

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 (Unentered and Abandoned Goods) Regulations 2022

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

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

The purpose of the *Customs Amendment (Unentered and Abandoned Goods) Regulations 2022* (the Amendment Regulations) is to reduce and align retention periods for:

- goods requiring a declaration for home consumption or warehousing, where the owner of the goods has failed to make an entry for the goods (unentered goods); and
- goods not requiring or unable to be entered for home consumption, where the goods are found at a customs place and no person claims ownership (abandoned goods).

The Act outlines, among other things, the processes for the disposal of unentered goods (subsection 72(4)), or goods deemed abandoned (section 218A). These processes include minimum retention periods prescribed by regulation.

The *Customs Regulation 2015* (the Regulation) prescribes the period of time in which a Collector (being either the Comptroller-General of Customs, or a relevant officer of Customs) is required to wait before selling, or otherwise disposing of goods that have been abandoned or unentered (the retention period). Currently, subsection 32(2) of the Regulations prescribes a period of six months for the disposal of unentered goods. This includes unentered goods that have been removed, or may be removed, to a warehouse or place of security. Section 124 of the Regulations prescribes that a Collector is taken to have reason to believe goods are abandoned if 90 days pass, and their legal owner fails to claim ownership.

These are long periods for goods to be stored awaiting action from the importer or legal owner. Long retention periods may encourage infrequent disposals, and result in the build-up of goods or encourage abandonment of goods outside of legislative requirements. The Amendment Regulations mitigate these issues by aligning the retention periods for unentered and abandoned goods to the same reduced period of time of two months. The intention is to increase the frequency of disposals, and to reduce the financial and practical burden for Industry and Custom's services.

This shortened period will benefit customs places, and particularly owners of customs depots licensed under section 77G of the Act, which store goods for short periods prior to their entry into home consumption or warehousing. These customs places accrue costs of storage of these goods if the original importer chooses to no longer deal with them. Significant costs can accrue for unentered goods that are required to be held for at least six months, and for abandoned goods for at least 90 days. Reduced retention periods will reduce administration

and storage costs for customs places and administration costs for the Australian Border Force, whose officers are required to monitor these goods as they are under customs control.

This has the added benefit of more closely aligning the Regulation with existing timeframes requiring the removal of goods from depots into warehouses under section 77P to the Act. Section 77P provides that imported goods received into a depot during a particular month must be removed from the depot to a licensed warehouse by the end of the following month – although a 30-day extension may be granted upon request from the Comptroller-General of Customs – and held until the end of the retention period that applies to the goods. In practice, the change to the timeframe for unentered goods means in many cases these goods could be disposed of directly from a depot prior to their mandatory removal to a warehouse.

To ensure notice for importers of goods of the amendments, the Amendment Regulations commence on 1 July 2022. Reducing retention periods offers shipping and logistics and customs services the ability to deal with unentered and abandoned goods before they become subject to compulsory removal to a warehouse. This timeframe reduces the potential financial burden on industry and customs services while still allowing importers a reasonable timeframe in which to resolve impediments to entry of the goods.

The Amendment Regulations align with the Government’s Simplified Trade System Policy Agenda and offer a deregulation benefit to operators of customs places, particularly operators of customs depots, and administrative efficiencies for the Australian Border Force.

No consultation was conducted on the Amendment Regulations due to the trade facilitative nature of the changes. The policy implemented by the Amendment Regulations responds to general feedback from Industry in public forums and directly to the Government requesting clarification of the retention timeframes that apply to different types of goods. The commencement date of 1 July 2022 provides sufficient notice for operators of customs places and importers generally, to be informed of the amendments to retention periods and prepare for their commencement.

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 Office of Best Practice Regulation (OBPR) has been consulted in relation to the amendments and has advised that the amendments are likely to have no more than minor regulatory impacts on business, individuals and organisations, and a Regulation Impact Statement will not be required. The OBPR reference number is 44575.

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

The Amendment Regulations commence on 1 July 2022.

Details of the *Customs Amendment (Unentered and Abandoned Goods) Regulations 2022*

Section 1 – Name

This section provides that the title of the Regulations is the *Customs Amendment (Unentered and Abandoned Goods) Regulations 2022* (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 of the Amendment Regulations to commence on 1 July 2022.

Section 3 – Authority

This section sets out the authority under which the Amendment Regulations are made, which is section 270 of the *Customs Act 1901* (the Customs Act).

Section 4 – Schedules

This section is the formal enabling provision for the Schedules 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 the Amendment Regulations has effect according to its terms.

The instrument being amended is *Customs Regulation 2015*.

Schedule 1 – Amendments

Customs Regulation 2015

Item [1] – Subsection 32(2)

Subsection 32(2) prescribes the minimum retention period before unentered goods may be disposed of by a Collector. Currently, this period is prescribed to be 6 months following the day on which they are, or may be, removed to a warehouse or other place of security by a Collector under subsection 72(1) of the Act (the removal time). This item changes this retention period from 6 months after the removal time to 2 months after the removal time.

