minamata Convention, an authorised officer will only be able to grant a permission for the export if the officer is satisfied that the importing Party has both provided written consent to the export, and has provided written certification demonstrating that:
- it has measures in place to ensure the protection of human health and the environment, and to ensure compliance with Articles 10 and 11 of the Minamata Convention; and
 - the mercury will be used only for a use allowed to a Party under the Convention, or for environmentally sound interim storage (as set out in Article 10 to the Convention).
130. The requirements in new subregulations 3.230(2A) and (2B) reflect Australia's obligations under Article 3(6) of the Minamata Convention.
131. New subregulation 3.230(2C) has the effect that an authorised officer can only grant a permission to export research mercury if the export is to a Party to the Rotterdam Convention and the authorised officer is satisfied that the export complies with the requirements of that Convention. This provision is necessary to retain the existing regulatory requirements for research mercury, as mercury will no longer be listed in Schedule 1 (see item 42) and will therefore no longer fall within existing subregulation 3.230(2).

Item [31] – Before subregulation 3.230(3)

132. Item 31 of Schedule 1 to the Amendment Regulations is a consequential amendment to the amendment made by item 30.
133. Item 31 amends regulation 3.230 of the AVCA Regulations to insert a new subheading before existing subregulation 3.230(3). The purpose of the new subheading is to differentiate between subregulation 3.230(3) (which applies to export-prohibited chemicals that do not fall within any of subregulation 3.230(1) to (2C)) and subregulations 3.230(1) to (2C) (which would apply to specific export-prohibited chemicals).

Item [32] – Paragraph 3.230(3)(a)

134. Item 32 of Schedule 1 to the Amendment Regulations is also a consequential amendment to the amendment made by item 30.
135. Item 32 amends existing subregulation 3.230(3) of the AVCA Regulations to insert a new paragraph (a). New paragraph 3.230(3)(a) has the effect that the requirements in subregulation 3.230(3) apply to export-prohibited chemicals that do not fall within any of subregulations 3.230(1), (2), (2A), (2B) or (2C). This amendment is necessary to retain the existing legal effect of subregulation 3.230, which is intended to apply to export-prohibited chemical that are not subject to the specific requirements of the other subregulations in regulation 3.230.

Item [33] – Before subregulation 3.230(4)

136. Item 33 of Schedule 1 to the Amendment Regulations amends regulation 3.230 of the AVCA Regulations to insert a new subheading before existing subregulation 3.230(4). This new subheading identifies that subregulation 3.230(4) deals with circumstances related to refusal to grant an application to export an export-prohibited chemical. This amendment is intended to provide clarity and is consistent with modern drafting practice.

Item [34] – Paragraph 3.235(1)(a)

137. Regulation 3.235 of the AVCA Regulations imposes a number of conditions on the export of certain export-prohibited chemicals listed in Schedule 1 where the export is to a Party to the Rotterdam Convention.
138. Item 34 of Schedule 1 to the Amendment Regulations amends existing paragraph 3.235(1)(a) to make it clear that the conditions imposed by regulation 3.235 also apply to exports of research mercury where the export is to a Party to the Rotterdam Convention.
139. The purpose of this amendment is to retain the existing regulatory arrangements for this category of mercury (that would not be subject to Minamata controls), as mercury will no longer be listed in Schedule 1 and therefore will no longer fall within existing regulation 3.235.

Item [35] – Subregulation 3.240(1)

140. Regulation 3.240 of the AVCA Regulations sets a number of mandatory considerations for an authorised officer to take into account when deciding whether to grant a permission to export certain export-prohibited chemicals listed in Schedule 1 where the export is to a Party to the Rotterdam Convention.
141. Item 35 of Schedule 1 to the Amendment Regulations amends existing subregulation 3.240(1) to make it clear that these mandatory considerations must also be taken into account when deciding whether to grant a permission to export research mercury to a country that is a Party to the Rotterdam Convention.
142. The purpose of this amendment is to retain the existing regulatory arrangements for this category of mercury (that would not be subject to Minamata controls), as mercury will no longer be listed in Schedule 1 and therefore will no longer fall within existing regulation 3.240.

Item [36] – Paragraph 3.245(1)(a)

143. Regulation 3.245 of the AVCA Regulations sets an additional requirement for granting a permission to export certain export-prohibited chemicals listed in Schedule 1 where the export is to a Party to the Rotterdam Convention and the Party's import decision is not known. The additional requirement is that an authorised officer must not grant a permission for the export unless the officer is satisfied that the export will not be in breach of Australia's obligations under Article 11 of the Rotterdam Convention.

144. Item 36 of Schedule 1 to the Amendment Regulations amends existing paragraph 3.245(1)(a) to make it clear that this additional requirement also applies to permissions to export research mercury to a country that is a Party to the Rotterdam Convention and the Party's import decision is not known.
145. The purpose of this amendment is to retain the existing regulatory arrangements for this category of mercury (that would not be subject to Minamata controls), as mercury will no longer be listed in Schedule 1 and therefore will no longer fall within existing regulation 3.240.

Item [37] – Subregulation 3.250(1)

146. Regulation 3.250 of the AVCA Regulations sets out the circumstances in which an authorised officer must refuse to grant a permission to export an export-prohibited chemical.
147. Item 37 of Schedule 1 to the Amendment Regulations amends existing subregulation 3.250(1) to make it clear that an authorised officer must refuse to grant a permission to export and export-prohibited chemical if the officer is not satisfied that the relevant requirements in regulation 3.230 (subregulations 3.230(1), (2), (2A), (2B), (2C) or (3)) are met. Which requirements are relevant to a particular export would depend on the chemical that is proposed to be exported and the circumstances and purposes of the export.
148. Item 37 is a consequential amendment to the amendments made by item 30 and is necessary to insert references to new subregulations 2.30(2A), (2B) and (2C) into existing subregulation 3.250(1).

Item [38] – Paragraph 3.250(2)(a)

149. Subregulation 3.250(2) of the AVCA Regulations sets additional circumstances when a permission to export certain export-prohibited chemical listed in Schedule 1 must be refused. The additional circumstances relate to compliance with Australia's obligations under the Rotterdam Convention.
150. Item 38 of Schedule 1 to the Amendment Regulations amends existing paragraph 3.250(2)(a) to make it clear that this additional requirement also applies to permissions to export research mercury.
151. The purpose of this amendment is to retain the existing regulatory arrangements for this category of mercury (that would not be subject to Minamata controls), as mercury will no longer be listed in Schedule 1 and therefore will no longer fall within existing subregulation 3.250(2).

