

EXPLANATORY STATEMENT

Issued by authority of the Comptroller-General of Customs

Customs Act 1901

Customs Legislation Amendment (Status of Forces Agreements) By-Laws 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.

Background

Schedule 4 to the Customs Tariff Act lists classes of goods to which concessional customs duty rates may apply and specifies the concessional customs duty rates 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.

Table item 11 of Schedule 4 to the Customs Tariff Act provides that goods, as prescribed by by-law, that are for use by, or for sale to, persons the subject of a Status of Forces Agreement between the Government of Australia and the government of another country or other countries are eligible for the concessional customs duty rate of “Free”.

The Agreement between Australia and Japan concerning the facilitation of reciprocal access and cooperation between the Australian Defence Force and the Self-Defense Forces of Japan (Agreement), signed on 6 January 2022, is a Status of Force Agreement.

Article VII of the Agreement, in part, sets out an obligation that members of the Self-Defense Force of Japan may import certain goods into the Receiving State free of duty. Those goods include a motor vehicle, personal effects, furniture and household goods, but does not include cigarettes, cigars, tobacco, and alcoholic beverages.

The *Customs Legislation Amendment (Status of Forces Agreements) By-Laws 2023* (Amendment By-Laws) amends the *Customs By-Laws (International Obligations) By-Laws 2023* (International Obligations By-Laws) to enable relevant goods imported into Australia by members of a Japan Visiting Force to be eligible for the concessional customs duty rate of “Free”, provided conditions that are consistent with Article VII of the Agreement are met.

The Amendment By-Laws also:

- amends the International Obligations By-Laws to replicate provisions under the *Customs By-Laws 2023* (Customs By-Laws), for the purposes of table item 11 of Schedule 4 to the Customs Tariff Act, giving effect to similar obligations under other Status of Force Agreements; and
- repeals customs by-laws that are no longer required.

Purpose and effect

The primary purpose of the Amendment By-Laws is to give effect to obligations under Article VII of the Agreement.

The other purpose of the Amendment By-Laws is to ensure that provisions are, consistent with item 1 of section 11 of the *Legislation (Exemption and Other Matters) Regulations 2015*, exempt from the operation of section 50 of the *Legislation Act 2003* (Legislation Act). The sole or primary purpose of the operation of these provisions is to implement specific obligations imposed by bilateral treaties to which Australia is a party. This amendment is to implement best drafting practice and does not change or alter the scope of the provisions concerned.

Each of these replicated by-laws give effect to obligations in Status of Forces Agreements to which Australia is a party. Subject to conditions, each of these replicated by-laws permit members of specified visiting defence forces to import certain goods into Australia free of duty under item 11 of Schedule 4 to the Customs Tariff Act. These amendments make no substantial changes to the goods prescribed or the conditions under which they apply.

Consultation

The Department of Defence led on negotiations with Japan in consultation with the Department of Home Affairs. The Department of Foreign Affairs and Trade facilitated discussions throughout the process of negotiation. The Agreement was subject to public consultation as part of the parliamentary review by the Joint Standing Committee on Treaties (JSCOT). The JSCOT sought submissions from the public after the Agreement was tabled in February 2022 and six submissions were received, which are accessible on the JSCOT website (https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties).

Public consultation was not considered for the amendments as they give effect to obligations under the Agreement. JSCOT has recommended treaty binding action be taken. No public consultation was undertaken for the technical amendments because these amendments are mechanical in nature.

Details and operations

The Amendment By-Laws is a legislative instrument for the purposes of the Legislation Act.

Item 10 of Schedule 1 commences on the later of the day after the Amendment By-Laws is registered on the Federal Register of Legislation and the day that Schedule 1 to the *Customs Legislation Amendment (Japan—Australia Reciprocal Access Agreement) Regulations 2023* commences. All other provisions of the Amendment By-Laws commence on the day after the Amendment By-Laws is registered on the Federal Register of Legislation.

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

Other

The Amendment By-Laws 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-Laws 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-Laws 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*.

The primary purpose of the Amendment By-Laws is to give effect to Australia's international obligations in relation to rates of customs duties on goods under a range of international agreements. For this reason, the Amendment By-Laws is in a class of legislative instrument that is not subject to sunseting in accordance with table item 1 in section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Section 48A of the Legislation Act repeals a legislative instrument whose only legal effect is to amend or repeal one or more other legislative instruments. As such, the Amendment By-Laws will repeal after commencement and is not subject to the sunseting provision contained in section 50 of the Legislation Act.

Details of the Customs Legislation Amendment (Status of Forces Agreements) By-Laws 2023

Section 1 Name

Section 1 provides that the name of the instrument is the *Customs Legislation Amendment (Status of Forces Agreements) By-Laws 2023* (Amendment By-Laws).

Section 2 Commencement

Section 2 sets out, in a table, the date on which each of the provisions contained in the Amendment By-Laws commences.

Table item 1 has the effect that sections 1 to 4 of, items 1 to 9 of Schedule 1 to, and Schedule 2 to, the Amendment By-Laws commence on the day after that By-Law is registered on the Federal Register of Legislation.

