

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Home Affairs

Customs (Prohibited Imports) Regulations 1956

Customs (Prohibited Imports) Amendment (Importation of Tobacco Products) Approval 2025

Legislative Authority

The *Customs Act 1901* (the 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 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.

Subsection 50(1) of the Act provides that the Governor-General may, by regulation, prohibit the importation of goods into Australia. Under section 50 this power may be exercised by prohibiting the importation of goods absolutely or in compliance with certain conditions or restrictions.

Paragraph 50(2)(c) of the Act provides that the power in subsection 50(1) to make regulations prohibiting the import of goods into Australia may be exercised by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

Purpose

The *Customs (Prohibited Imports) Amendment (Importation of Tobacco Products) Approval 2025* (Amendment Instrument) amends the *Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019* (Instrument of Approval) to provide clarity in relation to ongoing approvals for certain tobacco products where it is considered that applying for a case-by-case permission is not necessary.

Background

Subregulation 4DA(1) of the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) prohibits the importation of tobacco products into Australia unless:

- (a) a permission to import the tobacco products has been granted in writing by the Minister or an authorised person and the permission is produced to the Collector; or
- (b) the Minister has approved the importation under subregulation 4DA(9).

Both the Amendment Instrument and the Instrument of Approval are made under the authority of subregulation 4DA(9) of the Prohibited Imports Regulations which allows the Minister to approve, by legislative instrument, the importation into Australia of a tobacco product that meets one or more of the following conditions or restrictions:

- (a) the tobacco product is specified in, or included in a class of tobacco products specified in, the approval;

- (b) the tobacco product is imported by a person, or class of persons, specified in, the approval;
- (c) the tobacco product does not exceed a value or amount specified in the approval;
- (d) the tobacco product is imported in a way, or by a means, specified in the approval.

Impact and effect

The Instrument of Approval, as amended by the Amendment Instrument, will provide clarity for ongoing approvals for the importation of tobacco products above the duty free limits by passengers and members of the crew of ships and aircraft arriving in Australia, who are aged 18 years or older. The purpose of this approval is to ensure that international travellers entering Australia, and the external Territories, can continue to import duty paid tobacco without the need to apply for and obtain an import permit, which would be an unnecessary administrative burden in this context.

The Instrument of Approval, as amended by the Amendment Instrument, will continue to permit on-going approvals for the importation into Australia, and the external Territories, of the following tobacco products:

- tobacco products imported as part of the Unaccompanied Personal Effects of a passenger on, or a member of the crew of, a ship or aircraft arriving in Australia, if the passenger or member is at least 18 years of age; or
- as part of the unaccompanied personal or household effects of a passenger on, or a member of the crew of, a ship or aircraft arriving in Australia, if the passenger or member is at least 18 years of age(subparagraph 5(a)(ii)).

Consultation

Consultation was not undertaken for the Amendment Instrument as the amendments provide additional clarification in relation to the tobacco products that are approved to be imported.

The Office of Impact Analysis (OIA) has determined that detailed analysis is not required under the Australian Government's Policy Impact Analysis Framework (OIA24-08745).

Details and operation

The Amendment Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Amendment Instrument are set out in **Attachment A**.

The Amendment Instrument will commence on the day after the instrument is registered.

Other matters

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 at **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 Instrument. As the Amendment Instrument will be automatically repealed, the sunseting framework under Part 4 of the Legislation Act is not engaged.

Details of the *Customs (Prohibited Imports) Amendment (Importation of Tobacco Products) Approval 2025*

Section 1 – Name

This section provides that the title of the instrument is the *Customs (Prohibited Imports) Amendment (Importation of Tobacco Products) Approval 2025* (Amendment Instrument).

Section 2 – Commencement

This section provides that the whole of the Amendment instrument commences on the day after the instrument is registered.

Section 3 – Authority

This section sets out the authority under which the Amendment Instrument is made, which is subregulation 4DA(9) of the *Customs (Prohibited Imports) Regulations 1956*.

Section 4 – Schedules

This section is the enabling provision for the Schedule to the Amendment Instrument and provides that, each instrument that is specified in a Schedule to the Amendment Instrument, is amended or repealed 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.

