

EXPLANATORY STATEMENT

Issued by authority of the Comptroller-General of Customs

Customs Act 1901

Customs Amendment (Goods of Low Value) By-Law 2023

Legislative Authority

The *Customs Act 1901* (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.

Section 271 of the Customs Act provides, in part, that where an item of a Customs Tariff is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law, the Comptroller-General of Customs may make by-laws for the purposes of that item. A Customs Tariff is defined in section 4 of the Customs Act to mean an act imposing duties of customs. The *Customs Tariff Act 1995* (Customs Tariff Act) is a Customs Tariff for the purposes of the Customs Act.

Schedule 4 to the Customs Tariff Act lists classes of goods to which concessional customs duty rate may apply and specifies the concessional customs duty rate applicable to such classes. Relevantly, by-laws made under section 271 (complemented by section 272) of the Customs Act prescribe goods for the purposes of items of Schedule 4 to the Customs Tariff Act and specify conditions under which the prescription of goods apply.

Background

Table item 26 in Schedule 4 to the Customs Tariff Act provides for imported goods as prescribed by by-law, whose value is less than the amount prescribed by by-law to be eligible for the concessional customs duty rate of “Free”.

The goods for table item 26 in Schedule 4 to the Customs Tariff Act are prescribed in section 36 of the *Customs By-Laws 2023* (2023 By-Laws), which superseded previous *Customs By-law No. 1305011*. The policy objective for section 36 of the 2023 By-Laws is to prescribe the goods within the confines as those previously prescribed in *Customs By-law No. 1305011*. However, for table item 26 in Schedule 4 to the Customs Tariff Act, which permit the by-law to prescribe the upper limit of the value of goods, the prescribed value is not clear.

Purpose and effect

The purpose of the *Customs Amendment (Goods of Low Value) By-Law 2023* (Amendment By-Law) is to amend section 36 of the 2023 By-Laws to make clear the upper limit of the value of goods prescribed by by-law. By doing so, the amendments has effect that the upper limit of the value of the prescribed goods in section 36 of the 2023 By-Laws is expressed in a manner that is consistent with table item 26 in Schedule 4 to the Customs Tariff Act.

Consultation

No consultation was undertaken because the amendments were of a mechanical nature. The goods that were previously eligible for the concessional customs duty rate under table item 26 in Schedule 4 to the Customs Tariff Act have not changed.

Details and operations

The Amendment By-Law is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

The Amendment By-Law is an instrument made under section 271 of the Customs Act. Paragraph (e) of table item 12 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* has effect that the Amendment By-Law is an instrument for which section 42 of the Legislation Act, dealing with disallowance, does not apply.

Instruments made under section 271 of the Customs Act are used to implement Government decisions, international agreements and industry policy. They are not subject to disallowance to preserve certainty in relation to these matters.

As the Amendment By-Law is an instrument for which disallowance does not apply, a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Section 48A of the Legislation Act repeals Amendment By-Law once the amendments contained within that By-Law are spent; that is, once the amendments are made to the 2023 By-Laws. As such, the Amendment By-Law is not subject to sunset.

Details of the Amendment By-Law are set out in **Attachment A**.

The Amendment By-Law will commence on the day after registration on the Federal Register of Legislation.

Details of the Customs Amendment (Goods of Low Value) By-Law 2023

Part 1—Preliminary

Section 1 Name

1. This section provides that the name of the instrument is the *Customs Amendment (Goods of Low Value) By-Law 2023* (Amendment By-Law).

Section 2 Commencement

2. This section sets out, in a table, the date on which each of the provisions contained in the Amendment By-Law commences.
3. Table item 1 provides that the whole of the instrument commences on the day after it is registered on the Federal Register of Legislation.
4. The note under the table in subsection (1) indicates that the table only relates to the provisions of this instrument as originally made and will not be amended to deal with any later amendments of this instrument.

Section 3 Authority

5. This section sets out the authority under which the Amendment By-Law is made, which is the *Customs Act 1901* (Customs Act).

Section 4 Schedules

6. This section is the enabling provision for the Schedule to the Amendment By-Law and provides that, each instrument that is specified in a Schedule to the Amendment By-Law, is amended as set out in the applicable items in the Schedule concerned and that any other item in a Schedules to this instrument has effect according to its terms.
7. The instrument being amended is the *Customs By-Laws 2023* (2023 By-Laws).

Schedule—Amendments

Item 1 Subsection 36(2)

8. This item repeals subsection 36(2) of the 2023 By-Laws and substitutes with new subsections 36(2) and (3).
9. Table item 26 in Schedule 4 to the Customs Tariff Act provide for imported goods as prescribed by by-law, whose value is less than the amount prescribed by by-law to be eligible for the concessional customs duty rate of “Free”.
10. For table item 26 in Schedule 4 to the Customs Tariff Act, new subsection 36(2) has effect that goods (other than the goods referred to in subsection (3)) the value of which

is less than \$1000.01 are prescribed. The value of \$1000.01 is the prescribed upper limit of the value of the goods for the purposes of table item 26 in Schedule 4 to the Customs Tariff Act.

11. New subsection 36(3) provides that subsection 36(2) does not include:
 - (a) tobacco, tobacco products or alcoholic beverages;
 - (b) goods imported by a passenger or a member of the crew of a ship or aircraft arriving in Australia from a place outside Australia;
 - (c) goods forming part of a bulk order.
12. The purpose of the amendments is to make clear the prescribed upper limit of the value of the prescribed goods and in a manner that is consistent with table item 26 in Schedule 4 to the Customs Tariff Act.
13. Previous subsection 36(2) superseded previous *Customs By-law No. 1305011*. The policy objective for section 36 of the 2023 By-Laws is to prescribe the goods within the confines as those previously prescribed in *Customs By-law No. 1305011*. The amendments gives effect to the intended policy objective for section 36 of the 2023 By-Laws.