

EXPLANATORY STATEMENT

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

Customs Act 1901

*Customs Amendment (2022 Harmonized System Changes and Other Measures)
Regulations 2021*

The *Customs Act 1901* (the Customs Act) concerns customs-related functions and is the legislative authority that sets out the customs requirement for the importation of goods into, and the exportation of goods from, Australia.

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

The Harmonized Commodity Description and Coding System, commonly referred to as the Harmonized System, is a system of goods classification based on internationally agreed descriptors for goods and related four and six digit codes. These four and six digit tariff classifications uniquely identify all traded goods and commodities and are uniform across all countries that have adopted the Harmonized System.

The World Customs Organization (WCO) maintains the Harmonized System and WCO members (including Australia) review and update it on a five-yearly basis. The sixth review of the Harmonized System was completed in June 2019. The updated codes and descriptions which are the outcome of the sixth review, commonly referred to as the 2022 Harmonized System, will commence on 1 January 2022.

The outcomes of the sixth review include the creation of new subheading classifications for emerging technologies and product categories such as 3D printers and edible insects respectively, and the removal of subheading classifications for products that are no longer traded in significant volume such as answering machines. The outcomes also include creating new subheading classifications to improve the monitoring of trade for goods of concern such as synthetic diamonds, chemicals that are controlled under the Montreal Protocol and the Chemical Weapons Convention, and environmental goods such as electronic waste.

The *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* (the HS2022 Changes Act) amends the *Customs Tariff Act 1995* to implement the 2022 Harmonized System and amends the tariff headings and subheadings that identify tradeable goods.

The purpose of the *Customs Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021* (the Amendment Regulations) is to amend the *Customs Regulation 2015* (the Customs Regulation) to reflect tariff heading and subheading changes made by the HS2022 Changes Act following the sixth review of the Harmonized System.

The Amendment Regulations also:

- amend the list of Australian Harmonized Export Commodity Classification (AHECC) subheadings in the table at Schedule 3 to the Customs Regulation. All goods exported from Australia must be classified according to the AHECC. AHECC subheadings are also based on the Harmonized System and are updated to reflect the outcomes of the most recent review, commencing on the same day as the HS2022 Changes Act. These amendments ensures that the Customs Regulation references new AHECC subheadings that will commence on 1 January 2022; and
- update the tariff classification subheadings to reflect tariff subheading changes made by the *Customs Tariff Amendment (Craft Beer) Act 2019*.

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

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

The *Customs Tariff Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021* amends the *Customs Tariff Regulations 2004* to make amendments consequential to amendments made by HS2022 Changes Act that updated the tariff classification codes, from the codes of the 2017 Harmonized System to the codes of the 2022 Harmonized System, in relation to certain goods covered by the Peru-Australia Free Trade Agreement. These amendments maintain preferential rates of customs duty that apply to those goods.

The Australian Border Force (ABF) represented Australia at the WCO during the sixth review of the Harmonized System and as part of this representation undertook targeted industry consultation. Several industries, including olive oil producers, Light-Emitting Diodes manufacturers and a jewellers association requested changes. The ABF, working through the committees of the WCO, was able to achieve the requested outcomes which will be to the advantage of these industries. These specific outcomes are reflected in the overall outcome of the sixth review. Industry was consulted during the development of the Budget measure that resulted in the amendments contained in the *Customs Tariff Amendment (Craft Beer) Act 2019* (the Craft Beer Act). No further consultation was undertaken in the development of the Amendment Regulations as the amendments are consequential to implementation of the sixth review of the Harmonized System and to the Craft Beer Act.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the implementation of the 2022 Harmonized System and has advised that the amendments are unlikely to have a more than minor regulatory impact and therefore a Regulation Impact Statement is not required. The OBPR reference number is 43800.

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

The Amendment Regulations commence on 1 January 2022.

Details of the Customs Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021

Section 1 – Name

This section provides that the title of the instrument is the *Customs Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021* (the Amendment Regulations).

Section 2 – Commencement

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

Table item 1 provides for the whole instrument to commence on 1 January 2022.

Section 3 – Authority

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

Section 4 – Schedules

This section sets out the formal enabling provision for the Schedule to the Amendment Regulations, and 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 that any other item in a Schedule to this instrument has effect according to its terms.

The *Customs Regulation 2015* (the Customs Regulation) is amended by the Amendment Regulations.