Item [39] – Regulation 3.305 (definition of *import-prohibited chemical*)

152. Division 3.7 of the AVCA Regulations makes provision for multiple entry import and multiple exit export permits.

153. Regulation 3.305 defines an *import-prohibited chemical* for the purposes of Division 3.7. An *import-prohibited chemical* is currently defined as a controlled chemical to which Subdivision 3.2.2 applies.
154. Item 39 of Schedule 1 to the Amendment Regulations amend the definition of *import-prohibited chemical* in regulation 3.305 to exclude controlled chemicals that are mercury from being an import-prohibited chemical for the purposes of Division 3.7. The effect is that the term import-prohibited chemical will have a different meaning for the purpose of Division 3.7 than for the rest of the AVCA Regulations.
155. This mean that it will not be possible to grant multiple entry import permits for imports of mercury to countries that are not party to the Minamata Convention. This is consistent with Australia's obligations under Article 3(8) of the Minamata Convention.
156. A permission will not be required to import research mercury or to import mercury to countries that are party to the Minamata Convention. This means it is not necessary to provide for multiple entry import permits for this category of mercury.

Item [40] – Regulation 3.305 (definition of *export-prohibited chemical*)

157. Division 3.7 of the AVCA Regulations makes provision for multiple entry import and multiple exit export permits.
158. Regulation 3.305 of the AVCA Regulations defines an *export-prohibited chemical* for the purposes of Division 3.7. An *export-prohibited chemical* is currently defined as a controlled chemical to which Subdivision 3.6.2 applies.
159. Item 40 of Schedule 1 to the Amendment Regulations amend the definition of *export-prohibited chemical* in regulation 3.305 to exclude mercury (other than research mercury) from being an export-prohibited chemical for the purposes of Division 3.7. The effect is that the term export-prohibited chemical will have a different meaning for the purpose of Division 3.7 than for the rest of the AVCA Regulations.
160. This means that it will not be possible to grant multiple exit export permits for exports of mercury (other than research mercury). This is consistent with Australia's obligations under Article 3(6) of the Minamata Convention.
161. Research mercury would continue to fall within the definition of *export-prohibited chemical* in regulation 3.305. This means that there will remain a power to grant multiple exit export permits for exports of research mercury. This retain the existing regulatory arrangements for this category of mercury.

Item [41] – After Part 4

162. Item 41 of Schedule 1 to the Amendment Regulations amends the AVCA Regulations to insert new Part 5. New Part 5 contains new regulation 5.05 which is a transitional provision for the amendments made by the Amendment Regulations.

163. New subregulation 5.05(1) provides that the amendments made by the Amendment Regulations applies in relation to:
- the importation into, export from, or manufacture in, Australia of mercury or mercury-added products on or after the commencement of the Amendment Regulations; and
 - the export of research mercury from Australia on or after the commencement of the Amendment Regulations.
164. It is important that the changes made by the Amendment Regulations apply to all relevant imports and exports of mercury, and all relevant imports, exports or manufacture of mercury-added products that occur from the time the Amendment Regulations commence, because Australia's obligations under the Minamata Convention apply from that date. If the import, export or manufacture of mercury or mercury-added products occurred after this date in a manner that did not comply with the Amendment Regulations, Australia would be in breach of its international obligations.
165. New subregulation 5.05(1) also clarifies that the amendments made by the Amendment Regulations apply to the export of mercury occurring on or after the commencement of the Amendment Regulations, even where an application for permission to export the mercury was made before the Amendment Regulations commenced. It is necessary to specifically provide for this situation, as mercury is already listed as an export-prohibited chemical under the AVCA Regulations. It is intended that permissions to export mercury that are granted before the commencement of the Amendment Regulations will have conditions attached preventing the export of mercury after the Minamata Convention comes into force for Australia. This approach is necessary to ensure that Australia's obligations under Article 3(6) of the Minamata Convention are properly implemented; if a person does not export mercury in accordance with an existing AVCA permission prior to the Amendment Regulations commencing, they will be required to apply for a new permission that meets the requirements of the Minamata Convention.
166. New subregulation 5.05(1) also clarifies that the amendments made by the Amendment Regulations apply to the export of research mercury occurring on or after the commencement of the Amendment Regulations, even where the application for permission to export the research mercury was made before the Amendment Regulations commenced. This is a technical amendment, as the section references for the regulations dealing with research mercury have changed. However, as the Amendment Regulations would retain the effect of the existing regulatory arrangements for research mercury, there is no substantive effect on applicants to export research mercury and such persons will not have to submit new applications.
167. New subregulation 5.05(2) has the effect that an application for permission to export mercury (as defined in the Amendment Regulations) that was made under the AVCA Regulations prior to the Amendment Regulations commencing, but was not decided prior

to the Amendment Regulations commencing, is, at the time the Amendment Regulations commence, taken not to have been made. This means that a person who has made an application for a permission to export mercury (other than research mercury) that has not been granted or refused at the time the Amendment Regulations commence, will need to make a new application if they still wish to export their mercury after the Amendment Regulations commence.

168. This is necessary because, given that the Amendment Regulations will not commence before the Minamata Convention comes into force for Australia:

- it will not be possible to allow persons who have made an application prior to the Amendment Regulations commencing to be assessed and approved under the current law, as this would result in the breach of Australia's obligations under the Minamata Convention; and
- applications made under the current law will not contain the necessary information to allow the relevant decision-maker to assess whether a permission should be granted consistently with the Minamata Convention.

Item [42] – Schedule 1 (item 25)

169. Schedule 1 to the AVCA Regulations currently lists the chemicals that are controlled for the purposes of the AVCA Regulations. This is reflected in the current definition of controlled chemical in subregulation 1.3A(1).

170. Mercury is currently listed in item 25 of Schedule 1. This is because the export of mercury is currently controlled under the AVCA Regulations.

171. Item 42 of Schedule 1 to the Amendment Regulations repeals item 25 of Schedule 1 to the AVCA Regulations. This has the effect of removing mercury from Schedule 1.

172. While it is still intended that mercury be a controlled chemical, it would not be sufficient to rely on the current listing of mercury in Schedule 1 to the AVCA Regulations and the existing definition of controlled chemical. This is because the effect of paragraph (b) of the definition of *controlled chemical* is that all chemical products where mercury is an active constituent would then become controlled chemicals within the meaning of the AVCA Regulations. This is not consistent with Australia's obligations under the Minamata Convention, which imposes obligations on the import and export of all elemental mercury (under Article 3) but only on the import, export or manufacture of certain products that contain mercury (under Article 4).

