

## **EXPLANATORY STATEMENT**

Issued by authority of the delegate of the Comptroller-General of Customs

*Customs Act 1901*

*Customs Amendment (FIFA and Returned Goods) 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 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 applies.

The *Customs By-Laws 2023* (Customs By-Laws) is made under section 271 of the Customs Act, and that instrument contains by-laws made for the purposes of table items of Schedule 4 to the Customs Tariff Act.

*Customs By-law No. 0176871*

*Customs By-law No. 0176871* prescribes certain goods returned in an unaltered condition that are eligible for the concessional customs duty rate of “Free” under table item 17 of Schedule 4 to the Customs Tariff Act.

That by-law sunsets on 1 October 2023 in accordance with section 50 of the *Legislation Act 2003* (Legislation Act) and, as a result, ceases from that date to prescribe goods for the purposes of table item 17 of Schedule 4 to the Customs Tariff Act.

The Department of Home Affairs (Department) reviewed and assessed the necessity and performance of *Customs By-law No. 0176871* and found that by-law is achieving its objective efficiently and effectively. The Department determined that this by-law should be remade to ensure that the same goods previously prescribed can continue to be eligible for the concessional customs duty rate set out in table item 17 in Schedule 4 to the Customs Tariff Act.

The *Customs Amendment (FIFA and Returned Goods) By-Laws 2023* (Amendment By-Laws) amends the Customs By-Laws to prescribe the same goods, as prescribed by *Customs By-law No. 0176871*, for the purposes of table item 17 of Schedule 4 to the Customs Tariff Act.

#### *Prescribing goods for use in connection with an international sporting event*

Subsection 273EA(1) of the Customs Act has effect that, when Parliament is not sitting for a period of at least seven days, the Minister may under section 273EA of the Customs Act publish a notice that within seven sitting days of the House of Representatives after the date of publication of the notice, the Minister will propose in Parliament a Customs Tariff alteration in accordance with particulars in the notice and operating as from such time as in the notice. Subsection 273EA(1) further provides that a notice that does not raise duty may apply retrospectively up to six months before the time of publication.

This mechanism is used for initially effecting alterations to the Customs Tariff Act, particularly when such alterations are required to have effect in a short timeframe that cannot be achieved through a Customs Tariff Amendment Bill. Following the introduction of a Customs Tariff Proposal in the House of Representatives, the alterations contained in the Proposal would be incorporated into the Customs Tariff Act by a Customs Tariff Amendment Bill.

The *Notice of Intention to Propose Customs Tariff Alterations (No. 3) 2023* (Notice) advises of the intention to insert new table item 59 in Schedule 4 of the Customs Tariff Act. The effect of the proposed amendment will be to provide a “Free” rate of customs duty to goods that are imported for use in connection with international sporting events prescribed by by-law. The concessional rate of customs duty will apply to goods as prescribed by by-law.

The Fédération Internationale de Football Association (**FIFA**) Women’s World Cup Australia New Zealand 2023, will be jointly hosted by Australia and New Zealand (FIFA Women’s World Cup 2023) and will comprise of matches held across five Australian cities between July and August 2023.

For the purposes of new table item 59 of Schedule 4 to the Customs Tariff Act, the Amendment By-Laws amend the Customs By-Laws to prescribe the goods eligible for the concessional customs duty rate of “Free” under that item for the FIFA Women’s World Cup 2023.

#### **Purpose and effect**

The purpose of the Amendment By-Laws is to amend the Customs By-Laws and the amendments contained in the Amendment By-Laws have effect:

- a) such that the same goods prescribed under *Customs By-law No. 0176871*, with the same conditions, continue to be eligible for the concessional customs duty rate under table item 17 of Schedule 4 to the Customs Tariff Act;; and
- b) prescribing the goods, and the international sporting event at which the goods are to be used, eligible for the concessional customs duty rate under new table item 59 of Schedule 4.

## Consultation

No consultation was undertaken with respect to the remake of *Customs By-law No. 0176871*, because section 27A substantially replicates this by-law, and any changes to simplify and modernise provisions are of a minor and mechanical nature. The goods that were previously eligible for the concessional customs duty rate under Schedule 4 to the Customs Tariff Act have not changed.

The Office for Sport led consultations with FIFA, Football Australia, FIFA Women's World Cup 2023 and other relevant affected bodies. The Department of the Treasury and the Office for Sport were consulted in the making of new section 74 as inserted into the Customs By-Laws by the Amendment By-Laws.

## Details and operations

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

Item 2 of Schedule 1 to the Amendment By-Laws commences on 1 January 2023. The retrospective commencement enables applicable goods to be eligible for the concessional customs duty rate of "Free", and as such, does not disadvantage the rights of a person (other than the Commonwealth). The retrospective eligibility for a lower customs duty rate is permitted by section 273C of the Customs Act.