Table item 2 has the effect that item 10 of Schedule 1 to the Amendment By-Laws commences on the later of the day after the Amendment By-Laws is registered on the Federal Register of Legislation, or the day that Schedule 1 to the *Customs Legislation Amendment (Japan—Australia Reciprocal Access Agreement) Regulations 2023* commences.

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

Section 3 sets out the authority under which the Amendment By-Laws is made, which is section 271 of the *Customs Act 1901* (Customs Act).

Section 4 Schedules

Section 4 is the enabling provision for the Schedule to the Amendment By-Laws. This section provides that each instrument that is specified in a Schedule to this instrument 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.

Schedule 1—Amendments

Items 1 to 6 and 9

Items 1, 2, 3, 4, 5 and 6 amend the *Customs By-Laws 2023* (Customs By-Laws) to repeal sections 17, 18, 19, 20, 21 and 22, respectively. These amendments are made as a consequence of the amendments made by item 9.

Item 9 amends the *Customs By-Laws (International Obligations) By-Laws 2023* (International Obligations By-Laws) to replicate the operation of sections 17, 18, 19, 20, 21 and 22 of the Customs By-Laws.

The sole purpose of sections 17, 18, 19, 20, 21 and 22 of the Customs By-Laws is to give effect to an obligation under the following international agreements (which are Status of Force Agreements) to enable certain goods imported by members of defence forces covered by those Agreements to be eligible for the concessional customs duty rate of “Free”:

- Agreement between the Government of Australia and the Government of Malaysia concerning the Status of Forces;
- Agreement between the Government of Australia and the Government of New Zealand concerning the Status of their Forces;
- Agreement between Australia and Papua New Guinea regarding the Status of Forces of Each State in the Territory of the Other State, and Agreed Minute;
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Status of Forces;
- Agreement with the Government of the Commonwealth of Australia and the Government of the United States of America concerning the Status of United States Forces in Australia, and Protocol;
- Agreement between the Government of Australia and the Government of the French Republic regarding Defence Cooperation and Status of Forces.

The table below set out the new provisions under the International Obligations By-Laws, which corresponds with sections 17, 18, 19, 20, 21 and 22 of the Customs By-Laws, the treaty referenced, where the treaty can be accessed and the purpose of the reference.

Item	Customs By-Laws	International Obligations By-Laws	Agreement referenced	Where the Agreement can be accessed free of charge	Purpose for reference
1	17	7	Agreement between the Government of Australia and the Government of Malaysia concerning the Status of Forces	The Agreement is in Australian Treaty Series 1999 No. 14 ([1999] ATS 14) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).	The Agreement is referenced to clarify the meaning of the terms: civil component, dependant, and Visiting Force.
2	18	8	Agreement between the Government of Australia and the Government of New Zealand concerning the Status of their Forces	The Agreement is in Australian Treaty Series 2005 No. 12 ([2005] ATS 12) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).	The Agreement is referenced to clarify the meaning of the terms: civil component, dependant, and Visiting Force.
3	19	9	Agreement between Australia and Papua & New Guinea regarding the Status of Forces of Each State in the Territory of the	The Agreement is in Australian Treaty Series 1977 No. 6 ([1977] ATS 6) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website	The Agreement is referenced to clarify the meaning of the terms: civil component, dependant, and

Item	Customs By-Laws	International Obligations By-Laws	Agreement referenced	Where the Agreement can be accessed free of charge	Purpose for reference
			Other State	(http://www.austlii.edu.au).	Visiting Force.
4	20	10	Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Singapore concerning the Status of Forces	The Agreement is in Australian Treaty Series 1988 No. 6 ([1988] ATS 6) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).	The Agreement is referenced to clarify the meaning of the terms: civil component, dependant, and Visiting Force.
5	21	11	Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America concerning the Status of United States Forces in Australia, and Protocol	The Agreement is in Australian Treaty Series 1963 No. 10 ([1963] ATS 10) and could in 2023 be viewed in the Australian Treaty Library on the AustLII website (http://www.austlii.edu.au).	The Agreement is referenced to clarify the meaning of the terms: member, dependant, and military post office.
6	22	12	Agreement between the Government of Australia and the Government of the French Republic regarding Defence Cooperation and Status of Forces	The Agreement is in Australian Treaty Series 2009 No. 18 ([2009] ATS 18) and could in 2023 be viewed in the Australian Treaty Library on the AustLII website (http://www.austlii.edu.au).	The Agreement is referenced to clarify the meaning of the terms: civil component, dependant, and Visiting Force.

The version of all of the Agreements referred to in the International Obligation By-Laws is the version of those Agreements in effect at the time the Amendment By-Laws commences.

The scope and operation of the provisions as relocated from the Customs By-Laws to the International Obligations By-Laws have not changed.

The purpose of these amendments is so that provisions giving effect to international obligations are set out in the International Obligations By-Laws. The effect of these amendments is that the provisions relocated, by operation of item 1 of section 11 of the *Legislation (Exemption and Other Matters) Regulations 2015*, are not subject to sunseting under section 50 of the *Legislation Act 2003*.