173. Accordingly, it is necessary to remove mercury from Schedule 1 and instead expressly provide that mercury is a controlled chemical to the extent that it is a chemical product itself, or where it is to be used as an active constituent of a proposed or existing chemical product. This is reflected in the amendments to the definition of *controlled chemical* in item 2 of Schedule 1 to the Amendment Regulations and allows the import

and export of mercury to be controlled consistently with Australia's obligations under the Minamata Convention.

174. Research mercury (which would not be subject to Minamata Controls) will be controlled separately, in a manner that is consistent with the existing regulatory arrangements for mercury. This reflects the policy to preserve existing regulatory arrangements for categories of mercury that are not controlled by the Minamata Convention.

Customs (Prohibited Exports) Regulations 1958

175. Items 43 to 53 of Schedule 1 to the Amendment Regulations update the existing export prohibition on mercury without permission in the *Customs (Prohibited Exports) Regulations 1958* (Prohibited Exports Regulations) to be consistent with Australia's obligations under Article 3(6) of the Minamata Convention.
176. The purpose of updating the existing prohibition on the export of mercury in the Prohibited Exports Regulations (in addition to subject-matter specific legislation such as the AVCA Regulations and the TG Regulations) is to ensure that there are border controls that are consistent with the Minamata Convention, for compliance and enforcement purposes.
177. However, it is not intended that an exporter be required to obtain multiple permissions in order to export mercury. Rather, the intention is that the Prohibited Exports Regulations will recognise permissions granted under the relevant subject-matter specific legislation.
178. The Amendment Regulations also preserve the current regulatory arrangements for mercury to be used for laboratory-scale research or as a reference standard, for which export will continue to require a permission under the Prohibited Exports Regulations.

Item [43] – Subregulation 2(1)

179. Item 43 of Schedule 1 to the Amendment Regulations amends subregulation 2(1) of the Prohibited Exports Regulations to insert definitions for *mercury, non-Minamata Convention mercury* and *research mercury*.
180. The term *mercury* is defined as elemental mercury (Hg(0), CAS No. 7439-97-6), and includes mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight, but would exclude non-Minamata Convention mercury. This definition is consistent with the definition of mercury in the Minamata Convention.
181. The intention is that, consistently with Australia's obligations under Article 3(6), only mercury that falls within this definition will be subject to the new prohibition on export in new subregulation 4A(1AA) (see item 45).
182. The term *non-Minamata Convention mercury* covers the categories of research mercury, naturally occurring trace quantities of mercury present in products such as non-

mercury metals, ores or mineral products (including coal) or in products derived from such products, and unintentional trace quantities of mercury in chemical products.

183. The concept of *non-Minamata Convention mercury* is relevant to the definition of *mercury*, as it covers the categories of mercury that are excluded from that definition, and therefore are not subject to the new prohibition on export in new subregulation 4A(1AA). This is consistent with Australia's obligations under the Minamata Convention, which do not extend to these categories of mercury.

184. *Research mercury* is defined as mercury to be used for laboratory-scale research or as a reference standard. This is a subset of the broader *non-Minamata mercury* and therefore will not be subject to the new prohibition on export in new subregulation 4A(1AA). It is necessary to refer specifically to *research mercury* because the export of this category of mercury, though not subject to the Minamata controls, will continue to require a permission under existing subregulation 4A(1) of the Prohibited Exports Regulations in line with existing regulatory arrangements.

Item [44] – Regulation 4A(heading)

185. Item 44 of Schedule 1 to the Amendment Regulations amends the Prohibited Exports Regulations to insert a new heading for regulation 4A. The new heading clarifies that regulation 4A deals with the exportation of chemicals

Item [45] – Before subregulation 4A(1)

186. Item 43 of Schedule 1 to the Amendment Regulations amends the Prohibited Exports Regulations to insert a new subheading before existing subregulation 4A(1). This amendment is consequential to the amendment in item 46, which inserts new subregulation 4A(1AA).

187. The purpose of this new subheading is to differentiate between the prohibition on export imposed by existing subregulation 4A(1) (which will continue to apply to chemicals other than mercury) the new prohibitions on export created by new subregulation 4A(1AA) (which would apply to mercury) and new subregulation 4A(1AB) (which would apply to research mercury) (see item 46).

Item [46] – After subregulation 4A(1)

188. Item 46 of Schedule 1 to the Amendment Regulations amends regulation 4A of the Prohibited Exports Regulations to insert a new subregulations 4A(1AA) and 4A(1AB).

189. The purpose of new subregulation 4A(1AA) would be to implement Australia's obligations under Article 3(6) of the Minamata Convention. New subregulation 4A(1AA) prohibits the export of mercury unless the exporter has been granted a permission under either the AVCA Regulations, the *Industrial Chemicals (General) Rules 2019* (IC Rules), or the TG Regulations, and the permission is produced to a Collector. The relevant permission must be in writing.

190. Which legislation is relevant to a particular export of mercury will depend on the purpose for which the mercury is being exported. For instance:
- where a person exports mercury as a therapeutic good (i.e. for a therapeutic purpose), the person will be required to produce, to a Collector, a permission granted under the TG Regulations for the export;
 - where a person exports mercury as an industrial chemical (i.e. for an industrial purpose), the person will be required to produce, to a Collector, a permission granted under the IC Rules for the export;
 - where a person imports mercury for use as a chemical product within the meaning of the AVCA Act (i.e. for agricultural or veterinary purposes), or as an active constituent in a proposed or existing chemical product, the person will be required to produce, to a Collector, a permission granted under the AVCA Regulations for the export.
191. The purpose of the prohibition recognising permissions granted under the relevant subject matter specific legislation (rather than providing for additional permissions to be granted under the Prohibited Exports Regulations) is to reduce duplication and regulatory burden on importers, while still ensuring that there are appropriate border controls in place to enforce Australia's international obligations.
192. New subregulation 4A(1AB) prohibits the export of research mercury unless the exporter has been granted a permission under either the AVCA Regulations or under new paragraph 4A(1AB)(b), and the permission is produced to a Collector. The effect of this provision is to retain the existing regulatory arrangements for research mercury, as Australia's obligations under the Minamata Convention do not extend to this category of mercury. It is necessary to provide a separate prohibition for research mercury because mercury will no longer be listed in Schedule 2 (see item 53) and therefore will no longer be subject to the existing prohibition in subregulation 4A(1).