The amended instrument is the *Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019*.

Schedule 1—Amendments

Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019

Item 1 Section 4

This item repeals section 4, and substitutes a new section 4, which defines the following terms for the *Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019*:

The term *Act* is defined to mean the *Customs Act 1901*.

The term *cargo report* replicates the definition of the repealed section 4, and is defined to have the same meaning as in subsection 4(1) of the Act.

Subsection 4(1) of the Act defines *cargo report* to mean a report under section 64AB that is made in respect of the cargo to be unloaded from, or kept on board, a ship at a port or an aircraft at an airport.

The term *Regulation* is defined to mean the *Customs Regulation 2015*.

The term *tobacco product* is defined to have the same meaning as in subsection 4(1) of the Act.

Subsection 4(1) of the Act defines **tobacco products** to mean goods classified to heading 2401, 2402 or 2403 or subheading 2404.11.00 of Schedule 3 to the *Customs Tariff Act 1995* (except goods classified to subheading 2402.90.00 or 2403.99.10 of that Schedule).

While the terms of the Act are taken to have the same meaning in instruments made under the Act, this amendment is necessary due the construction of the *Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019* and for the purpose of ensuring clarity.

Item 2 Paragraphs 5(a) and (b)

This item repeals paragraphs 5(a) and (b), and substitutes a new paragraph 5(a), which has the effect that the Approval applies to tobacco products in excess of the amounts mentioned in paragraph 27(2)(g) of the Regulation that are imported:

- by a passenger on, or a member of the crew of, a ship or aircraft arriving in Australia, if the passenger or member is at least 18 years of age (subparagraph 5(a)(i)); or
- as part of the unaccompanied personal or household effects of a passenger on, or a member of the crew of, a ship or aircraft arriving in Australia, if the passenger or member is at least 18 years of age(subparagraph 5(a)(ii)).

This amendment does not alter the tobacco goods referred to in the repealed paragraphs, it continues to capture the same goods that were captured by the repealed paragraphs 5(a) and (b) of the *Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019*.

The purpose of new paragraph 5(a) is to remove the potential for an inference to be drawn that “on which duty is payable” is a condition for the Approval to apply to the imported tobacco goods. Referring to paragraph 27(2)(g) of the Regulation, that itself does not deal with duties, also has the benefit that, should the amounts mentioned in paragraph 27(2)(g) change, the new amounts will be automatically captured by this reference.

The guidance note following new paragraph 5(a) reminds the reader that paragraph 27(2)(g) of the Regulation refers to amounts in excess of 25 cigarettes or 25 grams of tobacco products.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Imports) Amendment (Importation of Tobacco Products) Approval 2025

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

Background

The Australian Government announced in the 2018-19 Budget that it would tighten tobacco border controls by introducing a prohibited import control for tobacco products through the *Black Economy Package – Combatting Illicit Tobacco*.

The *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) set out various goods the importation of which is prohibited absolutely or prohibited unless certain conditions, restrictions, requirements are complied with, such as the granting of a licence or permission. The Prohibited Imports Regulations introduced a prohibition on the importation of tobacco products without a permit, with limited exemptions from 1 July 2019.

Consequently, tobacco products can only be imported with a valid import permit (except for international travellers using duty free allowances and specified tobacco items such as cigars and smokeless tobacco).

The *Customs (Prohibited Imports) Amendment (Importation of Tobacco Products) Approval 2025* (Disallowable Legislative Instrument) amends the *Customs (Prohibited Imports) (Importation of Tobacco Products) Approval 2019* (Instrument of Approval) to provide clarity in relation to ongoing approvals for the importation of tobacco products above the duty free limits by passengers and members of the crew of ships and aircraft arriving in Australia, who are aged 18 years or older, in line with the specified circumstances and restrictions provided in subregulation 4DA(9) of the Prohibited Imports Regulations. The purpose of the amendments made by the Disallowable Legislative Instrument is to ensure that international travellers entering Australia, and the external Territories, can continue to import duty paid tobacco without the need to apply for and obtain an import permit, which would be an unnecessary administrative burden in this context. On this basis, the amendments made by the Disallowable Legislative Instrument are only technical in nature.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Tony Burke MP, Minister for Home Affairs