

EXPLANATORY STATEMENT

Minister for Home Affairs

Customs Act 1901

*Customs (Prohibited Exports) Amendment (COVID-19 Human Biosecurity
Emergency) Regulations 2020*

The *Customs Act 1901* (the 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 112 of the Customs Act provides, in part, that the Governor-General may, by regulation, prohibit the exportation of goods from Australia and that the power may be exercised by prohibiting the exportation of goods absolutely or by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

The purpose of the *Customs (Prohibited Exports) Amendment (COVID-19 Human Biosecurity Emergency) Regulations 2020* (the Regulations) is to amend the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations) to implement a temporary prohibition on the export of goods that are essential to preventing the spread of the COVID - 19 virus.

The prohibition applies to the exportation of goods including face masks and hand sanitizer, as such export limits the availability of these goods for those with the greatest need in Australia. A further aim of this export prohibition is to dissuade consumers from engaging in widespread bulk purchase for the purpose of export.

The amendment provides for a number of exceptions to this prohibition, including where:

- a person departing Australia takes with them a reasonable quantity of such items for personal use;
- export is by a humanitarian organisation, and the export is not by post; or
- export of such items was a person's normal business, and the export is not by post.

The prohibition applies only when the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Biosecurity Declaration) is in force, including where it is extended.

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

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at [Attachment B](#).

The Regulations are required as a matter of urgency to ensure the interests of the Australian public are safeguarded and to aid in the minimisation of the spread of COVID - 19. As such, consultation was not appropriate.

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

The Regulations commence on the day after the instrument is registered.

OPC64520-A

Details of the Customs (Prohibited Exports) Amendment (COVID-19 Human Biosecurity Emergency) Regulations 2020

Section 1 – Name of Regulation

This section provides that the title of the Regulations is the *Customs (Prohibited Exports) Amendment (COVID-19 Human Biosecurity Emergency) Regulations 2020* (the Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Regulations commence.

Table item 1 provides for the whole of the instrument to commence the day after the instrument is registered.

Section 3 – Authority

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

Section 4 - Schedules

This section is the formal enabling provision for the Schedules to the Regulations, and provides that each instrument that is specified in a Schedule to the 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 this instrument has effect according to its terms.

The instrument to be amended is the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations).

Schedule 1 – Amendments commencing day after registration

Customs (Prohibited Exports) Regulations 1958

Item 1 – Subregulation 2(1)

This item inserts a new definition into the definitions provided in regulation 2. The new definition provides:

‘ABN’ has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

This new definition is consequential to the amendments discussed below.

Item 2 – At the end of Part 3

This item inserts a new Division 7, titled ‘Exportation of goods during COVID-19 human biosecurity emergency period’ at the end of Part 3 – Prohibited Exports. New Division 7 contain new regulations 13GI Exportation of goods during COVID-19 human biosecurity emergency period, and 13GJ Exportation of goods during COVID-19 human biosecurity emergency period- exceptions.

New regulation 13GI implements a prohibition on the export of goods, as described below.

New subregulation 13GI(1)

New subregulation 13GI(1) provides that new regulation 13GI will apply during a human biosecurity emergency period, within the meaning of the *Biosecurity Act 2015* (the Biosecurity Act), if the declaration listed human disease for that period is human coronavirus with pandemic potential.

The effect of this provision is that the provisions of new regulation 13GI only apply when the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Biosecurity Declaration) is in force, including where it is extended. The Biosecurity Declaration was made by the Governor-General on 18 March 2020 under section 475 of the Biosecurity Act.

New subregulation 13GI(1) also provides new notes that explain the nomenclature COVID-19 virus.

New subregulation 13GI(2)

New subregulation 13GI(2) provides that the exportation from Australia of goods listed is prohibited. The goods to which the prohibition applies are:

- a) any of the following equipment that is capable of limiting the transmission of organisms to humans:
 - (i) disposable face masks;
 - (ii) disposable gloves;
 - (iii) disposable gowns;

- (iv) goggles, glasses or eye visors;
- b) any of the following disinfectant products:
 - (i) alcohol wipes;
 - (ii) hand sanitizer;
- c) goods included in a determination under subregulation (3).

New subregulation 13GI(3)

New subregulation 13GI(3) provides that the Minister may, by legislative instrument, determine goods for paragraph 13GI(2)(c). This enables the Minister to extend the prohibition on export under subregulation 13GI(1) to additional goods that are listed in a legislative instrument, at a later date and if this is required.

The legislative instrument would be registered and available to be viewed for free on the Federal Register of Legislation.

New regulation 13GJ provides exceptions to the application of the prohibition in new regulation 13GI.