Item [47] – Before subregulation 4A(1A)

193. Item 47 of Schedule 1 to the Amendment Regulations amends regulation 4A of the Prohibited Exports Regulations to insert a new subheading before subregulation 4A(1A). This amendment is intended to provide clarity and is consistent with modern drafting practice.

Item [48] – Before subregulation 4A(2)

194. Item 48 of Schedule 1 to the Amendment Regulations amends regulation 4A of the Prohibited Exports Regulations to insert a new subheading before subregulation 4A(2). This amendment is intended to provide clarity and is consistent with modern drafting practice.

Item [49] – Subregulations 4A(2), (3) and (4)

195. Item 49 of Schedule 1 to the Amendment Regulations amends each of subregulation 4A(2), (3) and (4) of the Prohibited Exports Regulations to insert a cross reference to new paragraph 4A(1AB)(b).

196. This item is a consequential amendment to the amendment made by item 46. It has the effect of facilitating permissions to export research mercury granted under new subregulation 4A(1AB).

Item [50] – Subregulations 4A(5) and (6)

197. Item 50 of Schedule 1 to the Amendment Regulations amends subregulations 4A(5) and (6) of the Prohibited Exports Regulations to insert a cross reference to new paragraph 4A(1AB)(b).

198. This item is a consequential amendment to the amendment made by item 46. It would have the effect of facilitating permissions to export research mercury granted under new subregulation 4A(1AB).

Item [51] – Before subregulation 4A(7)

199. Item 51 of Schedule 1 to the Amendment Regulations amends regulation 4A of the Prohibited Exports Regulations to insert a new subheading before subregulation 4A(7). This amendment is intended to provide clarity and is consistent with modern drafting practice.

Item [52] – In the appropriate position in Part 5

200. Item 52 of Schedule 1 to the Amendment Regulations amends Part 5 of the Prohibited Exports Regulations to insert new regulation 21. New regulation 21 would be a transitional provision for the amendments made by the Amendment Regulations.

201. New subregulation 21(1) provides that the amendments made by the Amendment Regulations apply in relation to the exportation of mercury or research mercury from Australia on or after the commencement of the Amendment Regulations.

202. It is important that the changes made by the Amendment Regulations apply to all relevant exports of mercury that occur from the time the Amendment Regulations commence, because Australia's obligations under the Minamata Convention will apply from that date. If the export of mercury occurred after this date in a manner that did not comply with the Amendment Regulations, Australia would be in breach of its international obligations.

203. New subregulation 21(1) also clarifies that the amendments made by the Amendment Regulations apply to the export of mercury or research occurring on or after the commencement of the Amendment Regulations, even where an application for permission to export the mercury was made before the Amendment Regulations commenced.

204. It is necessary to specifically provide for this situation, as mercury is already listed as a prohibited export chemical under the Prohibited Exports Regulations.
205. In relation to the export of mercury (other than research mercury), it is intended that permissions to export mercury that are granted under existing paragraph 4A(1)(b) of the Prohibited Exports Regulations before the commencement of the Amendment Regulations will have conditions attached preventing the export of mercury after the Minamata Convention comes into force for Australia. This means if a person does not export mercury in accordance with an existing permission prior to the Amendment Regulations commencing, they will be required to apply for a new permission that meets the requirements of the Minamata Convention if they still wish to export their mercury.
206. In relation to the export of research mercury, permissions granted under the existing law will continue to allow the export of research mercury before, on and after the Amendment Regulations commence. Applications to export research mercury that are made but not decided before the Amendment Regulations commence will be assessed and decided under the Prohibited Exports Regulations as amended by the Amendment Regulations. However, as the Amendment Regulations would retain the existing regulatory arrangements for research mercury, there will be no substantive effect on applications to export research mercury.
207. New subregulation 21(2) has the effect that an application for permission to export mercury (other than research mercury) that was made under the Prohibited Exports Regulations prior to the Amendment Regulations commencing, but was not decided prior to the Amendment Regulations commencing, is, at the time the Amendment Regulations commence, taken not to have been made. This means that a person who has made an application for a permission to export mercury (other than research mercury) that has not been granted or refused at the time the Amendment Regulations commence, will need to make a new application if they still wish to export their mercury after the Amendment Regulations commence.
208. This is necessary because, given that the Amendment Regulations will not commence before the Minamata Convention comes into force for Australia:
- it will not be possible to allow persons who have made an application prior to the Amendment Regulations commencing to be assessed and approved under the current law, as this would result in the breach of Australia's obligations under the Minamata Convention; and
 - applications made under the current law will not contain the necessary information to allow the relevant decision-maker to assess whether a permission should be granted consistently with the Minamata Convention.

Item [53] – Schedule 2 (table item 25)

Item 53 of Schedule 1 to the Amendment Regulations repeals item 25 of Schedule 2 to the Prohibited Exports Regulations. This has the effect of removing mercury from Schedule 2.

The amendment in item 53 is necessary because chemicals listed in Schedule 2 of the Prohibited Exports Regulations are subject to the existing prohibition in subregulation 4A(1). As mercury is currently listed in Schedule 2, all exports of mercury are currently subject to the existing prohibition in subregulation 4A(1).

However, once the new prohibition in subregulation 4A(1AA) commences, the export of mercury will instead be regulated by new subregulation 4A(1AA) and will therefore no longer need to be listed in Schedule 2. Treating mercury differently from other chemicals is necessary in order to comply with Australia's obligations under the Minamata Convention.

Similarly, once the new prohibition in subregulation 4A(1AB) commences, the export of research mercury will instead be regulated by new subregulation 4A(1AB) and will therefore no longer need to be listed in Schedule 2.

Customs (Prohibited Imports) Regulations 1956

209. Items 54 to 56 of Schedule 1 to the Amendment Regulations amend the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) to prohibit the import of mercury to Australia without permission, consistently with Australia's obligations under Article 3(8) of the Minamata Convention.
210. The purpose of including mercury in the Prohibited Imports Regulations (in addition to subject-matter specific legislation such as the AVCA Regulations and the TG Regulations) is to ensure that appropriate border controls are in place for compliance and enforcement purposes.
211. However, it is not intended that an importer be required to obtain multiple permissions in order to import mercury. Rather, the intention is that the Prohibited Import Regulations would recognise permissions granted under the relevant subject-matter specific legislation.
212. In contrast to the Prohibited Exports Regulations, it is not necessary to make specific provision to preserve existing regulatory arrangements for mercury to be used for laboratory-scale research. This is because mercury is not currently listed in the Prohibited Imports Regulations and there is currently no permission required to import such mercury into Australia.