Schedule 1—Amendments

Customs Regulation 2015

Items [1] to [4] Clause 1 of Schedule 1

Clause 1 of Schedule 1 to the Customs Regulation lists the tariff subheadings to which goods classified are excise-equivalent goods.

The tariff subheadings listed as excise-equivalent goods in the table in clause 1 of Schedule 1 to the Customs Regulation are from multiple Chapters of Schedule 3 to the *Customs Tariff Act 1995* (the Tariff Act), including Chapter 22 (which deals with beverages, spirits and vinegar). Excise-equivalent goods have a customs duty applied to them that is equal to the excise duty applied to their domestically produced equivalents, in addition to any *ad valorem* customs duty rates that may apply.

The amendments in items [1] to [3] of the Amendment Regulations amend clause 1 of Schedule 1 to the Customs Regulation consequential to the *Customs Tariff Amendment (Craft Beer) Act 2019* (the Craft Beer Act).

The Craft Beer Act reduced the excise-equivalent customs tariff rate on draught beer in containers between 8 and 48 litres designed to be connected to pressurised gas or pump delivery systems. The amendments made by the Craft Beer Act complemented similar changes to the excise rates on these goods made by the *Excise Tariff Amendment (Supporting Craft Brewers) Act 2019* to support small brewers of boutique beers commonly referred to as “craft beer”.

The amendments made by the Craft Beer Act changed the tariff subheadings used to describe these kinds of draught beer, which were referenced in the clause 1 of Schedule 1 to the Customs Regulation as excise-equivalent goods. Items [1] to [3] of the Amendment Regulations update the tariff subheadings for these kinds of draught beer, to retain their status as excise-equivalent goods following the amendments made by the Craft Beer Act.

Item [1] of the Amendment Regulations repeals table item 1 in clause 1 of Schedule 1 to the Customs Regulation and substitutes with new table items 1, 1A, 1B, 1C and 1D. These new table items refer to tariff subheadings 2203.00.63, 2203.00.64, 2203.00.65, 2203.00.66 and 2203.00.67, which apply to beer in containers of various sizes and specifications. These tariff subheadings were inserted into the Tariff Act by the Craft Beer Act.

Item [2] of the Amendment Regulations repeals table items 30 and 31 in clause 1 of Schedule 1 to the Customs Regulation and substitutes with new table items 30, 31, 31A and 31B. These new table items refer to tariff subheadings 2206.00.72, 2206.00.73, 2206.00.76 and 2206.00.77, which apply to beer in containers of various sizes and specifications. These tariff subheadings were inserted into the Tariff Act by the Craft Beer Act.

Item [3] of the Amendment Regulations inserts new table item 32A into the table in clause 1 of Schedule 1 to the Customs Regulation. This new table item refers to tariff subheading 2206.00.79, which applies to beer in a container other than those specified in subheadings 2206.00.72 to 2206.00.78. Tariff subheading 2206.00.79 was inserted into the Tariff Act by the Craft Beer Act.

Item [4] of the Amendment Regulations inserts new table item 60A into the table in clause 1 of Schedule 1 to the Customs Regulation. This new table item refers to tariff subheading 2404.11.00, which applies to products intended for inhalation without combustion containing tobacco or reconstituted tobacco. Tariff subheading 2404.11.00 was inserted into the Tariff Act by the *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* (the HS2022 Changes Act). As part of the outcome of the sixth review of the Harmonized System, goods classified to new subheading 2404.11.00 were transferred from subheadings 2403.91.00 and 2403.99.80. This amendment will preserve existing rate of custom duty that applies to goods that have been transferred to the new tariff subheading.

Items [5] to [8] Clause 2 of Schedule 1

Clause 2 of Schedule 1 to the Customs Regulation lists the tariff headings to which goods classified are like customizable goods. Like customizable goods are goods for which a deferred settlement permission arrangement may be made. In place of a formal entry being made on an

importation-by-importation basis, a weekly return is provided to the Department of Home Affairs, at which time the applicable excise equivalent customs duty, and/or Wine Equalisation Tax and Goods and Services Tax is paid.

Item [5] of the Amendment Regulations repeals table items 1 and 2 in clause 2 of Schedule 1 to the Customs Regulation and substitutes with new table items 1, 2, 2A, 2B, and 2C. These new table items refer to tariff subheadings 2203.00.63, 2203.00.64, 2203.00.65, 2203.00.66 and 2203.00.67, which apply to beer in containers of various sizes and specifications. These tariff subheadings were inserted into the *Customs Tariff Act 1995* (the Tariff Act) by the Craft Beer Act.