New subregulation 13GJ(1)

New subregulation 13GJ(1) provides that the prohibition on the export of goods listed in new subregulation 13GI(2) does not apply to those goods if they are accompanied personal or household effects of a person who is either passenger on or a crew member of, a ship or aircraft, if the goods are for the personal use of the person.

This means that, for example, a person who boards a ship that is departing for overseas may export hand sanitizer for their personal use in their luggage.

New subregulation 13GJ(2)

New subregulation 13GJ(2) provides that the prohibition on the export of goods listed in new subregulation 13GI(2) does not apply to those goods if they are exported by a person to a relative of the person, for the relative's personal use, and the exportation is not by post.

This means that, for example, a person may send a care package containing, for example a face mask and hand sanitizer for the relative's use.

New subregulation 13GJ(3)

New subregulation 13GJ(3) provides that the prohibition on the export of goods listed in new subregulation 13GI(2) does not apply to goods if they are exported by a humanitarian organisation or agency, and the export is not for commercial purposes and is not exported via post.

New subregulation 13GJ(4)

New subregulation 13GJ(4) provides that the prohibition on the export of goods listed in new subregulation 13GI(2) does not apply if they are exported by a person who manufactured the goods, and the goods are exported other than by post.

In accordance with subregulation 2C(1) of the *Acts Interpretation Act 1901*, a ‘person’ includes a body politic or corporate, as well as an individual.

New subregulation 13GJ(4) means, for example, that the prohibition in new subregulation 13GI(2) does not apply to face masks that an Australian company manufactures. However, if the same facemasks were to be exported by post, their export is prohibited.

New subregulation 13GJ(5)

New subregulation 13GJ(5) provides that the prohibition on the export of goods listed in new subregulation 13GI(2) does not apply if a person exporting those goods:

- exports them in the ordinary course of the person’s business; and
- the person is registered under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and has an ABN; and
- the exportation is not by post.

New subregulation 13GJ(5) means, for example, the prohibition on export in new subregulation 13GI(2) does not apply to disinfectant products exported by a company that has operated a business of exporting (but not manufacturing) disinfectant products, by air cargo, and who is registered for GST and has an ABN.

Statement of Compatibility with Human Rights

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

Customs (Prohibited Exports) Amendment (COVID-19 Human Biosecurity Emergency) Regulations 2018

This Legislative Instrument is compatible with 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 Legislative Instrument

The Legislative Instrument amends the Customs (Prohibited Exports) Regulations 1958 (the PE Regulations) to amend the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations) to implement a temporary prohibition on the export of goods that are essential to preventing the spread of the COVID - 19 virus.

The prohibition applies to the exportation of goods including face masks and hand sanitizer, as such export limits the availability of these goods for those with the greatest need in Australia. A further aim of this export prohibition is to dissuade consumers from engaging in widespread bulk purchase for the purpose of export.

The amendment provides for a number of exceptions to this prohibition, including where:

- a person departing Australia takes with them a reasonable quantity of such items for personal use;
- export is by a humanitarian organisation, and the export is not by post; or
- export of such items is a person's normal business, and the export is not by post.

The prohibition applies only when the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Biosecurity Declaration) is in force, including where it is extended.

Human rights implications

To the extent the goods to which the prohibition applies are substances that are required for medical purposes, this amendment to the PE Regulations may engage the right to enjoyment of the highest attainable standard of physical and mental health under Article 12 of *International Covenant on Economic, Social and Cultural Rights* (ICESCR) but will not limit this right for persons in Australia. Rather this right will be promoted by the amendments made by the Legislative Instrument as they will prohibit the export of goods that are essential to prevent the spread of the COVID-19 virus, making more available to persons in Australia.

The amendments to the PE Regulations may also engage also the right to life in Article 6(1) of the *International Covenant on Civil and Political Rights* (ICCPR); specifically, the responsibility that a country has to take appropriate steps to protect the right to life.

The inherent right to life entails the right not to be deprived of life arbitrarily or unlawfully by the country or its agents. The right to life also includes a duty on governments to take appropriate steps to protect the right to life of those within its jurisdiction, and to investigate arbitrary or unlawful killings and punish offenders.

The Legislative Instrument prohibits the export of goods that are essential to prevent the spread of COVID-19. This promotes the right to life as the resulting increased availability of these essential goods for use in Australia will significantly lower the risk and potential harm to life posed by COVID-19 in the Australian community.

The exceptions for persons who manufacture such items and for persons whose ordinary business is the export of such items also helps ensure that the right to work, under Article 6 of the ICESCR, of the employees of such companies is not adversely affected by this prohibition.

Conclusion

The Legislative Instrument is compatible with human rights because it does not limit human rights, rather it supports, in particular, the rights in both Article 12 of the ICESCR and Article 6(1) of the ICCPR for persons in Australia.

**The Hon Peter Dutton MP
Minister for Home Affairs**

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.