Item [54] – Subregulation 2(1)

213. Item 54 of Schedule 1 to the Amendment Regulations amends subregulation 2(1) of the Prohibited Imports Regulations to insert definitions for *mercury*, *Minamata Convention* and *non-Minamata mercury*.
214. The term *mercury* is defined as elemental mercury (Hg(0), CAS No. 7439-97-6), and includes mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight, but would exclude non-Minamata mercury. This definition is consistent with the definition of mercury in the Minamata Convention.

215. The intention is that, consistently with Australia's obligations under Article 3(8) of the Minamata Convention, only mercury that falls within this definition will be subject to the prohibition on import in new regulation 4AC (see item 55).
216. The term *Minamata Convention* is defined as the Minamata Convention on Mercury done at Minamata on 10 October 2013, as in force for Australia at the commencement of this definition.
217. A note included under the definition of *Minamata Convention* explains that the Convention is in the Australian Treaty Series and provides a link to the Australian Treaties Library.
218. The term *non-Minamata mercury* covers the categories of mercury to be used for laboratory-scale research or as a reference standard, naturally occurring trace quantities of mercury present in products such as non-mercury metals, ores or mineral products (including coal) or in products derived from such products, and unintentional trace quantities of mercury in chemical products.
219. The concept of *non-Minamata mercury* is relevant to the definition of *mercury*, as it covers the categories of mercury that are excluded from that definition, and therefore will not be regulated under the Prohibited Imports Regulations. This is consistent with Australia's obligations under the Minamata Convention, which do not extend to these categories of mercury.

Item [55] – After regulation 4AB

220. Item 55 of Schedule 1 to the Amendment Regulations amends the Prohibited Imports Regulations to insert a new regulation 4AC. The purpose of new regulation 4AC is to implement Australia's obligations under Article 3(8) of the Minamata Convention.
221. New subregulation 4AC(1) has the effect of prohibiting the import of mercury unless the importer has been granted a permission under either the AVCA Regulations, the *Industrial Chemicals (General) Rules 2019* (IC Rules), or the TG Regulations, and the permission is produced to a Collector. The permission must be in writing.
222. Which legislation is relevant to a particular import of mercury would depend on the purpose for which the mercury is being imported. For instance:
- where a person imports mercury as a therapeutic good (i.e. for therapeutic purposes), the person will be required to produce, to a Collector, a permission granted under the TG Regulations for the import;
 - where a person imports mercury as an industrial chemical (i.e. for an industrial purpose), the person will be required to produce, to a Collector, a permission granted under the IC Rules for the import;

- where a person imports mercury for use as a chemical product within the meaning of the AVCA Act (i.e. for agricultural or veterinary purposes), or as an active constituent in a proposed or existing chemical product, the person will be required to produce, to a Collector, a permission granted under the AVCA Regulations for the import.

223. The purpose of the prohibition recognising permissions granted under the relevant subject matter specific legislation (rather than providing for additional permissions to be granted under the Prohibited Imports Regulations) is to reduce duplication and regulatory burden on importers, while still ensuring that there are appropriate border controls in place to enforce Australia's international obligations.

224. New subregulation 4AC(2) provides that the prohibition in subregulation 4AC(1) does not apply to imports of mercury from a party to the Minamata Convention. This exclusion reflects the scope of Australia's obligations under Article 3(8) of the Minamata Convention, which do not extend to imposing controls of imports from countries that are Parties to the Convention. Such imports will also not require permission under the relevant subject matter-specific legislation.

Item [56] – After regulation 12

225. Item 56 of Schedule 1 to the Amendment Regulations amends the Prohibited Imports Regulations to insert new regulation 13. New regulation 13 would be an application provision for the amendments made by the Amendment Regulations.

226. New regulation 13 has the effect that the amendments made to the Prohibited Imports Regulations by the Amendment Regulations would apply in relation to the import into Australia of mercury on or after the commencement of the Amendment Regulations. The purpose of this application provision is to ensure that Australia's obligations under the Minamata Convention are complied with once that Convention comes into force for Australia.

Therapeutic Goods Regulations 1990

227. Items 57 to 59 of Schedule 1 to the Amendment Regulations amend the *Therapeutic Goods Regulations 1990* (TG Regulations) to implement Australia's obligations under Articles 3(6) and 3(8), and Articles 4(1) and 4(5), of the Minamata Convention, in respect of:

- elemental mercury (including certain mixtures and alloys) that is being imported or exported for use as a therapeutic good (within the meaning of the TG Act); and
- the mercury-added products listed in Part 1 of Annex A of the Convention, where the product is being imported, exported or manufactured as a therapeutic good (within the meaning of the TG Act).

228. Where the mercury or mercury-added product being imported or exported (in the case of mercury) or imported, exported or manufactured (in the case of mercury-added products) is not a therapeutic good, the amendments in items 52 and 53 do not apply.

Instead, it is intended that, in those circumstance, any such import, export or manufacture would be regulated by the subject matter specific legislation relevant to the particular purpose of the import, export or manufacture. This will be the AVCA Regulations, or rules made under either the IC Act or the RAWR Act, depending on the purpose involved.

Item [57] – Regulation 2

229. Item 57 of Schedule 1 to the Amendment Regulations amends regulation 2 of the TG Regulations to insert definitions for *mercury*, *mercury-added products*, *Minamata Convention* and *non-Minamata mercury*.

230. The term *mercury* is defined as elemental mercury (Hg(0), CAS No. 7439-97-6), and includes mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight, but would exclude non-Minamata mercury. This definition is consistent with the definition of mercury in the Minamata Convention.

231. The intention is that, consistently with Australia’s obligations under Articles 3(6) and 3(8) of the Minamata Convention, only mercury that falls within this definition will be subject to the new prohibitions on import and export in new regulations 10JB and 10JC respectively (see item 53).

232. The term *mercury-added products* is relevant to implementing Australia’s obligations under Articles 4(1) and 4(5) of the Minamata Convention. *Mercury-added products* is defined to only include those products that are listed in Part 1 of Annex A to the Minamata Convention and that contain mercury.