All other provisions under the Amendment By-Laws commences on the day after that instrument 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*.

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

**Details of the Customs Amendment (FIFA and Returned Goods) By-Laws 2023**

**Section 1 Name**

This section provides that the name of the instrument is the *Customs Amendment (FIFA and Returned Goods) By-Laws 2023* (Amendment By-Laws).

**Section 2 Commencement**

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

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

Table item 2 has effect that item 2 of Schedule 1 commences on 1 January 2023. The retrospective commencement enables applicable goods to be eligible for the concessional customs duty rate of “Free”, and as such, does not disadvantage the rights of a person (other than the Commonwealth).

Subsection 12(4) of the *Legislation Act 2023* provides that an Act may provide for a contrary different commencement than that provided in section 12 of that Act. Section 273C of the *Customs Act 1901* (Customs Act) allows for by-laws to retrospectively commence if the by-law does not raise the rate of duty payable in respect of those goods from what they otherwise would be on the day on which the goods were entered for home consumption.

New section 74, as inserted by item 2 of Schedule 1, is a by-law prescribing goods that would be eligible for a tariff concession. Put another way, this clause provides for certain goods to be exempt from import related taxes. Therefore, persons who import goods at any time from 1 January 2023 that meet the criteria specified in Clause 2 are eligible to receive a tariff concession on those goods under item 59 to the Customs Tariff Act.

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**

This section sets out the authority under which the Amendment By-Laws is made, which is the *Customs Act 1901*.

**Section 4 Schedules**

This section is the enabling provision for the schedules to the Amendment By-Laws and provides that, each instrument that is specified in a Schedule to the Amendment By-Laws, is amended 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 instrument being amended is the *Customs By-Laws 2023* (Customs By-Laws).

## **Schedule 1—Amendments**

### ***Customs By-Laws 2023***

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.

#### **Item 1 Before section 28**

Item 1 amends the Customs By-Laws to insert new section 27A.

Section 27A is a remake of *Customs By-law No. 0176871*. This section substantially replicates that by-law while complying with modern drafting standards.

Item 17 of Schedule 4 to the Customs Tariff Act provides that goods which have been exported from Australia and returned in an unaltered condition are dutiable at the rate of “Free”.

Section 27A identifies the goods that are prescribed for the purposes of item 17 and imposes conditions on those goods in the same terms as *Customs By-law No. 0176871*. Section 27A restructures the requirements to be clearer, and consistent with modern drafting standards.

Subsection 27A(2) replicates section 3 of the *Customs By-law No. 0176871* in identifying goods that are prescribed for the purposes of item 17.

Subsection 27A(3) replicates the provision excluding certain goods found in section 5 of *Customs By-law No. 0176871*.

The goods prescribed in section 27A does not include goods, including excisable goods, in respect of which duties of the Commonwealth were payable prior to exportation, but were not paid. It also does not include goods for which a refund or drawback has been paid and an amount equal to such refund or drawback has not been paid to the Commonwealth.

Subsection 27A(4) sets out a condition that the goods were exported from Australia and are returned in an unaltered condition, and were not subject to treatment, repair, renovation, alteration, or any other processes. This was previously contained in section 3 of *Customs By-law No. 0176871* and has been expressed in the new provision to more clearly identify this requirement as a condition.

New subsection 27A(5) sets out the definitions, for the purpose of the by-law, of “excise duty” and “excisable goods”. These definitions were previously included within the text of the substantive provisions of *Customs By-law No. 0176871* and have been set out in a definitions section in line with modern drafting standards.

New subsection 27A(6) replicates subsection 4 of *Customs By-law No. 0176871*.

## **Item 2 After section 73**

Item 2 amends the Customs By-Laws to insert new section 74, which prescribes certain goods for use in connection with the Fédération Internationale de Football Association (FIFA) Women’s World Cup Australia New Zealand 2023 (FIFA Women’s World Cup 2023) for the purposes of table item 59 in Schedule 4 to the Customs Tariff Act.

The FIFA Women’s World Cup 2023 is an international sporting event prescribed by this provision.

Table item 59 in Schedule 4 to the Customs Tariff Act provides for imported goods, as prescribed by by-law, for use in connection with an international sporting event prescribed by the by-law to be eligible for the concessional customs duty rate of “Free”.

Under new subsection 74(1), section 74 may be cited as Customs By-law No. 2320518. It prescribes goods for the purposes of item 59.

For table item 59 in Schedule 4 to the Customs Tariff Act, new subsection 74(2) has the effect that goods for use in connection with the Fédération Internationale de Football Association (FIFA) Women’s World Cup 2023 are prescribed.