Item [2] – Section 124

Section 124 prescribes the retention period after which goods found at a customs place are deemed to be abandoned, so they may be disposed of by a Collector. Currently, this period is prescribed to be 90 days after they were found. This item changes this retention period from 90 days after the goods were found to 2 months after the goods were found.

Item [3] - Amendments made by the Customs Amendment (Unentered and Abandoned Goods) Regulations 2022

This item inserts section 162 into the Regulations. Section 162 outlines that the Amendment Regulations applies to all abandoned and unentered goods covered by subsections 72(4) and 218A(2) of the Customs Act upon commencement of the Amendment Regulations on 1 July 2022.

Subsection 162(1) provides that the amendment to subsection 32(2) applies in relations to the sale or disposal of goods on or after 1 July 2022 irrespective of whether; (a) the goods were imported before or on 1 July 2022; (b) the period that applies to the goods under paragraph 72(1)(b) of the Act ends before, on or after 1 July 2022; and (c) the goods were removed to a warehouse or other place under subsection 72(1) of the Customs Act before, on or after 1 July 2022.

Subsection 162(2) provides that the amendment to section 124 applies in relation to disposal of goods on or after 1 July 2022, whether the goods were found at a customs place before, on or after 1 July 2022.

Statement of Compatibility with Human Rights

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

Customs Amendment (Unentered and Abandoned Goods) Regulations 2022

The *Customs Amendment (Unentered and Abandoned Goods) Regulations 2022* (the Amendment Regulations) are compatible with human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

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

The Customs Act outlines, among other things, the provisions in relation to the disposal of unentered goods (subsection 72(4)), or goods deemed abandoned (subsection 218A(2)). The *Customs Regulation 2015* (the Regulation) prescribes the period of time in which a Collector (being either the Comptroller-General of Customs, or a relevant officer of Customs) is required to wait before selling, or otherwise disposing of these goods (the retention period).

There are a variety of circumstances that lead to imported goods being abandoned or remaining unentered by the person that imported them. These include, among other things, importers becoming insolvent or otherwise being unable to finalise importations that they have initiated, owners changing their mind after goods arrive, hand-carried goods or luggage being lost or abandoned at customs places (such as international airport terminals), or international mail items that cannot be delivered due to insufficient or incorrect address information.

In relation to unentered goods, section 72 of the Customs Act provides for processes if an owner of imported goods fails to make a formal import entry for the goods for warehousing or home consumption. It provides, in part, that unentered goods that are not live animals, perishable or hazardous materials, can be sold, or otherwise disposed of, by the Collector after a prescribed period has ended. Prior to the commencement of the Amendment Regulations, subsection 32(2) of the Regulation prescribes a retention period of six months before unentered goods could be disposed. This includes unentered goods that have been removed, or may be removed, to a warehouse or place of security.

In relation to abandoned goods, section 218A of the Customs Act provides for processes to dispose of certain goods under customs control that have been deemed to be abandoned at a customs place (defined in s183UA of the Customs Act, including for example a port, airport under s15 of the Customs Act, a depot licensed under section 77G, or warehouse licensed under section 79). Subsection 218A(2) provides that a Collector is taken to have reason to believe that the goods found in these places have been abandoned after a prescribed period of time, not exceeding 120 days, has passed since the goods were found at that place and no person has claimed ownership of the goods. Section 124 of the Regulation prescribes, prior to

the commencement of the Amendment Regulations, that suspected abandoned goods must be retained by the customs place for a period of 90 days before the Collector can deem them abandoned and authorise their disposal.

Storage of these goods for extended periods of time has financial and practical implications for Australia's customs places, particularly depots and warehouses that store goods under customs control, and accrue costs of storage of these goods until their disposal, if the original importer chooses to no longer deal with them. Significant costs can accrue for unentered goods that are required to be held for at least six months, and for abandoned goods for at least 90 days. Long retention periods may also encourage infrequent disposals, and result in the build-up of goods or encourage abandonment of goods outside of legislative requirements.

The purpose of the Amendment Regulations is to amend the existing retention periods in subsection 32(2) and section 124 of the Regulation and prescribe a new period of two months from the time when:

- unentered goods are removed (or could have been removed) to a warehouse or place of security; or
- certain abandoned goods were found by a Collector at a customs place.

The amendments reduce the periods of time that customs places must retain imported goods under customs control that remain unentered or are suspected of being abandoned after importation, but prior to their entry into warehousing or home consumption. The Amendment Regulations aim to mitigate the issues associated with extended storage periods and reduce the financial and administrative burdens to industry and to customs services provided by the Australian Border Force by reducing and aligning the retention periods for these goods to two months. The shortened period allows importers a reasonable timeframe within the modern trading environment, in which to claim ownership and, if possible, resolve any impediments to entry of the goods.

Human rights implications

The Amendment Regulations do not engage the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The Amendment Regulations are compatible with human rights, as they do not raise any human rights issues.

Jason Wood, Assistant Minister for Customs, Community Safety and Multicultural Affairs, Parliamentary Secretary to the Minister for Home Affairs