233. It does not include all products containing mercury or all products to which mercury is added. It also does not include the following products:

- products essential for civil protection and military uses;
- products for research, calibration of instrumentation, or for use as reference standards;
- if no feasible mercury-free alternative for replacement is available – switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps for electronic displays, and measuring devices;
- products used in traditional or religious practices;
- vaccines containing thiomersal as preservatives.

234. This is because these products are excluded from the scope of the Minamata Convention. Similarly, Australia’s obligations under Articles 4(1) and 4(5) of the Minamata Convention do not extend to all products containing mercury, or all products to which mercury is added. The concept of *mercury-added products* only covers those

products for which Australia has international obligations under the Minamata Convention.

235. The term *Minamata Convention* is defined as the Minamata Convention on Mercury done at Minamata on 10 October 2013, as in force for Australia at the commencement of this definition.
236. A note included under the definition of *Minamata Convention* explains that the Convention is in the Australian Treaty Series and provides a link to the Australian Treaties Library.
237. The term *non-Minamata mercury* covers the categories of mercury to be used for laboratory-scale research or as a reference standard, naturally occurring trace quantities of mercury present in products such as non-mercury metals, ores or mineral products (including coal) or in products derived from such products, and unintentional trace quantities of mercury in chemical products.
238. The concept of *non-Minamata mercury* is relevant to the definition of *mercury*, as it covers the categories of mercury that are excluded from that definition, and therefore will not be regulated under the TG Regulations. This is consistent with Australia's obligations under the Minamata Convention, which do not extend to these categories of mercury.

Item [58] – After Part 2C

239. Item 58 of Schedule 1 to the Amendment Regulations amends the TG Regulations to insert a new Part 2CA after existing Part 2C. New Part 2CA consists of new regulations 10JA to 10JH.
240. The purpose of new Part 2CA is to implement Australia's obligations under Articles 3(6), 3(8), 4(1) and 4(5) of the Minamata Convention in respect of *mercury and mercury-added products* that are therapeutic goods.

Division 1 – Prescribed international agreements

Regulation 10JA – Prescribed international agreements

241. Section 9K of the TG Act provides that the regulations may prohibit the import, export, manufacture or supply of therapeutic goods (subsection 9K(1)), or therapeutic goods that contain a specific ingredient or component (subsection 9K(3)), where the therapeutic good, or the ingredient or component, is the subject of a prescribed international agreement.
242. New subregulation 10JA(1) prescribes, for the purposes of subsection 9K(1) of the TG Act, the Minamata Convention.
243. New subregulation 10JA(2) prescribes, for the purposes of subsection 9K(3) of the TG Act, the Minamata Convention.

244. The effect of new subregulations 10JA(1) and (2) is that the Minamata Convention is a prescribed international agreement for the purposes of subsections 9K(1) and 9K(3) of the TG Act. This allows the regulations to prohibit, consistent with Australia's international obligations under the Minamata Convention:

- the import and export of elemental mercury that is a therapeutic good; and
- the import, export and manufacture of a mercury-added product that is a therapeutic good; and
- the manufacture of therapeutic goods containing mercury-added products.

Division 2 – Prohibition on importation of mercury

Regulation 10JB – Importation of a therapeutic good that is mercury from a non-party to the Minamata Convention is prohibited unless approved by the Secretary before importation

245. New regulation 10JB is made for the purposes of paragraph 9K(1)(a) of the TG Act. It has the effect of prohibiting the import into Australia of a therapeutic good that is mercury from a non-party to the Minamata Convention unless the Secretary has approved the import. The Secretary's approval must be in writing. *Mercury* will be defined in regulation 2 (see item 52).

246. The requirement to obtain the Secretary's approval for the import will be a condition prescribed for the purpose of subsection 9K(5) of the TG Act.

247. The purpose of new regulation 10JB is to implement Australia's obligations under Article 3(8) of the Minamata Convention, which requires Parties to not allow the import of mercury unless certain conditions are met.

248. The prohibition on import in regulation 10JB does not apply to imports of mercury from a Party to the Minamata Convention. This exclusion reflects the scope of Australia's obligations under Article 3(8) of the Minamata Convention, which do not extend to imposing controls of imports from countries that are Parties to the Convention. Import of mercury from Parties to the Convention therefore do not require the Secretary's approval.

249. Where mercury is not a therapeutic good, the prohibition on import in new regulation 10JB does not apply. Instead, an equivalent prohibition on import is imposed under the AVCA regulations (for mercury that is a chemical product, or that is to be used in a proposed or existing chemical product within the meaning of the AVCA Act) and it is intended that an equivalent prohibition will also be imposed under the IC Rules (for mercury that is an industrial chemical within the meaning of the IC Act).

Division 3 – Prohibition on export of mercury

Regulation 10JC – Export of a therapeutic good that is mercury is prohibited unless approved by the Secretary before exportation

250. New regulation 10JC is made for the purposes of paragraph 9K(1)(b) of the TG Act. It has the effect of prohibiting the export into Australia of mercury that is a therapeutic good

unless the Secretary has approved the export. The Secretary's approval must be in writing. *Mercury* will be defined in regulation 2 (see item 52).

251. The requirement to obtain the Secretary's approval for the export will be a condition prescribed for the purpose of subsection 9K(5) of the TG Act.
252. The purpose of new regulation 10JC is to implement Australia's obligations under Article 3(6) of the Minamata Convention, which requires Parties to not allow the export of mercury unless certain conditions are met.
253. Where mercury is not a therapeutic good, the prohibition on export in new regulation 10JC does not apply. Instead, an equivalent prohibition on export would be imposed under the AVCA regulations (for mercury that is a chemical product, or that is to be used in an proposed or existing chemical product within the meaning of the AVCA Act) and it is intended that an equivalent prohibition will also be imposed under the IC Rules (for mercury that is an industrial chemical within the meaning of the IC Act).

Division 4 – Applications to import or export mercury

Regulation 10JD – Applications to import or export mercury

254. New subregulation 10JD(1) allow a person to apply to the Secretary for approval to import a therapeutic good that is mercury from a non-party to the Minamata Convention, or to export a therapeutic good that is mercury.
255. New subregulation 10JD(2) sets out the requirements for an application for approval to import or export mercury that is a therapeutic good. The application is be required to be in the approved form, to include the information required by the form and to include the prescribed fee (if any).
256. New subregulation 10JD(3) clarifies that if an application does not comply with the requirements in subregulation 10JD(2), it is taken not to be made (and therefore is not required to be assessed by the Secretary).
257. New subregulation 10JD(4) provides that the Secretary may approve an application form for the purposes of paragraph 10JD(2)(a).