### *Goods for use in connection with the FIFA Women’s World Cup 2023*

The phrase in subsection 74(2) “in connection” with the FIFA Women’s World Cup Australia New Zealand 2023 is to include an event, competition or activity that is directly or indirectly related to the FIFA Women’s World Cup Australia New Zealand 2023 that is officially organised, supported, sanctioned or endorsed by an entity identified under (3)(a), and which are designed to promote, celebrate, enhance or facilitate the hosting and staging of the FIFA Women’s World Cup Australia New Zealand 2023. This may include the following events and activities:

- (a) the FIFA congress, banquets, opening, closing, award and other ceremonies and the draw;
- (b) any media and marketing events, including press conferences and launch activities;
- (c) any seminars, meetings, conferences and workshops;
- (d) any official public viewing or other fan-related events;
- (e) any cultural activities and events, in particular concerts, exhibitions, displays, shows or other expressions of culture;
- (f) any sustainability activities, including events, activities and/or programmes developed by FIFA which promote sustainable event management and/or sustainable development and contribute to FIFA's mission to building a better future;
- (g) any football matches and training sessions; and
- (h) any other activities that FIFA, an entity identified under (3)(a), consider relevant for the staging, organisation, preparation, marketing, promotion or winding-up of the Women’s World Cup Australia New Zealand 2023.

### *Excise-equivalent goods are excluded*

Subsection 74(2) excludes excise-equivalent goods from goods prescribed as eligible for a tariff concession for the purposes of item 59.

***Excise-equivalent goods*** is defined in section 4 of the Customs Act to mean goods prescribed by the regulations for the purposes of this definition.

The note to subsection 74(2) indicates that goods classified to a tariff subheading listed in clause 1 of Schedule 1 to the *Customs Regulation 2015* are excise-equivalent goods. This list is incorporated as in force from time to time, consistent with the operation of paragraph 14(1)(a) of the *Legislation Act 2003*.

### *Conditions*

New subsection 74(3) provides that subsection 74(2) only applies to goods subject to all of the outlined conditions.

### *Conditions on who can import goods*

New paragraph 74(3)(a) sets out a condition that the goods must be imported by certain entities or persons listed in the subparagraphs.

Subparagraph (i) identifies the Swiss legal entity known as FIFA (UID CHE 107.301.064) and includes continental football confederations. Those confederations includes:

- Asian Football Confederation;
- Confederation of African Football;
- Confederation of North, Central American and Caribbean Association Football;
- Confederación Sudamericana de Fútbol;
- Oceania Football Confederation;
- Union of European Football Associations.

Subparagraph (ii) sets out that FIFA subsidiaries are included in the cohort of entities eligible to claim the concessional rate of duty. ***FIFA subsidiary*** is defined in subsection (4).

Subparagraph (iii) sets out that Football Australia Limited (ACN 106 478 068) is included in the cohort of entities eligible to claim the concessional rate of duty. This entity is the national sporting organisation that has been granted the rights to host the FIFA Women's World Cup Australia New Zealand 2023 in Australia.

Subparagraph (iv) sets out that FWWC2023 Pty Ltd (ACN 650 853 302) is included in the cohort of entities eligible to claim the concessional rate of duty. This is the legal entity established on 11 June 2021 as a central entity for the operational delivery of the tasks, activities and sub-projects in relation to the FIFA Women's World Cup Australia New Zealand 2023 in Australia.

Subparagraph (v) provides that a person or body in connection with an entity referred to in the previous subparagraphs – i.e. FIFA (including continental football confederations), FIFA subsidiary, Football Australia Limited (ACN 106 478 068), or FWWC2023 Pty Ltd (ACN 650 853 302) – are included in the cohort of persons eligible to claim the concessional rate of duty. The phrase “any person or body in connection with” is to include any employee,

contractor, subcontractor, or members (national associations) of FIFA (including their employees, contractors or subcontractors).

The effect of this subparagraph is the importer must be: (i) a person or body in connection with FIFA (including continental football confederations), (ii) a person or body in connection with a subsidiary of FIFA, (iii) a person or body in connection with Football Australia Limited, or (iv) a person or body in connection with FWWC2023 Pty Ltd.

*Must provide evidence to a Collector if requested*

New paragraph 74(3)(b) sets out a condition that the person or body (i.e. the importer) provides evidence of the goods being imported for the purposes of the FIFA Women's World Cup Australia New Zealand 2023 (i.e. the prescribed international sporting event).

*Time of importation*

New paragraph 74(3)(c) sets out a condition that the goods were imported between 1 January 2023 and 31 December 2028.

*Use of the goods*

New paragraph 74(3)(d) sets out a condition that the goods are for consumption in Australia, or are exported from Australia after their use, or are donated after their use to either: an entity whose purpose is related to the practice of sports or social development, or a registered charity within the meaning of the Customs Tariff Act.

New subsection 74(4) sets out the definitions for the purpose of the by-law.

**Schedule 2—Repeals**

The effect of this clause is that Customs By-Law No. 0176871 is repealed.

That by-law is effectively replaced by new section 27A of the Customs By-Laws and as such is redundant.