Item [6] of the Amendment Regulations repeals table items 49 and 50 in clause 2 of Schedule 1 to the Customs Regulation and substitutes with new table items 49, 50, 50A and 50B. These new table items refer to tariff subheadings 2206.00.72, 2206.00.73, 2206.00.76 and 2206.00.77, which apply to beer in containers of various sizes and specifications. These tariff subheadings were inserted into the Tariff Act by the Craft Beer Act.

Item [7] of the Amendment Regulations inserts new table item 51A into the table in clause 2 of Schedule 1 to the Customs Regulation. This new table item refers to tariff subheading 2206.00.79, which applies to beer in a container other than those specified in subheadings 2206.00.72 to 2206.00.78. Tariff subheading 2206.00.79 was inserted into the Tariff Act by the Craft Beer Act.

The amendments in items [5] to [7] of the Amendment Regulations update the tariff classification changes to reflect the changes to tariff subheadings for certain categories of beer made by the Craft Beer Act.

Item [8] of the Amendment Regulations inserts new table item 80A into the table in clause 2 of Schedule 1 to the Customs Regulation. This new table item refers to tariff subheading 2404.11.00, which applies to products intended for inhalation without combustion containing tobacco or reconstituted tobacco. Tariff subheading 2404.11.00 was inserted into the Tariff Act by the HS2022 Changes Act. This amendment will preserve the existing rate of custom duty that applies to these goods.

Items [9] to [11] Subclause 1(1) of Schedule 3

Clause 1 of Schedule 3 to the Customs Regulation lists the tariff subheadings for certain goods classified under an Australian Harmonized Export Commodity Classification (AHECC) subheading. Goods listed in clause 1 of Schedule 3 are covered by certain provisions of the Customs Act regulating goods in warehouses to be exported from Australia.

The AHECC, like the Tariff Act, is based on the Harmonized Commodity Description and Coding System (Harmonized System) and uses the same internationally agreed chapters, headings and subheadings. All goods exported from Australia must be classified according to the AHECC. Revised AHECC subheadings, reflecting the 2022 version of the Harmonized System will commence on 1 January 2022.

The amendments contained in items [9] to [11] of the Amendment Regulations update the AHECC subheadings to reflect revised AHECC subheadings covered by Schedule 3 to the Customs Regulation resulting from the implementation of the outcome of the sixth review of the Harmonized System.

Item [9] of the Amendment Regulations amends table item 22 in clause 1 of Schedule 3 to the Customs Regulation to repeal “2403.91.00” and substitute with “2403.91.10”.

Item [10] of the Amendment Regulations amends table item 23 in clause 1 of Schedule 3 to the Customs Regulation to repeal “2403.99.00” and substitute with “2403.99.90”.

Item [11] of the Amendment Regulations adds new table items 24 and 25 into the table in subclause 1(1) of Schedule 3 to the Customs Regulations. These new tables item refers to AHECC subheadings 2404.11.00 and 2404.19.00 which apply to various products intended for inhalation without combustion.

Item [12] – Clause 1 of Schedule 9 (table item 23, column headed “Tariff heading or tariff subheading”)

Goods covered by a Tariff Concession Order (TCO), made under Part XVA of the Customs Act, may be imported into Australia free from, or at a concessional rate of, customs duty. These Orders are part of the Tariff Concession System designed to help Australia’s industry become more internationally competitive and allows duty-free entry of certain goods where there is no local industry that produces these goods.

Clause 1 of Schedule 9 to the Customs Regulation lists goods by tariff headings and subheadings to which a TCO should not extend, and includes tariff subheading 9401.30.00. This subheading applies to goods that are swivel seats with variable height adjustment, which, as part of the updates to the 2022 version of the Harmonized System, is superseded by subheading 9401.31.00. Item 372 of Schedule 1 to the HS2022 Changes Act gives effect to this change.

Item [12] of the Amendment Regulations amends table item 23 in clause 1 of Schedule 9 to the Customs Regulation to omit “9401.30.00” and substitute with “9401.31.00”. This amendment is made to reflect related tariff subheading changes made to the Tariff Act resulting from the implementation of the outcome of the sixth review of the Harmonized System. Goods that are swivel seats with variable height adjustment will continue to be goods to which a TCO should not extend.

