

EXPLANATORY STATEMENT

Overview

As a part of the Government's Simplified Trade System (STS) agenda, the Australian Border Force (ABF) proposed to develop a regulatory framework to trial new border management practices under the *Customs Act 1901* (the Customs Act). This proposal was endorsed by Government in the 2020-21 Budget.

The Customs Amendment (Controlled Trials) Bill 2021 (the Bill) would establish a framework to conduct time limited trials of new trade practices with approved industry participants. The Bill would allow the Comptroller-General of Customs (Comptroller-General) to vary, waive or create new obligations under the Customs Act for a limited time. Only approved industry participants would be eligible to participate in these trials. The standard duration of a trial would not be longer than 12 months, and could be extended for 6 months only. A trial may also be revoked if necessary.

The controlled trials framework would allow the ABF to collaborate with industry in conducting proof of concept trials of new trade practices before considering legislative change. Conducting controlled trials would allow the ABF to build a robust evidence base to inform the Government's future decisions on larger-scale reform under the STS agenda. Trial results will assist in simplifying the Australian customs framework whilst maintaining, and achieving, Australia's border security objectives.

The Bill would allow for controlled trials to be conducted with respect to the following parts of the Customs Act and associated regulations:

- Part IV Imports (excluding prohibited imports);
- Part VI Exports (excluding prohibited exports);
- Parts IVA - Depots;
- Part V - Warehouses;
- Part VIA - Electronic Communications;
- Part XI - Agents and Customs Brokers; and
- Part XVA – Tariff Concession Orders.

The Bill would allow the Comptroller-General to make rules that establish and administer controlled trials. The rules would set out the subject matter of the trial, the application process, eligibility requirements and duration of a trial. The duration of a trial would be no longer than 12 months but could be extended once for an additional 6 months. Once a trial is established, an entity may apply or be invited to participate in a trial.

Amendments

The amendments propose to:

- Amend the *Australian Border Force Act 2015* to ensure the Comptroller-General's power to make rules with respect to controlled trials cannot be delegated.

- Establish key definitions to facilitate controlled trials under subsection 4(1) of the Customs Act. These definitions would establish the concept of a controlled trial, the parts of the Customs Act that a controlled trial can be used for, and update the definition of rules to also be in relation to controlled trials.
- Insert ‘Part XB – Controlled Trials’ establishing the legal framework for controlled trials.
 - Division 1 provides a simplified outline of Part XB and the entities this Part applies to.
 - Division 2 outlines an entity’s obligations and the benefits an entity may receive if the entity is approved to participate in a controlled trial.
 - Division 3 outlines the administration of participation in controlled trials. This includes the requirements for applications to participate in a controlled trial, elections to participate, the process for approving participation, conditions of approvals and, the variation, suspension or revocation of approvals.
 - Division 4 outlines the Comptroller-General’s rule making powers with respect to controlled trials. The Comptroller General may make general rules that determine the qualification criteria to participate in any trial. The Comptroller-General may also make rules outlining the establishment, purpose, period of operation, eligibility criteria, conditions and affected obligations under the Customs Act for each controlled trial. The Comptroller-General may also extend or revoke a controlled trial through these rule making powers.