Regulation 10JE – When approval may be granted – importation

258. New regulation 10JE sets out the criteria that must be satisfied before the Secretary can approve an application to import mercury that is a therapeutic good from a non-Party to the Minamata Convention (the exporting party).
259. The Secretary will only be able to approve an application to import mercury that is a therapeutic good if he or she is satisfied both that Australia has consented to the import, and that the exporting party has provided written certification that the mercury is not sourced from primary mercury mining and is not excess mercury from the decommissioning of chlor-alkali facilities.

260. The requirement for consent can be satisfied either by Australia providing the exporting party with written consent to the specific import (i.e. on a case-by-case basis), or by Australia having a general notification of consent in force in accordance with Article 3(7) of the Minamata Convention.

261. The requirements in new regulation 10JE reflect Australia's obligations under Article 3(8) of the Minamata Convention.

Regulation 10JF – When approval may be granted – export

262. New regulation 10JF sets out the criteria that must be satisfied before the Secretary can approve an application to export mercury that is a therapeutic good.

263. Consistent with Australia's obligations under Article 3(6) of the Minamata Convention, there are different criteria depending on whether the proposed export is to a Party to the Convention or a non-Party to the Convention.

264. Where the proposed export is to a country that is a Party to the Minamata Convention, the Secretary will only be able to approve the application if he or she is satisfied both that the importing party has provided written consent to the export, and that the mercury is to be exported for a use allowed to the importing Party under the Convention or for environmentally sound interim storage (as set out in Article 10 of the Convention).

265. Where the proposed export is to a country that is not a Party to the Minamata Convention, the Secretary will only be able to approve the application if she or she is satisfied that the importing party has both provided written consent to the export, and has provided written certification demonstrating that:

- it has measures in place to ensure the protection of human health and the environment, and to ensure compliance with Articles 10 and 11 of the Minamata Convention; and
- the mercury will be used only for a use allowed to a Party under the Convention, or for environmentally sound interim storage (as set out in Article 10 to the Convention).

266. The requirements in new regulation 10JF reflect Australia's obligations under Article 3(6) of the Minamata Convention.

Division 5 – Mercury-added products

Regulation 10JG – Import, export and manufacture of therapeutic goods that are mercury-added products

267. New regulation 10JG is made for the purposes of subsection 9K(1) of the TG Act. It prohibits the import into, export from, and manufacture in, Australia of mercury-added products that are therapeutic goods. The term *mercury-added products* will be defined in regulation 2 (see item 52).

268. The purpose of regulation 10JG is to implement Australia's obligations under Article 4(1) of the Minamata Convention, which requires Parties to not allow, by taking appropriate measures, the manufacture, import or export of the mercury-added products listed in Part I of Annex A.
269. The prohibition in new regulation 10JG is an absolute prohibition; a person will not be able to apply for approval to import, export or manufacture in Australia mercury-added products that are therapeutic goods. This is consistent with Australia's obligations under Article 4(1) of the Minamata Convention.
270. For mercury-added products that are not therapeutic goods, the prohibition in new regulation 10JG does not apply. Instead, an equivalent prohibition on the import, export and manufacture in Australia of mercury-added products that are not therapeutic goods will be imposed in the ACVA Regulations (for mercury-added products that are chemical products within the meaning of the AVCA Act) and it is intended that an equivalent prohibition will also be imposed in rules made under the RAWR Act (for mercury-added product that are neither therapeutic goods within the meaning of the TG Act, nor chemical products within the meaning of the AVCA Act).

Regulation 10JH – Manufacture of therapeutic goods containing mercury-added products

271. New regulation 10JH is made for the purposes of subsection 9K(3) of the TG Act. It prohibits the manufacture in Australia of therapeutic goods that contain mercury-added products. The term *mercury-added products* will be defined in regulation 2 (see item 52).
272. The purpose of new regulation 10JH is to implement Australia's obligations under Article 4(5) of the Minamata Convention, which requires Parties to take measures to prevent the incorporation into assembled products of the mercury-added products covered by Article 4(1) of the Convention.
273. The prohibition in new regulation 10JH is an absolute prohibition; a person will not be able to apply for approval to manufacture in Australia therapeutic goods that contain mercury-added products.
274. For products that are not therapeutic goods, the prohibition in new regulation 10JH does not apply. Instead it is anticipated that an equivalent prohibition on the manufacture in Australia of other products that contain mercury-added products will be imposed in rules made under the RAWR Act.

Item [59] – In the appropriate position in Part 9

275. Item 59 of Schedule 1 to the Amendment Regulations amends the TG Regulations to insert new Division 15. New Division 15 contains new regulation 79, which is an application provision for the amendments made by the Amendment Regulations.
276. New regulation 79 has the effect that the amendments made to the TG Regulations by the Amendment Regulations apply in relation to the import into, export from, or manufacture in, Australia of therapeutic goods on or after the commencement of the

Amendment Regulations. The purpose of this application provision is to ensure that Australia's obligations under the Minamata Convention are complied with once that Convention comes into force for Australia.

Statement of Compatibility with Human Rights

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

Minamata Convention on Mercury (Consequential Amendments) Regulations 2021

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 (Cth)*.

Overview of the instrument

The *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* (the Amendment Regulations) is made under the *Agricultural and Veterinary Chemical (Administration) Act 1992* (AVCA Act), the *Customs Act 1901* (Customs Act) and the *Therapeutic Goods Act 1989* (TG Act)

The Amendment Regulations make amendments to the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* (AVCA Regulations), the *Customs (Prohibited Exports) Regulations 1958* (Prohibited Exports Regulations), *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) and *Therapeutic Goods Regulations 1990* (TG Regulations) to implement Australia's obligations under Articles 3(6), 3(8), 4(1) and 4(5) of the Minamata Convention on Mercury (Minamata Convention), once that Convention comes into force for Australia.

The Amendment Regulations prohibit the import or export of mercury, and the import, export or manufacture of certain mercury-added products covered by the Convention consistently with the requirements of Articles 3 and 4 of the Convention by amending the AVCA Regulations and TG Regulations. It is also intended that rules will be separately made under the *Industrial Chemicals Act 2019* (IC Act) and the *Recycling and Waste Reduction Act 2020* (RAWR Act).