Items [13] to [22] Subclause 2(1) of Schedule 9

The table in subclause 2(1) of Schedule 9 to the Customs Regulation lists goods to which a TCO should not extend by reference to their tariff headings and subheadings, and also lists items that are exempt from the exclusion.

Multiple tariff headings and subheadings contained in the list in subclause 2(1) have been superseded as part of the updates to the 2022 version of the Harmonized System implemented by the HS2022 Changes Act.

The amendments contained in items [13] to [22] of the Amendment Regulations amend the table in subclause 2(1) of Schedule 9 to the Customs Regulation to update multiple tariff headings and subheadings to reflect related changes made to the Tariff Act resulting from the implementation of the outcome of the sixth review of the Harmonized System.

Goods classified to tariff headings and subheadings listed in the table in subclause 2(1) of Schedule 9 to the Customs Regulation continue to be goods to which a TCO should not extend, unless the goods are exempted from the TCO exclusion in accordance with that provision.

For example, item [13] of the Amendment Regulations amends table item 1 in subclause 2(1) of Schedule 9 to the Customs Regulation to omit “0308.99.00” and substitute with “0309.90.00”. As part of the updates to the 2022 version of the Harmonized System implemented by the HS2022 Changes Act, goods classified to subheading 0308.99.00 are transferred to new subheading 0309.90.00. This amendment updates the tariff subheading to reflect related tariff classification changes.

As another example, item [17] of the Amendment Regulations amends table item 31 in subclause 2(1) of Schedule 9 to the Customs Regulation to repeal the cell containing “9401.90.90” and substitute with “9401.91.00 and 9401.99.90”. As part of the updates to the 2022 version of the Harmonized System implemented by the HS2022 Changes Act, all goods classified to subheading 9401.90.90 are transferred to tariff subheadings 9401.91.00 and 9401.99.90. This amendment updates the tariff subheading to reflect related tariff classification changes.

Statement of Compatibility with Human Rights

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

**Customs Amendment (2022 Harmonized System Changes and Other Measures)
Regulations 2021**

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

Overview of Disallowable Legislative Instrument

The Harmonized Commodity Description and Coding System, commonly referred to as the Harmonized System, is a system of goods classification based on internationally agreed descriptors for goods and related four and six digit codes. These four and six digit tariff classifications uniquely identify all traded goods and commodities and are uniform across all countries that have adopted the Harmonized System.

The World Customs Organization (WCO) maintains the Harmonized System and WCO members (including Australia) review and update it on a five yearly basis. The sixth review of the Harmonized System was completed in June 2019. The updated codes and descriptions which are the outcome of the sixth review, commonly referred to as the 2022 Harmonized System, will commence on 1 January 2022.

The outcomes of the sixth review include the creation of new subheading classifications for emerging technologies and product categories such as 3D printers and edible insects respectively, and the removal of subheading classifications for products that are no longer traded in significant volume such as answering machines. The outcomes also include creating new subheading classifications to improve the monitoring of trade for goods of concern such as synthetic diamonds, chemicals that are controlled under the Montreal Protocol and the Chemical Weapons Convention, and environmental goods such as electronic waste.

The *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* amends the *Customs Tariff Act 1995* to implement the 2022 Harmonized System and amends the tariff headings and subheadings that identify tradeable goods.

The purpose of the Disallowable Legislative Instrument titled *Customs Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021* is to amend the *Customs Regulation 2015* (the Customs Regulation) to reflect tariff heading and subheading changes made by the HS2022 Changes Act following the sixth review of the Harmonized System.

The Disallowable Legislative Instrument also:

- amends the list of Australian Harmonized Export Commodity Classification (AHECC) subheadings in the table at Schedule 3 to the Customs Regulation. All goods exported from Australia must be classified according to the AHECC. AHECC subheadings are also based on the Harmonized System and are updated to reflect the outcomes of the

most recent review, commencing on the same day as the HS2022 Changes Act. These amendments would ensure that the Customs Regulation references new AHECC subheadings that will commence on 1 January 2022; and

- updates the tariff classification subheadings to reflect tariff subheading changes made by the *Customs Tariff Amendment (Craft Beer) Act 2019*.

The Disallowable Legislative Instrument commences on 1 January 2022, being the same time that the HS2022 Changes Act commences.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Jason Wood MP
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Parliamentary Secretary to the Minister for Home Affairs