

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Customs Act 1901

Customs (Prohibited Imports) Amendment (Directed Energy Weapons) Regulations 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.

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.

Section 50 of the Customs Act provides, in part, that the Governor-General may, by regulation, prohibit the importation of goods into Australia and that the power may be exercised by prohibiting the importation of goods absolutely or by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

For section 50 of the Customs Act, the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) control the importation into Australia of certain goods by prohibiting importation absolutely, or by making importation subject to a permission or licence.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Purpose

The *Customs (Prohibited Imports) Amendment (Directed Energy Weapons) Regulations 2023* (Amendment Regulations) amends the Prohibited Imports Regulations to establish an import control for directed energy weapons and their parts. Directed energy weapons are those designed to damage their target with highly focused energy (including high energy lasers, high power microwaves, particle beams and sound beams) without a solid projectile, and when discharged are capable of causing damage to property or bodily harm.

The import control for the goods is achieved through new table items 50 and 51 of Part 2 of Schedule 13 to the Prohibited Imports Regulations, which set out the range of specified tests that must be complied with in connection to the importation of these goods.

Background

The Australian Border Force enforces import control under the Prohibited Imports Regulations over goods that arrive at the border, including non-firearm weapons. These controls are in place to ensure that imported goods do not pose a threat to the wider community.

Directed energy weapons use energy in the form of lasers, radio frequencies or particle beams, as opposed to a physical projectile, to strike a target. These goods are not for civilian use as they are essentially designed or adapted for military use. As such, they are capable of disabling drones, including military unmanned aerial systems, countering command and control systems, and stopping vehicles or vessels.

There is no legitimate civilian use for such weapons or their parts, and allowing the importation of these weapons into Australia without first establishing an appropriate importation framework would pose a threat to the wider community.

Impact and effect

Part 2 of Schedule 13 to the Prohibited Imports Regulations lists non-firearm weapons prohibited from importation under regulation 4H of those Regulations unless a permission has been granted by the Minister or an authorised person following compliance with the tests specified in the second column of the table under Part 2. There are a broad range of prohibited weapons, including large calibre armaments, military attack vehicles, body armour, laser pointers, anti-personnel sprays, and martial arts weaponry.

The new table items list directed energy weapons and their parts as a category of non-firearm weapons and parts that may be imported into Australia only if the importation of these goods comply with the official purposes test, the specified purposes test, the returned goods test, or the national interest test, as set out in Part 1 of Schedule 13 to the Prohibited Imports Regulations.

In practice, this means that the giving of permission for the importation of directed energy weapons and their parts would be confined to imports of directed energy weapons and their parts by government end users, companies purchasing under a contract or tender for government end users, or where the import of these goods is in the national interest. This prevents any importation which could provide general public access to importation of these weapons.

The Office of Impact Analysis (OIA) 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 an Impact Analysis is not required. The OIA reference number is OIA23-04530.

Consultation

The Department of Home Affairs consulted with the Department of Defence to confirm there is no legitimate civilian use for directed energy weapons. Due to the risk these weapons pose to community safety, defence importers understand and endorse the necessity for import controls.

No broader community consultation was undertaken because there is no legitimate and lawful civilian use for these weapons.

Details and operations

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

The Amendment Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Details of the Amendment Regulations are set out in [Attachment A](#).

Other

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full Statement of Compatibility with Human Rights is set out in [Attachment B](#).

Division 1 of Part 3 of Chapter 3 of the Legislation Act operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. That Division applies to automatically repeal the Amendment Regulations. As the Amendment Regulations will be automatically repealed, the sunseting framework under Part 4 of the Legislation Act is not engaged.

Details of the Customs (Prohibited Imports) Amendment (Directed Energy Weapons) Regulations 2023

Section 1 – Name

This section provides that the name of the instrument is the *Customs (Prohibited Imports) Amendment (Directed Energy Weapons) Regulations 2023* (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 has effect that the Amendment Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

The note below the table provides that the table relates only to the provisions of the Amendment Regulations as originally made. It will not be amended to deal with later amendments of the Amendment Regulations. The purpose of this note clarifies that the commencement of any subsequent amendments will not be reflected in this table.

Section 3 – Authority

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

Section 4 – Schedules

This section sets out 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 amended is the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations).

Schedule 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item 1 Part 2 of Schedule 13 (at the end of the table)

The purpose of the Amendment Regulations is to introduce new import controls for directed energy weapons and their parts, prohibiting the importation of those goods under section 4H of the Prohibited Imports Regulations unless new specified requirements inserted into Part 2 of Schedule 13 to those Regulations are complied with. This prohibition articulates a distinction between directed energy weapons and the existing import controls in table item 1

(for example, for dazzle or decoy devices which would include hand held laser pointers of lower wattage).

Under the amendments, the Minister administering the Prohibited Imports Regulations may only grant permission to import directed energy weapons or parts of directed energy weapons where the Minister is satisfied that the prospective importer complies with the ‘official purposes test’, the ‘specified purposes test’, the ‘returned goods test’, or the ‘national interest test’ in items 1, 2, 5 and 10 respectively in Part 1 of Schedule 13 to the Prohibited Imports Regulations. An authorised person may also give written permission, provided the prospective importer satisfies the ‘official purposes test’, ‘specified purposes test’ or ‘returned goods test’. A person other than the Minister cannot be authorised to assess compliance with the ‘national interest test’.