Items 7 and 8

Items 7 and 8 amend the title of the International Obligations By-Laws such that it may be cited as the *Customs (International Obligations) By-Laws 2023*. This is a technical amendment to omit any additional references to “By-Laws” in the title and does not change the scope or operation of the International Obligations By-Laws

Item 10 After section 6

Item 10 amends the International Obligations By-Laws to insert new section 13.

Schedule 4 to the *Customs Tariff Act 1995* (Customs Tariff Act) lists classes of goods to which concessional customs duty rates may apply and specifies the concessional customs duty rate applicable to such classes of goods. 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.

Table item 11 of Schedule 4 to the Customs Tariff Act provides that goods, as prescribed by by-law, that are for use by, or for sale to, persons the subject of a Status of Forces Agreement between the Government of Australia and the government of another country or other countries are eligible for the concessional customs duty rate of “Free”.

On 6 January 2022, a Status of Force Agreement titled *Agreement between Australia and Japan concerning the facilitation of reciprocal access and cooperation between the Australian Defence Force and the Self-Defense Forces of Japan* (Agreement) was signed.

Article VII of the Agreement, in part, set out an obligation that members of the Japan Self-Defense Force may import certain goods into the Receiving State free of duty. Those goods include a motor vehicle, personal effects, furniture and household goods, but does not include cigarettes, cigars, tobacco, and alcoholic beverages.

The purpose of new section 13 is to give effect to the afore-mentioned obligation under Article VII of the Agreement.

Under new subsection 13(1), section 13 may be cited as Customs By-law No. 2300138. It prescribes goods for the purposes of item 11.

Item 11 of Schedule 4 to the Customs Tariff Act provides that goods, as prescribed by by-law, that are for use by, or for sale to, persons the subject of a Status of Forces Agreement between the Government of Australia and the Government of another country are dutiable at the rate of “Free”.

New subsection 13(2) sets out the following goods that are prescribed for the purposes of the item 11 of Schedule 4 to the Customs Tariff Act:

- (a) personal effects, furniture and household goods of a member;
- (b) motor vehicles.

This excludes cigarettes, cigars, or tobacco, and alcoholic beverages.

New subsection 13(3) provides that subsection 13(2) only applies to goods subject to the conditions that the goods were imported within 6 months of the member’s first arrival in Australia; and that the goods remain in the use, ownership and possession of the member; and will not be disposed of in Australia, other than by transfer to another member, unless prior written approval has been obtained from a Collector.

In addition, new paragraph 13(3)(d) provides that if the goods are motor vehicles, no more than one motor vehicle is imported by the member. Section 7 of Article VII of the Agreement provides, in part, that members may import into the Receiving State (i.e. Japan or Australia) one motor vehicle free of Duty provided that the same conditions which apply to other goods are met. “Duty” means any duty, tax, fee, charge or levy (including, relevantly, customs duty) payable on importation except those that are no more than charges for services rendered.

Subsection 13(4) sets out the definitions for the purpose of the by-law:

- *Agreement* means the Agreement between Australia and Japan concerning the facilitation of reciprocal access and cooperation between the Australian Defence Force and the Self-Defense Forces of Japan, done at Canberra and Tokyo on 6 January 2022.
- *civilian component* has the same meaning as in the Agreement.
- *member* means a member of a Japan Visiting Force or of its civilian component.
- *Visiting Force* has the same meaning as in the Agreement.

The note to the definition of Agreement indicates, as at 2023, the text of this Agreement is accessible through the Australian Treaties Library on the AustLII website.

Schedule 2—Repeals

Item 1 Customs By-Law No. 0709706

Item 1 of Schedule 2 repeals *Customs By-law No. 0709706*. This by-law prescribed certain goods to make them eligible for concessional customs rate of duty under then item 8 of Schedule 4 to the Customs Tariff Act, which was amended by the *Customs Tariff Amendment (Schedule 4) Act 2012* to become current item 11 of Schedule 4 to the Customs Tariff Act.

This by-law prescribed goods to implement obligations on Australia under the *Agreement with the Government of the Republic of the Philippines concerning the Status of Visiting Forces of Each State in the Territory of the Other State*. This agreement could, in 2023, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

The same goods which are prescribed under *Customs By-law No. 0709706* are also prescribed under *Customs By-Law No. 1700126* and, as such, are eligible for concessional customs rate of duty by operation of item 10 of Schedule 4 to the Customs Tariff Act. The Department has, therefore, reviewed and assessed *Customs By-law No. 0709706* as no longer necessary. As a result, this by-law is redundant and is repealed.

Item 2 Customs By-Law No. 1700052

Item 2 of Schedule 2 repeals *Customs By-law No. 1700052* as that instrument was made redundant by section 64 of the *Customs By-Laws 2023* which regulates the same class of goods.

This by-law prescribed goods that were un compounded polyamides and polyesters under subheadings 3907.6, 3907.70.00, 3907.9 or heading 3908 in Schedule 3 to the Customs Tariff Act for the purposes of item 48 of Schedule 4 to the Customs Tariff Act.