A person will be able to apply for approval to import or export mercury under the relevant subject specific legislation. The decision-maker will only be able to grant the approval consistently with the requirements of Article 3 of the Minamata Convention.

Consistent with Australia's obligations under Article 4 of the Convention, a person will not be able to apply for approval to import, export or manufacture mercury-added products, or to incorporate mercury-added products into other products.

The Amendment Regulations also impose prohibitions on the import of mercury in the Prohibited Imports Regulations and updates the existing provision on the export of mercury in the Prohibited Exports Regulations in order to ensure border controls are consistent with the Minamata Convention. However, for the purposes of the Minamata Convention, no permissions will need to be granted under the Customs legislation; rather the Prohibited Exports Regulations and the Prohibited Imports Regulations will simply recognise the permissions granted under the relevant subject specific legislation.

The Amendment Regulations are made under section 73 of the AVCA Act, section 270 of the Customs Act and section 63 of the TG Act. The Amendment Regulations are made for the purpose of subsections 69C of the AVCA Act, sections 50 and 112 of the Customs Act and section 9K of the TG Act.

Background

The Minamata Convention on Mercury aims to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. Australia signed the Minamata Convention on 10 October 2013. The Convention entered into force globally on 16 August 2017.

The Minamata Convention provides a range of obligations on parties, including measures to control the supply and trade of mercury, prohibiting specific sources of mercury such as primary mining, and setting limitations and controls on specific mercury-added products and manufacturing processes in which mercury or mercury compounds are used.

In accordance with the usual division of responsibilities, the Commonwealth is responsible for implementing the following articles of the Convention:

- Article 3(6) (prohibit the export of mercury);
- Article 3(8) (prohibit the import of mercury);
- Article 4(1) (prohibit the export, import and manufacture of certain mercury-added products);
- Article 4(5) (prohibit the incorporation into assembled products of certain mercury-added products).

The Commonwealth's position is that where possible, existing subject matter specific legislation is being amended to implement Australia's obligations under the above Articles. The regulatory regime that would be relevant for a particular import, export or manufacture will depend on the intended purpose of the mercury or mercury-added products to be imported, exported or manufactured.

Relevantly:

- the import or export of mercury, the import, export and manufacture of mercury-added products, and the incorporation of mercury-added products into other products, for therapeutic purposes, will be regulated by the TG Regulations;
- the import or export of mercury, and the import, export and manufacture of mercury-added products, for agricultural or veterinary purposes will be regulated by the AVCA Regulations.

It is intended that rules will also be made under the IC Act and RAWR Act (mandatory product stewardship provisions), to fully implement Australia's obligations under Articles 3(6), 3(8), 4(1) and 4(5) of the Convention.

Human rights implications

This legislative instrument engages the following human rights:

- the right to health under Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR); and

- the right to protection from arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Right to Health

Article 12(1) of the ICESCR makes provision in relation to the right to health, specifically the right to the enjoyment of the highest attainable standard of physical and mental health.

Article 12(2)(b) includes the improvement of all aspects of environmental hygiene as a step to be taken to achieve the full realisation of the right to health. In its *General Comment No 14 (August 2000)*, the United Nations Committee on Economic Social and Cultural Rights states that this encompasses the prevention and reduction of the population's exposure to harmful substances such as harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health (at [15]).

Mercury exposure is a global health concern. Every year, as much as 9,000 tons of mercury are released into the atmosphere, in water and on land. The largest source of mercury emissions is artisanal and small-scale gold mining, followed closely by coal combustion, non-ferrous metal production and cement production. Mercury is also found in many commercial products such as batteries, fluorescent lamps, cosmetics, pesticides, thermometers and dental amalgams. High amounts of mercury exposure can lead to long-term and sometimes permanent neurological damages.

The Amendment Regulations amend the AVCA Regulations, Prohibited Exports Regulations, Prohibited Imports Regulations and TG Regulations to ensure that the import of mercury into Australia and the export of mercury from Australia is prohibited unless approval is granted for the import or export. The relevant decision-maker would only be able to grant the approval consistently with the requirements of Articles 3(6) and 3(8) of the Minamata Convention.

The Amendment Regulations also amend the AVCA Regulations and the TG Regulations to prohibit the import into Australia, export from Australia and manufacture in Australia of the mercury-added products covered by the Minamata Convention, and amends the TG Regulations to prevent the manufacture of therapeutic goods that contain mercury-added products.

These prohibitions promote the right to health by aiming to protect human health and the environment from harmful anthropogenic emissions and releases of mercury and mercury compounds. The prohibitions are considered necessary to ensure that Australia's obligations under Articles 3(6), 3(8), 4(1) and 4(5) of the Minamata Convention are fully implemented.

For these reasons, the Amendment Regulations are consistent with the right to health in Article 12(1) of the ICESCR.

Right to Privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with

the ICCPR and be reasonable in the circumstances. The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances. While the United Nations Human Rights Committee has not defined ‘privacy’, the term is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The Amendment Regulations would have the effect that a person would be required to provide information or documents as part of an applications for approval to import or export mercury under either the AVCA Regulations or the TG Regulations. Requiring persons to provide information or documents may incidentally require the provision of personal information. The collection, use, storage, and disclosure of personal information may engage the right to freedom from arbitrary or unlawful interference with privacy.

The collection of this information is necessary for the legitimate objective of regulating the import and export of mercury that is an industrial chemical, consistently with Australia’s international obligations under the Minamata Convention. The information required to be provided by importers and exporters is limited to that information that is considered necessary to facilitate import or export under the AVCA or TG Regulations, in order to ensure Australia’s obligations under the Minamata Convention are met.

Further, a person who seeks to import or export mercury ‘opts in’ to the regulatory system. It is reasonable that a person who has opted in should expect that a certain amount of personal information about the way their business operates will need to be provided in order to comply with the regulatory system. In addition, many importers and exporters will be corporations, for which the right to privacy does not apply.

For these reasons, this limitation to the right to privacy is reasonable, necessary and proportionate to achieve legitimate objectives and is consistent with the right to privacy in Article 17 of the ICCPR.

Conclusion

This legislative instrument is compatible with human rights because it promotes the right to health under Article 12(1) of the ICESCR and, to the extent that it limits the right to protection from arbitrary interference with privacy under Article 17 of the ICCPR, those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the instrument and the Minamata Convention.

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