Key elements of the new import prohibition are explained below.

Directed energy weapons or similar devices

New table item 50 applies to weapons or similar devices that use highly focused energy in the form of lasers, radio frequencies or particle beams, as opposed to a physical projectile, to strike and damage a target. These weapons are capable of disabling drones, including military unmanned aerial systems, countering command and control systems, and stopping vehicles or vessels.

The phrase ‘or similar devices’ ensures that variations of these weapons are also captured by the import prohibition set out in new table item 50.

To the extent that certain directed energy weapons may be covered by table item 44 of Part 2 of Schedule 13 to the Prohibited Imports Regulations – e.g. hand held laser pointers, the importation of those weapons continues to be regulated by the import tests required in that table item.

Designed to damage their target with highly focused energy (including high energy lasers, high power microwaves, particle beams and sound beams) without a solid projectile

The purpose of this element is to ensure the range of devices that use highly focused energy which, when discharged, cause damage to property or person are adequately captured by the new import control. What may be covered as a directed energy weapon is wide in nature to encapsulate current and future varieties of directed energy devices that are designed to cause damage with highly focused laser, microwave, particle or sound beam energy.

As an example, damage to property in this instance would include, but is not limited to, temporarily or permanently disabling a target by scrambling computer memories or burning out sensitive electronic parts, suppressing navigation, telecommunication and transmission channels, or interfering with guidance systems.

Capable of causing: (i) damage to property or (ii) bodily harm

The ‘capable of causing damage to property or bodily harm’ element is similar to the existing import restriction on electromagnetic weapons in table item 48 of Part 2 of Schedule 13 to the Prohibited Imports Regulations.

This element ensures that the new import prohibition for directed energy weapons and parts is appropriately targeted to weapons that may cause damage or harm, which pose a risk to military unmanned aerial systems, command and control systems, and vehicles or vessels. There may also be a separate risk to community safety if directed energy weapons were used against civilian, aviation or law enforcement targets.

As with the first element, this element also ensures that the new prohibition is not linked to any particular kind or design of directed energy weapon, and can capture emerging designs of these weapons. If new kinds of directed energy weapons become commercially available, or have restricted availability for defence purposes in overseas jurisdictions, there is a foreseeable risk of these weapons entering the Australian market and causing harm if the elements describing their nature and effects in the Prohibited Import Regulations are too narrow.

Parts for directed energy weapons or similar devices

New table item 51 prohibits the importation of parts designed for directed energy weapons, and replicates the regulatory approach to ‘parts’ for other kinds of weapons throughout Part 2 of Schedule 13. Integral parts are those essential to the operation of the weapon, but would not include minor components such as screws, washers, brackets, springs etc. or dual use goods commercially available for non-military use.

Through this control, the importation of directed energy weapons, and their parts, into Australia is prohibited unless the Minister, or a person authorised by the Minister, gives permission for the importation of such goods. Permission to import directed energy weapons or their integral parts would generally be restricted to government end users in line with the appropriate test.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Imports) Amendment (Directed Energy Weapons) Regulations 2023

The *Customs (Prohibited Imports) Amendment (Directed Energy Weapons) Regulations 2023* (disallowable legislative instrument) is 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 of the disallowable legislative instrument

The Australian Border Force enforces import control under the Prohibited Imports Regulations applicable to goods that arrive at the border, including non-firearm weapons. These controls are in place to ensure that imported goods do not pose a threat to the wider community.

Directed energy weapons are those designed to damage their target with highly focused energy (including high energy lasers, high power microwaves, particle beams and sound beams) without a solid projectile, and when discharged are capable of causing damage to property or bodily harm.

There is no legitimate civilian use for such weapons or their parts, and allowing the importation of these weapons into Australia without first establishing an appropriate importation framework would pose a threat to the wider community.

The disallowable legislative instrument amends the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) to establish import control for directed energy weapons and their parts. This is achieved through new items 50 and 51 inserted into the table under Part 2 of Schedule 13 to the Prohibited Imports Regulations.

Part 2 of Schedule 13 to the Prohibited Imports Regulations lists non-firearm weapons prohibited from importation under regulation 4H of those Regulations unless a permission has been granted by the Minister or an authorised person. There are a broad range of prohibited weapons, including large calibre armaments, military attack vehicles, body armour, laser pointers, anti-personnel sprays, and martial arts weaponry.

The new table items list directed energy weapons and their parts as a category of non-firearm weapons and parts that may be imported into Australia only if the importation of these goods comply with the official purposes test, specified purposes test, the returned goods test, or the national interest test, as set out in Part 1 of Schedule 13 to the Prohibited Imports Regulations.

The circumstances under which directed energy weapons and their parts can be imported is therefore confined to imports of directed energy weapons and their parts by government end users, companies purchasing under a contract or tender for government end users, or where

the import of these goods is in the national interest. This prevents general public access to importation of these weapons.

Human rights implications

The disallowable legislative instrument does not engage, impact on or limit in any way, 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 disallowable legislative instrument is compatible with human rights, as the instrument does not raise any human rights issues.

The Hon. Clare O’Neil MP
Minister for Home Affairs